

Bill No. SB 2280

Barcode 602692

CHAMBER ACTION

Senate

House

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The Committee on Commerce (Oelrich) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Part XII of chapter 288, Florida Statutes, is created to read:

288.991 New Markets Tax Credit Act.--This part may be cited as the "New Markets Tax Credit Act."

Section 2. Section 288.992, Florida Statutes, is created to read:

288.992 New markets tax credit.--

(1) As used in this section, the term:

(a) "Adjusted purchase price" means the product of the amount paid to the issuer of a qualified equity investment for such qualified equity investment and a fraction the numerator of which is the dollar amount of qualified low-income community investments held by the issuer in this state as of the credit allowance date during the applicable tax year and

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1 the denominator of which is the total dollar amount of
 2 qualified low-income community investments held by the issuer
 3 as of the credit allowance date during the applicable tax
 4 year.

5 (b) "Applicable percentage" means zero percent for the
 6 first credit allowance date and 8.33 percent for each of the
 7 next six credit allowance dates.

8 (c) "Credit allowance date" means:

9 1. The date on which any qualified equity investment
 10 is initially made; and

11 2. Each of the six subsequent anniversary dates of the
 12 date upon which the qualified equity investment was initially
 13 made.

14 (d) "Long-term debt security" means any debt
 15 instrument issued by a qualified community development entity,
 16 at par value or a premium, having an original maturity date of
 17 at least 7 years following the date of its issuance, with no
 18 acceleration of repayment, amortization, or prepayment
 19 features before its original maturity date, and having no
 20 distribution, payment, or interest features related to the
 21 profitability of the qualified community development entity or
 22 the performance of the qualified community development
 23 entity's investment portfolio. This paragraph does not limit
 24 the holder's ability to accelerate payments on the debt
 25 instrument in situations in which the issuer has defaulted on
 26 covenants designed to ensure compliance with this section or
 27 s. 45D of the Internal Revenue Code of 1986, as amended.

28 (e) "Low-income community" means with respect to any
 29 population census tract if within this state:

30 1. The poverty rate of such tract is at least 20
 31 percent;

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1 2. In the case of a tract not located within a
 2 metropolitan area, the median family income for such tract
 3 does not exceed 80 percent of statewide median family income;
 4 or

5 3. In the case of a tract located within a
 6 metropolitan area, the median family income for such a tract
 7 does not exceed 80 percent of the greater of statewide median
 8 family income or the metropolitan area median income.

9 (f) "Qualified active low-income community business"
 10 has the same meaning as in s. 45D of the Internal Revenue Code
 11 of 1986, as amended. Any business that derives or projects to
 12 derive 15 percent or more of its annual revenue from the
 13 rental or sale of real estate is not a qualified active
 14 low-income community business. The term does not include any
 15 trade or business consisting predominantly of the development
 16 or holding of intangibles for sale or license; any trade or
 17 business consisting of the operation of any private or
 18 commercial golf course, country club, massage parlor, hot tub
 19 facility, suntan facility, racetrack or other facility used
 20 for gambling, or any store the principal business of which is
 21 the sale of alcoholic beverages for consumption off premises;
 22 or any trade or business the principal activity of which is
 23 farming if the sum of the aggregate unadjusted bases or, if
 24 greater, the fair market value, of the assets owned by the
 25 taxpayer which are used in such trade or business, and the
 26 aggregate value of the assets leased by a taxpayer used in
 27 such trade or business, exceeds \$500,000. For the purposes of
 28 this paragraph, two or more trades or businesses shall be
 29 treated as a single trade or business.

30 (g) "Qualified community development entity" has the
 31 same meaning as in s. 45D of the Internal Revenue Code of

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1 1986, as amended. However, an entity that has never entered
 2 into an allocation agreement with the Community Development
 3 Financial Institutions Fund of the United States Treasury
 4 Department with respect to credits authorized by s. 45D of the
 5 Internal Revenue Code of 1986, as amended, is not a qualified
 6 community development entity. A qualified community
 7 development entity is often referred to as an "issuer" in this
 8 section.

