

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 293 Corporate Income Tax Credits

**SPONSOR(S):** Economic Expansion & Infrastructure & Weatherford & others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 850

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	<u>10 Y, 0 N</u>	<u>West</u>	<u>Croom</u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	<u>11 Y, 3 N, As CS</u>	<u>West</u>	<u>Tinker</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

The program provides state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for qualified investments in Florida low-income communities.

The intent of CS/HB 293 is to make the state more attractive to national investors who are deciding where to invest funds raised under the federal New Markets Tax Credits program by creating a state New Markets Tax Credit program similar to the federal program.

The credit provided under this CS is 6.5 percent per year for six years after the original date of the investment. Over six years this credit totals 39 percent of the investment. The federal program provides credits totaling 39 percent of the investment over a seven year period. A company with a qualified investment for both the federal and state program would receive 78 percent of the purchase price of the investment in tax credits. Any amount of the tax credit may be carried forward for future taxable years, however all tax credits expire December 31, 2021. The tax credits are allocated on a first-come, first-serve basis.

A total of \$70 million in tax credits may be awarded for the duration of the program with no more than \$10 million claimed in each state fiscal year. The annual limit of \$10 million in tax credits claimed does not include credits carried forward from previous tax years.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

*Provide Limited Government:* This CS grants separate rule-making authority to the Department of Revenue (DOR) and the Office of Tourism, Trade, and Economic Development (OTTED) for the purpose of administering the provisions set out in this CS including the recapture provision and the allocation of tax credits issued for qualified equity investments and recapture of these credits.

*Ensure Lower Taxes:* This CS provides tax credits to entities making investments in low-income communities in Florida.

### B. EFFECT OF PROPOSED CHANGES:

#### **Present Situation:**

##### ***Federal New Markets Tax Credit***

The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). The CDE must in turn invest the qualified equity investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not realize a return on their investments in CDEs prior to the conclusion of the seven-year period.<sup>1</sup>

An organization wishing to receive awards under the NMTC Program must be certified as a CDE by the US Department of Treasury.

To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.<sup>2</sup>

##### ***Community Development Entities in Florida, Investment by State***

There are 56 CDEs in Florida.<sup>3</sup> Florida trails only New York (121), California (116), Texas (66), Pennsylvania (59), and Illinois (58) in total number of CDEs.<sup>4</sup> The federal program has awarded New

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<sup>1</sup> Community Development Financial Institutes Fund; the Department of Treasury; information contained in this paragraph can be found at [http://www.cdfifund.gov/what\\_we\\_do/programs\\_id.asp?programID=5](http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5) (visited 3/15/07).

<sup>2</sup> Community Development Financial Institutes Fund; the Department of Treasury; available online at [http://www.cdfifund.gov/what\\_we\\_do/programs\\_id.asp?programID=5](http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5) (visited 3/15/07).

<sup>3</sup> Community Development Financial Institutes Fund; the Department of Treasury; available online at <http://www.cdfifund.gov/docs/certification/CDEstate.pdf>.

<sup>4</sup> Id.

Markets Tax Credits to at least 179 CDEs nationwide; these CDEs would be eligible to utilize the state program created in this CS.<sup>5</sup>

Under the federal program, loans have been used to finance a range of activities, such as the rehabilitation of historic buildings and the operation of mixed-use real estate development. Other uses include the construction or operation of cultural arts centers, frozen pizza manufacturing, and the construction of daycare centers and charter schools.<sup>6</sup>

Florida ranked 25<sup>th</sup> in total NMTC investment dollars during fiscal years 2003-2005. The state received 1.23 percent of total loans and investments and eight total projects.<sup>7</sup>

State	Total dollar amount of loans and investment	Percentage of all loans and investment	Number of NMTC projects	Percentage of NMTC projects
1. California	\$303,081,270	9.74	58	9.95
2. New York	239,178,566	7.68	25	4.29
3. Ohio	201,857,969	6.49	69	11.84
4. Maine	153,527,250	4.93	13	2.23
5. Wisconsin	149,131,108	4.79	26	4.46
6. Missouri	146,165,868	4.70	22	3.77
7. Massachusetts	145,059,237	4.66	34	5.83
8. Kentucky	135,117,406	4.34	44	7.55
9. North Carolina	126,420,590	4.06	14	2.40
10. Washington	125,703,680	4.04	19	3.26
11. Minnesota	122,587,357	3.94	13	2.23
12. Oklahoma	112,092,186	3.60	24	4.12
13. Oregon	111,464,317	3.58	14	2.40
14. Maryland	106,171,382	3.41	14	2.40
15. New Jersey	83,439,000	2.68	7	1.20
16. Pennsylvania	77,111,177	2.48	21	3.60
17. Arizona	68,476,055	2.20	8	1.37
18. Washington D.C.	67,715,807	2.18	10	1.72
19. Texas	65,644,265	2.11	11	1.89
20. Michigan	57,541,869	1.85	10	1.72
21. Virginia	55,898,873	1.80	8	1.37
22. Rhode Island	55,235,675	1.77	3	0.51
23. Utah	53,884,716	1.73	14	2.40
24. Georgia	38,516,906	1.24	4	0.69
<b>25. Florida</b>	<b>38,261,093</b>	<b>1.23</b>	<b>8</b>	<b>1.37</b>

### **Effects of Proposed Changes:**

CS/HB 293 creates the Florida New Markets Tax Credit in s. 288.991, F.S. The program will provide state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for qualified investments in Florida low-income communities.

