

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Community Affairs Committee

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BILL: SB 202

SPONSOR: Senator Saunders

SUBJECT: Community Contribution Tax Credit

DATE: December 15, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Yeatman	CA	<b>Favorable</b>
2.	_____	_____	CM	_____
3.	_____	_____	GE	_____
4.	_____	_____	TA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill increases from \$10 million to \$15 million the total annual amount of tax credits that may be granted under the community contribution tax credit program, and increases, from 50 percent to 80 percent, the amount of available tax credits to be reserved for businesses that contribute to housing projects for low-income and very-low-income households. The bill also revises the procedures governing the distribution of tax credits. Finally, the bill extends the operation of the community contribution tax program through June 30, 2015.

This bill substantially amends the following sections of the Florida Statutes: 212.08, 220.03, 220.183, and 624.5105.

## II. Present Situation:

### Community Contribution Tax Credit Program

Under the community contribution tax credit program, corporations, insurance companies, and persons who collect or remit sales or use taxes may be able to receive tax credits for making donations to certain low-income housing and community development projects.

**Credits Available** - Available tax credits under the program may be taken against sales or use taxes, corporate income taxes, and insurance premium taxes.<sup>1</sup> Tax credits are limited to 50 percent of the amount of a “community contribution” or donation to a maximum of \$200,000 annually per donor.<sup>2</sup> The total amount of community contribution tax credits available per year

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<sup>1</sup> Sections 212.08(5)(q), 220.183, and 624.5105, F.S.

<sup>2</sup> Sections 212.08(5)(q)1.a. and c., 220.183(1)(a) and (b), and 624.5105(1)(a) and (b), F.S.

under the program is \$10 million.<sup>3</sup> Tax credits against sales or use taxes are granted as a refund against sales and use taxes reported on returns and remitted in the 12 months preceding the application to the Department of Revenue for a refund.<sup>4</sup> Tax credits against corporate income taxes and insurance premium taxes are claimed against taxes due.<sup>5</sup>

***Form of Contributions*** - Community contributions or donations must take the following forms: (1) cash or other liquid assets; (2) real property; (3) goods or inventory; or (4) other physical resources.<sup>6</sup> For purposes of credits against insurance premium taxes and corporate income taxes, the Department of Revenue is authorized to identify “other physical resources” that qualify as a community contribution. For purposes of credits against sales or use taxes, the Office of Tourism, Trade, and Economic Development (OTTED) is authorized to identify “other physical resources.”

***Use of Contributions*** - Community contributions must be used for projects to provide: low and very low-income housing; commercial, industrial, or public resources and facilities; entrepreneurial and job development opportunities for low-income persons; access to high speed broadband capability for rural enterprise zones; and educational programs and materials for the Florida Holocaust Museum in St. Petersburg.<sup>7</sup>

***Project Location*** - Projects to provide low and very low-income housing may be located anywhere in the state.<sup>8</sup> However, community development projects, such as projects to construct or rehabilitate commercial, industrial, or public facilities, must be located in an enterprise zone or Front Porch Florida Community.<sup>9</sup> For purposes of credits against corporate income taxes, projects increasing access to high speed broadband capabilities may be located in any area of a rural county.<sup>10</sup> For purposes of credits against sales or use taxes, a project that is designed to increase high speed broadband access to rural enterprise zones may be located anywhere.<sup>11</sup> For the purposes of credits against insurance premium taxes, however, a project that is designed to increase high speed broadband access to rural enterprise zones must be located in an enterprise zone or Front Porch Florida Community.<sup>12</sup>

***Contribution Recipients*** - Eligible project sponsors under the program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.<sup>13</sup> OTTED maintains a list of approved sponsors.

***Tax Credit Application Process*** - Applications to receive community contribution tax credits must be submitted to OTTED and are processed on a first-come, first-serve basis. The

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<sup>3</sup> Sections 212.08(5)(q)1.e., 220.183(1)(c), and 624.5105(1)(c), F.S.

<sup>4</sup> Section 212.08(5)(q)1.b., F.S.

<sup>5</sup> Sections 220.183(1)(a) and 624.5105(1)(a), F.S.

<sup>6</sup> Sections 212.08(5)(q)2.a., 220.03(1)(d), and 624.5105(5)(a), F.S.

