

By the Committee on Commerce; and Senator Bennett

577-2209-07

1                                   A bill to be entitled  
2                   An act relating to insurance premium and  
3                   corporate income tax credits; creating part XII  
4                   of ch. 288, F.S., consisting of ss. 288.991 and  
5                   288.992, F.S.; providing definitions; providing  
6                   that taxpayers who hold a qualified equity  
7                   investment on a credit allowance date of the  
8                   investment are entitled to a nonrefundable,  
9                   nontransferable tax credit for the taxable year  
10                  in which the credit allowance date falls;  
11                  providing for calculating the amount of the tax  
12                  credit; limiting the amount of the tax credit  
13                  which may be redeemed in a fiscal year;  
14                  providing for carryforward of tax credits;  
15                  providing for the redemption of tax credits  
16                  earned by certain business entities and by the  
17                  partners, members, or shareholders of those  
18                  entities; authorizing a taxpayer to carry over  
19                  any amount of the tax credit that the taxpayer  
20                  is prohibited from redeeming in a taxable year  
21                  to any subsequent taxable year; requiring the  
22                  issuer of a qualified equity investment to  
23                  certify to the Department of Revenue the  
24                  anticipated dollar amount of investments to be  
25                  made in this state during a specified period  
26                  following the initial credit allowance date;  
27                  requiring the department to limit the monetary  
28                  amount of qualified equity investments to a  
29                  level necessary to limit the use of tax credits  
30                  to a specified amount in each fiscal year;  
31                  providing a basis for such limitation;

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

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

12

13 Be It Enacted by the Legislature of the State of Florida:

14

15 Section 1. Part XII of chapter 288, Florida Statutes,  
16 consisting of sections 288.991 and 288.992, is created to  
17 read:

18 288.991 New Markets Tax Credit Act.--This part may be  
19 cited as the "New Markets Tax Credit Act."

20 288.992 New markets tax credit.--

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

22 (a) "Adjusted purchase price" means the product of the  
23 amount paid to the issuer of a qualified equity investment for  
24 such qualified equity investment and a fraction the numerator  
25 of which is the dollar amount of qualified low-income  
26 community investments held by the issuer in this state as of  
27 the credit allowance date during the applicable tax year and  
28 the denominator of which is the total dollar amount of  
29 qualified low-income community investments held by the issuer  
30 as of the credit allowance date during the applicable tax  
31 year.

1           (b) "Applicable percentage" means zero percent for the  
2 first credit allowance date and 8.33 percent for each of the  
3 next six credit allowance dates.

4           (c) "Credit allowance date" means:

5           1. The date on which any qualified equity investment  
6 is initially made; and

7           2. Each of the six subsequent anniversary dates of the  
8 date upon which the qualified equity investment was initially  
9 made.

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

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

26           1. The poverty rate of such tract is at least 20  
27 percent;

28           2. In the case of a tract not located within a  
29 metropolitan area, the median family income for such tract  
30 does not exceed 80 percent of statewide median family income;  
31 or

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

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

26           (g) "Qualified community development entity" has the  
27 same meaning as in s. 45D of the Internal Revenue Code of  
28 1986, as amended. However, an entity that has never entered  
29 into an allocation agreement with the Community Development  
30 Financial Institutions Fund of the United States Treasury  
31 Department with respect to credits authorized by s. 45D of the

1 Internal Revenue Code of 1986, as amended, is not a qualified  
2 community development entity. A qualified community  
3 development entity is often referred to as an "issuer" in this  
4 section.

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

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

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

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

21 (i) "Qualified low-income community investment" means  
22 any capital or equity investment in or loan to any qualified  
23 active low-income community business made after July 1, 2007.  
24 With respect to any one qualified active low-income community  
25 business, on a collective basis with all of its affiliates,  
26 the maximum amount of investment that any qualified community  
27 development entity, on an aggregate basis with all of its  
28 affiliates, may use for the calculation of any numerator  
29 described in paragraph (a) is \$10 million. For purposes of  
30 calculating the amount of qualified low-income community  
31 investments held by an issuer, an investment is deemed to be

1 held by an issuer, even if the investment has been sold or  
2 repaid, if the issuer reinvests an amount equal to the capital  
3 returned to or recovered by the issuer from the original  
4 investment, exclusive of any profits realized, in another  
5 qualified low-income community investment within 12 months  
6 after receipt of such capital. An issuer is not required to  
7 reinvest capital returned from qualified low-income community  
8 investments after the sixth anniversary of the issuance of the  
9 qualified equity investment for which the proceeds were used  
10 to make the qualified low-income community investment. The  
11 qualified low-income community investment is deemed to be held  
12 by the issuer through the seventh anniversary of the qualified  
13 equity investment's issuance.