9 (h) "Qualified equity investment" means any equity
 10 investment or long-term debt security issued by a qualified
 11 community development entity including an equity investment
 12 that was a qualified equity investment when in the possession
 13 of a prior holder or:

14 1. Is acquired on or after July 1, 2007, at its
 15 original issuance solely in exchange for cash;

16 2. Has at least 85 percent of its cash purchase price
 17 used by the issuer to make qualified low-income community
 18 investments; and

19 3. Is designated by the issuer as a qualified equity
 20 investment pursuant to this section, regardless of whether it
 21 also has been designated as a qualified equity investment
 22 under s. 45D of the Internal Revenue Code of 1986, as amended.
 23 All applicable provisions of s. 45D of the Internal Revenue
 24 Code of 1986, as amended, shall remain in full force.

25 (i) "Qualified low-income community investment" means
 26 any capital or equity investment in or loan to any qualified
 27 active low-income community business made after July 1, 2007.
 28 With respect to any one qualified active low-income community
 29 business, on a collective basis with all of its affiliates,
 30 the maximum amount of investment that any qualified community
 31 development entity, on an aggregate basis with all of its

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1 affiliates, may use for the calculation of any numerator
 2 described in paragraph (a) is \$10 million. For purposes of
 3 calculating the amount of qualified low-income community
 4 investments held by an issuer, an investment is deemed to be
 5 held by an issuer, even if the investment has been sold or
 6 repaid, if the issuer reinvests an amount equal to the capital
 7 returned to or recovered by the issuer from the original
 8 investment, exclusive of any profits realized, in another
 9 qualified low-income community investment within 12 months
 10 after receipt of such capital. An issuer is not required to
 11 reinvest capital returned from qualified low-income community
 12 investments after the sixth anniversary of the issuance of the
 13 qualified equity investment for which the proceeds were used
 14 to make the qualified low-income community investment. The
 15 qualified low-income community investment is deemed to be held
 16 by the issuer through the seventh anniversary of the qualified
 17 equity investment's issuance.

18 (j) "Tax credit" means a credit against the taxes
 19 imposed by ss. 220.11 and 624.509.

20 (k) "Taxpayer" means any individual or entity subject
 21 to the taxes imposed by s. 220.11 or s. 624.509.

22 (2) A taxpayer holding a qualified equity investment
 23 on a credit allowance date of such qualified equity investment
 24 is entitled to a tax credit during the taxable year, including
 25 the credit allowance date. The tax credit amount is equal to
 26 the applicable percentage of the adjusted purchase price paid
 27 to the issuer of such qualified equity investment. The amount
 28 of the tax credit that may be redeemed in any tax year may not
 29 exceed the amount of the taxpayer's state tax liability for
 30 such tax year. A tax credit authorized under this section is
 31 not refundable or transferable. Tax credits earned by a

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1 partnership, limited liability company, S corporation, or
 2 other pass-through entity may be allocated to the partners,
 3 members, or shareholders of such entity for their direct
 4 redemption in accordance with the provisions of any agreement
 5 among such partners, members, or shareholders. Any amount of
 6 tax credit that the taxpayer is prohibited by this section
 7 from redeeming in a taxable year may be carried forward to any
 8 of the taxpayer's subsequent taxable years. The maximum
 9 aggregate amount of qualified equity investments that may be
 10 allocated by the Department of Revenue may not exceed an
 11 amount that would result in taxpayers claiming in any single
 12 state fiscal year credits in excess of \$15 million. Such
 13 limitations on qualified equity investments shall be based
 14 solely on the anticipated use of credits without regard for
 15 the potential for taxpayers to carry forward tax credits to
 16 later tax years.