<sup>7</sup> Sections 212.08(5)(q)2.b., 220.03(1)(t), and 624.5105(2)(b) and (5)(e), F.S.

<sup>8</sup> Sections 212.08(5)(q)2.d., 220.183(2)(d), and 624.5105(2)(d), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 220.183(2)(d), F.S.

<sup>11</sup> Section 212.08(5)(q)2.d., F.S.

<sup>12</sup> Section 624.5105(2)(d), F.S.

<sup>13</sup> Sections 212.08(5)(q)2.c. and 220.183(2)(c), F.S.

application must set forth the terms of the application, such as the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. For the purposes of credits against corporate income taxes and sales or use taxes, the sponsor must verify in the application for tax credits that the community contribution has been received.<sup>14</sup> For the purposes of credits against insurance premium taxes, the sponsor must state its willingness to receive the contribution in the application for tax credits.<sup>15</sup> After approval for community contribution tax credits is received by an applicant, the applicant must also claim the credit from the Department of Revenue.<sup>16</sup> Unused credits against corporate income taxes and insurance premium taxes may be carried forward for 5 years.<sup>17</sup> Unused credits against sales taxes may be carried forward for 3 years.<sup>18</sup>

**Program History** - The community contributions tax credit was created in 1980<sup>19</sup> as a credit against the corporate income tax or insurance premium tax. From 1980 through 1994 it was capped at \$3 million per year. In 1994<sup>20</sup> the program’s expiration date was extended from that year until 2005, and the cap was decreased to \$2 million. In 1998<sup>21</sup> the Legislature increased the cap to \$5 million, and in 1999<sup>22</sup> it was raised again to \$10 million. Legislation enacted in 2001<sup>23</sup> allowed the credit to be used against a dealer’s sales and use tax liability.

**Program Expiration** - The statutes creating the community contribution tax credit program are scheduled to expire on June 30, 2005.

**Program Statistics** – According to the Office of Transportation and Economic Development, most of the community contribution tax credits are used against sales taxes. Similarly, the majority of contributions has been primarily to low-income housing projects. The following table and chart summarize the application of tax credits issued during FY 2003-2004.

Category of Tax Credit	Amount	Percentage
Sales Tax	\$8,431,439	84%
Corporate Income Tax	\$1,386,561	14%
Insurance Premium Tax	\$182,000	2%
Totals	\$10,000,000	100%

<sup>14</sup> Sections 212.08(5)(q)3.b. and 220.183(3)(b), F.S.

<sup>15</sup> Section 624.5105(3)(b), F.S.

<sup>16</sup> Section 212.08(5)(q)3.c., F.S., and Rules 12A-1.107(4), 12B-8.001(3), and 12C-1.0188(3), F.A.C.

<sup>17</sup> Sections 220.183(1)(e) and 624.5105(1)(e), F.S.

<sup>18</sup> Section 212.08(5)(q)1.b. and 5., F.S.