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

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

18 (2) A taxpayer holding a qualified equity investment  
19 on a credit allowance date of such qualified equity investment  
20 is entitled to a tax credit during the taxable year, including  
21 the credit allowance date. The tax credit amount is equal to  
22 the applicable percentage of the adjusted purchase price paid  
23 to the issuer of such qualified equity investment. The amount  
24 of the tax credit that may be redeemed in any tax year may not  
25 exceed the amount of the taxpayer's state tax liability for  
26 such tax year. A tax credit authorized under this section is  
27 not refundable or transferable. Tax credits earned by a  
28 partnership, limited liability company, S corporation, or  
29 other pass-through entity may be allocated to the partners,  
30 members, or shareholders of such entity for their direct  
31 redemption in accordance with the provisions of any agreement

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

13 (3) The issuer of the qualified equity investment must  
14 certify to the department the anticipated dollar amount of  
15 such investments to be made in this state during the first  
16 12-month period following the initial credit allowance date.  
17 On the second and each subsequent credit allowance date, if  
18 the actual dollar amount of the investments is different from  
19 the amount estimated, the department shall adjust the credits  
20 arising on the second and subsequent credit allowance date to  
21 account for any differences. All certifications shall be  
22 accompanied by audited financial statements and notarized  
23 affidavits provided by the issuer in forms acceptable to the  
24 department. A taxpayer shall make, on the date on which a  
25 qualified equity investment is initially made, an irrevocable  
26 election to apply the credit against taxes due under chapter  
27 220 or chapter 624 or against a stated combination of the two  
28 taxes. The election shall be binding upon any subsequent  
29 holder.

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

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

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

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

21  
22 Any tax credit that is subject to recapture shall be  
23 recaptured from the taxpayer who claimed the tax credit on a  
24 tax return.

25           (5)(a) The department may adopt rules by September 30,  
26 2007, to administer this section, including recapture  
27 provisions on a scaled proportional basis, and to administer  
28 the allocation of tax credits issued for qualified equity  
29 investments, which shall be conducted on a first-come,  
30 first-served basis. Qualified equity investments shall be  
31 approved on a first-come, first-served basis by the

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

10 (b) If the maximum cap on allocation of tax credits of  
11 \$15 million as provided in subsection (2) is exhausted in any  
12 fiscal year, approval of any additional qualified equity  
13 investments shall be suspended until such time as the maximum  
14 cap on allocation is no longer exhausted. In such case, the  
15 department shall notify a community development entity that  
16 the qualified equity investment is not being approved due to  
17 exhausting the maximum cap on allocation of tax credits. At  
18 such time, the community development entity shall elect,  
19 within 20 days, to preserve its place in line under the  
20 first-come, first-served provision, or withdraw its claim to  
21 credits for such qualified equity investment under this  
22 section. At such time as additional cap is made available, a  
23 qualified equity investment by an entity that preserved its  
24 place in line shall be approved if the investment would have  
25 been deemed a qualified equity investment at the time of  
26 submitting the initial investment documentation for approval.

27 (c) Where the maximum cap on allocation is not yet  
28 reached, but a pending request for qualification of an  
29 investment would cause the cap to be exhausted and breached if  
30 such investment were qualified, the community development  
31 entity shall elect whether to receive partial credits, up to

1 the point of exhausting the cap, until such time as additional  
2 cap is made available, or withdraw its claim to credits for  
3 such qualified equity investment under this act.

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

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

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

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

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

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

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

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 2. 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 3. Paragraph (a) of subsection (1) of section  
29 220.13, Florida Statutes, is amended to read:

30 220.13 "Adjusted federal income" defined.--

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

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

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

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

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

27           4. That portion of the wages or salaries paid or  
28 incurred for the taxable year which is equal to the amount of  
29 the credit allowable for the taxable year under s. 220.181.  
30 This subparagraph shall expire on the date specified in s.  
31 290.016 for the expiration of the Florida Enterprise Zone Act.

1           5. That portion of the ad valorem school taxes paid or  
2 incurred for the taxable year which is equal to the amount of  
3 the credit allowable for the taxable year under s. 220.182.

4 This subparagraph shall expire on the date specified in s.  
5 290.016 for the expiration of the Florida Enterprise Zone Act.

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

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

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

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

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

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

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

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

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

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1           Section 4. This act shall take effect July 1, 2007 and  
2 shall apply to tax years ending after December 31, 2007.

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4                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
5                                   COMMITTEE SUBSTITUTE FOR  
6                                   Senate Bill 2280

7 This CS differs from the bill as filed by:

- 8 - Rewrites several provisions to clarify their intent and  
9 address issues identified by the Department of Revenue  
(DOR);
- 10 - Directs the Governor's Office of Tourism, Trade, and  
11 Economic Development, instead of DOR, to issue  
certification letters to equity investors;
- 12 - Specifies that all unused tax credits shall expire  
13 December 31, 2028;
- 14 - Adds or expands upon a number of definitions for terms  
used in the bill;
- 15 - Excludes certain types of businesses from the definition  
16 of "qualified active low-income community business,"  
among them massage parlors, country clubs and golf  
17 courses, and any business that principally sells liquor  
for off-premises consumption;
- 18 - Establishes a \$1,000 application fee to defray DOR's  
19 costs to review each application for a qualified  
community equity investment, and gives DOR 30 days to  
20 make its decision;
- 21 - Clarifies the information to be included in DOR's annual  
report to the Governor and Legislature about the program;  
22 and
- 23 - Establishes that the new tax credits are the last in  
order to be applied against a taxpayer's state tax  
24 liabilities.
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