17 (3) The issuer of the qualified equity investment must
 18 certify to the department the anticipated dollar amount of
 19 such investments to be made in this state during the first
 20 12-month period following the initial credit allowance date.
 21 On the second and each subsequent credit allowance date, if
 22 the actual dollar amount of the investments is different from
 23 the amount estimated, the department shall adjust the credits
 24 arising on the second and subsequent credit allowance date to
 25 account for any differences. All certifications shall be
 26 accompanied by audited financial statements and notarized
 27 affidavits provided by the issuer in forms acceptable to the
 28 department. A taxpayer shall make, on the date on which a
 29 qualified equity investment is initially made, an irrevocable
 30 election to apply the credit against taxes due under chapter
 31 220 or chapter 624 or against a stated combination of the two

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1 taxes. The election shall be binding upon any subsequent
2 holder.

3 (4) The department shall recapture the tax credit
4 allowed under this section with respect to the qualified
5 equity investment if:

6 (a) Any amount of the federal tax credit available
7 with respect to a qualified equity investment that is eligible
8 for a tax credit under this section is recaptured under s. 45D
9 of the Internal Revenue Code of 1986, as amended. In the event
10 of such recapture by the IRS, the taxpayer shall notify the
11 Department of Revenue of a pending IRS recapture within 20
12 days after receipt of a notice of recapture from the IRS;

13 (b) The issuer redeems or makes any principal
14 repayment with respect to a qualified equity investment before
15 the seventh anniversary of the issuance of the qualified
16 equity investment; or

17 (c) The qualified community development entity fails
18 to maintain at least 85 percent of the proceeds of the
19 qualified equity investment in qualified low-income community
20 investments in this state at any time before the seventh
21 anniversary of the issuance of the qualified equity
22 investment.

23
24 Any tax credit that is subject to recapture shall be
25 recaptured from the taxpayer who claimed the tax credit on a
26 tax return.

27 (5)(a) The department may adopt rules by September 30,
28 2007, to administer this section, including recapture
29 provisions on a scaled proportional basis, and to administer
30 the allocation of tax credits issued for qualified equity
31 investments, which shall be conducted on a first-come,

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1 first-served basis. Qualified equity investments shall be
2 approved on a first-come, first-served basis by the
3 department. A community development entity shall submit
4 sufficient documentation as required by the department to
5 demonstrate that the provisions of this section have been met
6 prior to being entitled to receive the credit provided in this
7 section. Such approval shall not be unreasonably withheld.
8 Notice of approval or of any deficiency in the materials
9 submitted to the department shall be mailed to the community
10 development entity within 30 days after submitting such
11 documentation for approval of a qualified equity investment.

12 (b) If the maximum cap on allocation of tax credits of
13 \$15 million as provided in subsection (2) is exhausted in any
14 fiscal year, approval of any additional qualified equity
15 investments shall be suspended until such time as the maximum
16 cap on allocation is no longer exhausted. In such case, the
17 department shall notify a community development entity that
18 the qualified equity investment is not being approved due to
19 exhausting the maximum cap on allocation of tax credits. At
20 such time, the community development entity shall elect,
21 within 20 days, to preserve its place in line under the
22 first-come, first-served provision, or withdraw its claim to
23 credits for such qualified equity investment under this
24 section. At such time as additional cap is made available, a
25 qualified equity investment by an entity that preserved its
26 place in line shall be approved if the investment would have
27 been deemed a qualified equity investment at the time of
28 submitting the initial investment documentation for approval.

29 (c) Where the maximum cap on allocation is not yet
30 reached, but a pending request for qualification of an
31 investment would cause the cap to be exhausted and breached if

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1 such investment were qualified, the community development
 2 entity shall elect whether to receive partial credits, up to
 3 the point of exhausting the cap, until such time as additional
 4 cap is made available, or withdraw its claim to credits for
 5 such qualified equity investment under this act.

6 (d) The Department of Revenue may adopt rules pursuant
 7 to ss. 120.536(1) and 120.54 to administer this section.