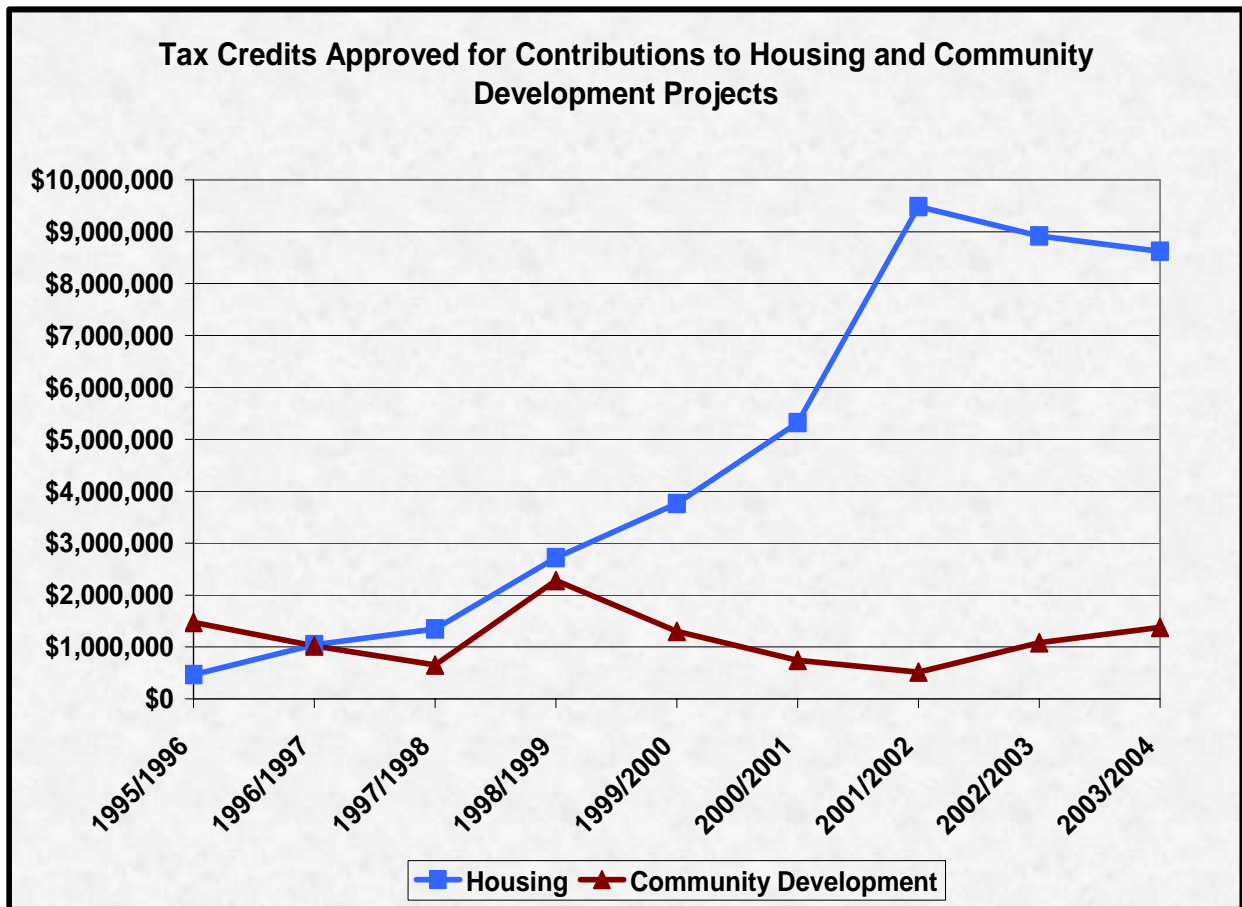
<sup>19</sup> Ch. 80-249, L.O.F.

<sup>20</sup> Ch. 94-136, L.O.F.

<sup>21</sup> Ch. 98-291, L.O.F.

<sup>22</sup> Ch. 99-265, L.O.F.

<sup>23</sup> Ch. 2001-201, L.O.F.



Source: Created from data provided by the OTTED

**III. Effect of Proposed Changes:**

This bill increases from \$10 million to \$15 million the total annual amount of tax credits that may be granted under the community contribution tax credit program, and increases, from 50 percent to 80 percent, the amount of available tax credits to be reserved for businesses that contribute to housing projects for low-income and very-low-income households. The bill also revises the procedures governing the distribution of tax credits.

**Section 1** amends s. 212.08(5), F.S., which relates to the **state sales tax**, to increase from \$10 million to \$15 million the total annual amount of tax credits which may be granted under the combined community contribution tax credit program and to increase, from 50 percent to 80 percent, the amount of available tax credits for the first two months of the fiscal year to be reserved for entities that contribute to homeownership projects for low-income and very-low-income households. Thereafter, businesses contributing to qualified non-housing projects are entitled to apply for remaining credits.

OTTED is required to reserve 20 percent of the available annual community contribution tax credits, for the first 2 months of the fiscal year, for businesses contributing to qualified entities

other than those constructing or rehabilitating low and very-low-income housing. Thereafter, businesses contributing to qualified housing entities are entitled to apply for remaining credits.

The bill stipulates that if during the first 10 business days of the state fiscal year, tax credit applications are received for more than 80 percent of the available annual tax credits for housing projects, applications that do not exceed \$200,000 will be granted in full. Thereafter, tax credit applications in excess of \$200,000 will be approved on a pro rata basis. If, after the first 2 months of the fiscal year, additional non-housing credits become available, OTTED is directed to grant the tax credits by first increasing the credits of those who received a pro rata reduction and, if there are remaining credits, granting credits to those who applied after the 10<sup>th</sup> business day of the fiscal year on a first-come, first-served basis.