8 (e)1. A qualified community development entity that
 9 seeks an allocation of credit for a qualified low-income
 10 community investment from the department must file an
 11 application with the department for each qualified low-income
 12 community investment it intends to make, in a form that the
 13 department may prescribe by rule. The qualified community
 14 development entity shall submit a nonrefundable application
 15 fee of \$1,000 to the department for each application for an
 16 allocation of credit under this section.

17 2. Within 30 days after receipt of a completed
 18 application containing all information necessary for the
 19 department to make an allocation of credit, including payment
 20 of the application fee, the department shall grant or deny the
 21 application in full or in part. If the department denies any
 22 part of the application, it shall inform the qualified
 23 community development entity of the grounds for the denial.

24 (f) Each community development entity that receives
 25 qualified equity investments to make qualified low-income
 26 community investments in this state shall annually report to
 27 the department using the North American Industry
 28 Classification System Code, the county, the dollars invested,
 29 the number of jobs assisted, and the number of jobs assisted
 30 with wages over 100 percent of the federal poverty level for a
 31 family of four of each qualified low-income community

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1 investment.

2 (g) The department shall file an annual report on all
3 qualified low-income community investments which includes
4 relevant statistics from the North American Industry
5 Classification System Code, the county or counties where the
6 qualified low-income community investments are located, the
7 amount invested, the number of jobs assisted with wages over
8 100 percent of the federal poverty level for a family of four
9 of each qualified low-income community investment, and the
10 value of applicable state tax credits claimed the previous
11 calendar year. The department shall submit a copy to the
12 Governor, the President of the Senate, and the Speaker of the
13 House of Representatives each January 2, beginning in 2009,
14 and also shall post the annual report on the department's
15 website.

16 (h) The Office of Tourism, Trade, and Economic
17 Development shall issue a certification letter for each
18 certified investor, showing the amount invested in the
19 qualified community development entity. The applicable
20 qualified community development entity shall attest to the
21 validity of the certification letter.

22 (6)(a) The department may conduct examinations and
23 audits as provided in s. 213.34 to verify that tax credits
24 under this section have been received and applied according to
25 the requirements of this section. The provisions of s. 213.053
26 apply to examination and audit information. If the department
27 determines that tax credits have not been received, or applied
28 as required by this section, the department may, in addition
29 to the remedies provided in this subsection, pursue recovery
30 of such funds pursuant to the laws and rules governing the
31 assessment of taxes.

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1 (b) The department may revoke or modify any written
 2 decision qualifying, certifying, or otherwise granting
 3 eligibility for tax credits under this section if it is
 4 discovered that the tax credit applicant submitted any false
 5 statement, representation, or certification in any
 6 application, record, report, plan, or other document filed in
 7 an attempt to receive tax credits under this section.

8 (c) A determination by the department, as a result of
 9 an audit or examination by the department, that a taxpayer
 10 received tax credits pursuant to this section to which the
 11 taxpayer was not entitled is grounds for forfeiture of
 12 previously claimed and received tax credits. The taxpayer is
 13 responsible for returning forfeited tax credits to the
 14 department and such funds shall be paid into the General
 15 Revenue Fund. If the credit provided for under this section is
 16 reduced as a result of an examination or audit by the
 17 department, the tax deficiency shall be recovered from the
 18 first entity or the surviving or acquiring entity to have
 19 claimed the credit up to the amount of the credit taken. Any
 20 subsequent deficiencies shall be assessed against any entity
 21 acquiring and claiming the credit or, in the case of multiple
 22 succeeding entities, in the order of tax credit succession.

23 (d) Any applicant that submits information under this
 24 section which includes fraudulent information is liable for
 25 reimbursement of the reasonable costs and fees associated with
 26 the review, processing, investigation, and prosecution of the
 27 fraudulent claim. A taxpayer that obtains a tax credit under
 28 this section through a claim that is fraudulent is liable for
 29 reimbursement of the credit amount claimed, plus a penalty in
 30 an amount double the credit amount claimed, and reimbursement
 31 of reasonable costs, which penalty is in addition to any

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1 criminal penalty to which the taxpayer is liable for the same
2 acts. The taxpayer is also liable for costs and fees incurred
3 by the state in investigating and prosecuting the fraudulent
4 claim.