The bill provides that if, during the first 10 business days of the fiscal year, tax credit applications are received for more than 20 percent of the available tax credits for non-housing projects, OTTED shall grant the tax credits on a pro rata basis. If, after the first 2 months of the fiscal year, additional credits become available for housing-related projects, OTTED shall grant tax credits by first increasing the credit to those entities who received a pro rata reduction and, if there are remaining credits, granting credits to those who applied on or after the 11<sup>th</sup> business day of the state fiscal year on a first-come, first-served basis.<sup>24</sup>

**Section 2** amends s. 220.03, F.S., to delete the requirement that OTTED reserve 50 percent of the available annual community contribution tax credits for businesses contributing to qualified entities constructing or rehabilitating low and very-low-income housing.

**Section 3** amends s. 220.183, F.S., which relates to the **corporate income tax**, to increase from \$10 million to \$15 million the total annual amount of tax credits which may be granted under the combined community contribution tax credit program and to increase, from 50 percent to 80 percent, the amount of available tax credits to be reserved for businesses that contribute to housing projects for low-income and very-low-income households for the first two months of the fiscal year. Thereafter, businesses contributing to qualified non-housing entities are entitled to apply for remaining credits.

OTTED is also required to reserve 20 percent of the available annual community contribution tax credits, for the first two months of the fiscal year, for businesses contributing to qualified entities other than those constructing or rehabilitating low and very-low-income housing. Thereafter, businesses contributing to qualified housing entities are entitled to apply for remaining credits.

This section also provides procedures for distributing available tax credits to eligible businesses (see Section 1 above for discussion of revised distribution procedures).

**Section 4** amends s. 624.5105, F.S., which relates to the **insurance premium income tax**, to increase from \$10 million to \$15 million the total annual amount of tax credits which may be granted under the combined community contribution tax credit program and to increase, from 50 percent to 80 percent, the amount of available tax credits to be reserved for businesses that

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<sup>24</sup> The bill does not specifically address the processing of tax credit applications received after the 10<sup>th</sup> day of the state fiscal year and prior to the beginning to the third month of the fiscal year.

contribute to housing projects for low-income and very-low-income households for the first two months of the fiscal year. Thereafter, businesses contributing to qualified non-housing entities are entitled to apply for remaining credits.

OTTED is also required to reserve 20 percent of the available annual community contribution tax credits, for the first two months of the fiscal year, for businesses contributing to qualified entities other than those constructing or rehabilitating low and very-low-income housing. Thereafter, businesses contributing to qualified housing entities are entitled to apply for remaining credits.

This section also relieves insurance companies that claim the community contribution tax credit against their insurance premium tax, from paying additional retaliatory tax resulting from having claimed the credit.

Finally, this section provides procedures for distributing available tax credits to eligible businesses (see Section 1 above for discussion of revised distribution procedures).

**Section 5** provides that this act shall take upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The Revenue Impact Conference has not issued an estimate of the fiscal impact of this bill. Based on a similar bill introduced during the 2004 Regular Session (SB 330), the impact of this bill will be a nonrecurring \$4.4 million negative fiscal impact on General Revenue, a non recurring \$600,000 negative fiscal impact on local revenues, and an insignificant nonrecurring negative impact on trust funds for FY 2005-2006.

B. Private Sector Impact:

Tax credits under the community contribution tax credit program available to corporations, insurance companies, and persons who collect or remit sales or use taxes will be increased by \$5 million. Additionally, more funding will be available to organizations who provide low-income housing and engage in community development

activities.

**C. Government Sector Impact:**

Government agencies that sponsor low-income housing projects and community development projects may receive additional funding in support of such projects and activities by increasing the cap on the community contribution tax credit program.

OTTED will be required to revise its processes to ensure that at least 80 percent of the available annual tax credits are allocated to projects that provide housing for low-income and very-low-income households.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In a July 2004 operational audit of OTTED, the Auditor General noted that in certain instances the methodology used by OTTED to determine the amount of community contribution tax credits did not provide a correlation to the cost or value of the contributions made.<sup>25</sup> The audit indicated that the Legislature may wish to clarify the acceptable methodologies for computing the tax credit.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>25</sup> Auditor General, Report No. 2005-010, *Operational Audit of the Executive Office of the Governor Office of Tourism, Trade, and Economic Development*, July 2004.





## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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