5 (7) This section is repealed July 1, 2014, except that
6 the tax credit carryforward provided in this section shall
7 continue to be valid for the period specified. However, any
8 qualified equity investment made prior to July 1, 2014, is
9 eligible to receive credits on each applicable credit
10 allowance date as provided by this act, even if such credit
11 allowance date comes after July 1, 2014. All unused credits
12 expire on December 31, 2028.

13 Section 3. Subsection (8) of section 220.02, Florida
14 Statutes, is amended to read:

15 220.02 Legislative intent.--

16 (8) It is the intent of the Legislature that credits
17 against either the corporate income tax or the franchise tax
18 be applied in the following order: those enumerated in s.
19 631.828, those enumerated in s. 220.191, those enumerated in
20 s. 220.181, those enumerated in s. 220.183, those enumerated
21 in s. 220.182, those enumerated in s. 220.1895, those
22 enumerated in s. 221.02, those enumerated in s. 220.184, those
23 enumerated in s. 220.186, those enumerated in s. 220.1845,
24 those enumerated in s. 220.19, those enumerated in s. 220.185,
25 those enumerated in s. 220.187, those enumerated in s.
26 220.192, ~~and~~ those enumerated in s. 220.193, and those
27 enumerated in s. 288.992.

28 Section 4. Paragraph (a) of subsection (1) of section
29 220.13, Florida Statutes, is amended to read:

30 220.13 "Adjusted federal income" defined.--

31 (1) The term "adjusted federal income" means an amount

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1 equal to the taxpayer's taxable income as defined in
2 subsection (2), or such taxable income of more than one
3 taxpayer as provided in s. 220.131, for the taxable year,
4 adjusted as follows:

5 (a) Additions.--There shall be added to such taxable
6 income:

7 1. The amount of any tax upon or measured by income,
8 excluding taxes based on gross receipts or revenues, paid or
9 accrued as a liability to the District of Columbia or any
10 state of the United States which is deductible from gross
11 income in the computation of taxable income for the taxable
12 year.

13 2. The amount of interest which is excluded from
14 taxable income under s. 103(a) of the Internal Revenue Code or
15 any other federal law, less the associated expenses disallowed
16 in the computation of taxable income under s. 265 of the
17 Internal Revenue Code or any other law, excluding 60 percent
18 of any amounts included in alternative minimum taxable income,
19 as defined in s. 55(b)(2) of the Internal Revenue Code, if the
20 taxpayer pays tax under s. 220.11(3).

21 3. In the case of a regulated investment company or
22 real estate investment trust, an amount equal to the excess of
23 the net long-term capital gain for the taxable year over the
24 amount of the capital gain dividends attributable to the
25 taxable year.

26 4. That portion of the wages or salaries paid or
27 incurred for the taxable year which is equal to the amount of
28 the credit allowable for the taxable year under s. 220.181.
29 This subparagraph shall expire on the date specified in s.
30 290.016 for the expiration of the Florida Enterprise Zone Act.

31 5. That portion of the ad valorem school taxes paid or

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1 incurred for the taxable year which is equal to the amount of
 2 the credit allowable for the taxable year under s. 220.182.
 3 This subparagraph shall expire on the date specified in s.
 4 290.016 for the expiration of the Florida Enterprise Zone Act.

5 6. The amount of emergency excise tax paid or accrued
 6 as a liability to this state under chapter 221 which tax is
 7 deductible from gross income in the computation of taxable
 8 income for the taxable year.

9 7. That portion of assessments to fund a guaranty
 10 association incurred for the taxable year which is equal to
 11 the amount of the credit allowable for the taxable year.

12 8. In the case of a nonprofit corporation which holds
 13 a pari-mutuel permit and which is exempt from federal income
 14 tax as a farmers' cooperative, an amount equal to the excess
 15 of the gross income attributable to the pari-mutuel operations
 16 over the attributable expenses for the taxable year.

17 9. The amount taken as a credit for the taxable year
 18 under s. 220.1895.

19 10. Up to nine percent of the eligible basis of any
 20 designated project which is equal to the credit allowable for
 21 the taxable year under s. 220.185.

22 11. The amount taken as a credit for the taxable year
 23 under s. 220.187.

24 12. The amount taken as a credit for the taxable year
 25 under s. 220.192.

26 13. The amount taken as a credit for the taxable year
 27 under s. 220.193.

28 14. The amount taken as a credit for the taxable year
 29 under s. 288.992.

30 Section 5. This act shall take effect July 1, 2007 and
 31 shall apply to tax years ending after December 31, 2007.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6 A bill to be entitled

7 An act relating to insurance premium and
8 corporate income tax credits; creating part XII
9 of ch. 288, F.S., consisting of ss. 288.991 and
10 288.992, F.S.; providing definitions; providing
11 that taxpayers who hold a qualified equity
12 investment on a credit allowance date of the
13 investment are entitled to a nonrefundable,
14 nontransferable tax credit for the taxable year
15 in which the credit allowance date falls;
16 providing for calculating the amount of the tax
17 credit; limiting the amount of the tax credit
18 which may be redeemed in a fiscal year;
19 providing for carryforward of tax credits;
20 providing for the redemption of tax credits
21 earned by certain business entities and by the
22 partners, members, or shareholders of those
23 entities; authorizing a taxpayer to carry over
24 any amount of the tax credit that the taxpayer
25 is prohibited from redeeming in a taxable year
26 to any subsequent taxable year; requiring the
27 issuer of a qualified equity investment to
28 certify to the Department of Revenue the
29 anticipated dollar amount of investments to be
30 made in this state during a specified period
31 following the initial credit allowance date;

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1 requiring the department to limit the monetary
2 amount of qualified equity investments to a
3 level necessary to limit the use of tax credits
4 to a specified amount in each fiscal year;
5 providing a basis for such limitation;
6 authorizing the department to adjust tax
7 credits under certain circumstances; requiring
8 certifications to be accompanied by audited
9 financial statements and notarized affidavits;
10 requiring taxpayers to make an irrevocable
11 election as to the taxes to which to apply the
12 credit; requiring the department to recapture
13 tax credits from certain taxpayers under
14 certain circumstances; requiring the department
15 to adopt rules; requiring the department to
16 administer the allocation of tax credits for
17 certain qualified investments in a specified
18 manner; requiring certain community development
19 entities to report certain information to the
20 department; requiring the department to file
21 annual reports on certain community
22 investments; authorizing the department to
23 conduct examinations and audits to verify
24 receipt and application of tax credits;
25 authorizing the department to pursue recovery
26 of certain funds; authorizing the department to
27 revoke or modify certain decisions relating to
28 eligibility for tax credits under certain
29 circumstances; providing grounds for forfeiture
30 of tax credits under certain circumstances;
31 requiring taxpayers to return forfeited tax

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1 credits under certain circumstances; providing
2 for recovery of tax deficiencies under certain
3 circumstances; providing for applicant
4 liability for costs and fees relating to
5 investigations of fraudulent claims; providing
6 for taxpayer liability for reimbursement of
7 fraudulently claimed tax credits; providing a
8 penalty; providing for taxpayer liability for
9 costs for investigating and prosecuting
10 fraudulent claims; providing for future repeal;
11 providing for continuation of certain tax
12 credit carryforwards; amending s. 220.02, F.S.;
13 revising legislative intent with respect to the
14 order of tax credits to conform; amending s.
15 220.13, F.S.; revising a definition to conform;
16 providing an effective date.

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