### **How the Program Works**

Under this program, federally-certified CDEs, which have entered into allocation agreements with the U.S. Treasury, have the ability to apply to the Office of Tourism, Trade, and Economic Development (OTTED) for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process would

<sup>5</sup> United States Government Accounting Office (GAO) *Report to Congressional Committees, Tax Policy, January, 2007, page 15.*

<sup>6</sup> *Id* at 30.

<sup>7</sup> Information found in the table came from the United States Government Accounting Office (GAO) *Report to Congressional Committees, Tax Policy, January, 2007.*

include proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding the proposed low-income community investments, a description of the CDE's efforts to partner with local community-based groups, and a non-refundable application fee payable to OTTED for administration costs. OTTED will also be able to request additional information deemed necessary. OTTED will certify qualified applications on a first-come, first-serve basis. For applications received on the same day and deemed complete, the office shall certify, consistent with remaining tax credit authority, qualified equity investments in proportionate percentages based on the amount of qualified equity investment requested to be certified in each application.

Once OTTED certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to make the investment in a low-income community. Thereafter, the CDE must annually report to OTTED information, including a list of low-income community investments and the amount of the investments with third-party proof that the investment was made. Any CDE that is allocated more than \$500,000 in tax credits in any state fiscal year will also be required to participate in Florida's Single Audit program. Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.

OTTED shall develop a list of targeted industries specifically for NMTC investments and provide the list to the Governor, the President of the Senate, and the Speaker of the House of Representatives. OTTED may grant a waiver for this criteria if a project will provide an economic stimulus to a community. In addition, jobs created as a result of NMTC investments must pay an average wage of 115 percent of the federal poverty guidelines for a family of four. This is equivalent to approximately \$24,380 in 2008.

### Qualified Investments

A "qualified equity investment" means any equity investment or long-term debt security by a qualified CDE that:

- Is invested in an industry that appears on the list of eligible industries developed by Enterprise Florida, Inc. (EFI) for this program
- Is acquired on or after July 1, 2008;
- Has at least 85 percent of its cash purchase price invested in qualified low-income community investments; and
- Is certified by OTTED as a qualified equity investment.

In addition, a qualified equity investment may mean an equity investment or long-term debt security that is currently a qualified equity investment.

The definition for a "qualified equity investment" in this CS expands the federal definition allowed under Sec. 45D of the Internal Revenue Code. It allows OTTED to certify a qualified investment regardless of whether it is allowed under the federal program; and it allows for long-term debt security to be a qualified investment.

"Long-term debt security" means any debt instrument issued by a CDE, "at par value or a premium, having an original maturity date of at least seven years following the date of its issuance, with no acceleration of repayment, amortization, or prepayment features before its original maturity date, and having no distribution, payment, or interest features related to the profitability of the qualified community

development entity or performance of the qualified community development entity's investment portfolio.”

### Qualified Active Low-Income Community Business

A “qualified active low-income community business” is defined as having the same meaning as what is provided in federal law. It also includes language different from federal law that states the business must not derive 15 percent or more of its annual revenue from the rental or sale of real estate. Businesses such as golf courses, country clubs, massage parlors, tanning salons, liquor stores, and establishments that permit gambling are not eligible for this program.

A low-income community is defined as any population census tract within the state for which the federal individual poverty rate of such tract is at least 20 percent. For census tracts not located within a metropolitan area to qualify as a low-income community, the median family income must not exceed 80 percent of the statewide median income. For census tracts located within a metropolitan area, the median family income must not exceed 80 percent of the greater of statewide median family income or the metropolitan area median income.

### Tax Credits

The CS allows a tax credit to be taken annually only after the investment has been made and held for a full year. The credit provided under this CS is 6.5 percent per year for six years after the originally date of the investment. Over six years this credit totals 39 percent of the investment. Any unused portion of the tax credit may be carried forward for future taxable years; however, all tax credits expire on December 31, 2021. No more than \$10 million in tax credits may be claimed in any fiscal year. The amount of investments that may be used to calculate a CDE's total tax credit allocation is capped at \$10 million annually.

The federal program provides credits totaling 39 percent of the investment over a seven year period. A company with a qualified investment for both the federal and state program would receive 78 percent of the purchase price of the investment in tax credits.

A business would qualify for credits as follows:

Year	State Program	Federal Program
1	0%	5%
2	6.5%	5%
3	6.5%	5%
4	6.5%	6%
5	6.5%	6%
6	6.5%	6%
7	6.5%	6%
<b>Total</b>	<b>39%</b>	<b>39%</b>

The CS does not allow the transfer or sale of tax credits, but does allow a tax credit to travel with the purchase of an investment to a new owner.

Any investor that receives an annual allocation of tax credits that exceeds \$500,000 shall be treated as a recipient pursuant to s. 215.97(2), F.S., and required to participate in a state single audit pursuant to the provisions of s. 215.97, F.S.

The department shall recapture tax credits available to an investor if:

- For any reason the federal government recaptures a related tax credit;
- A CDE is no longer deemed to be a qualified CDE under the federal program;
- The CDE redeems any principal repayment related to the investment prior to its seventh anniversary;
- A CDE exhibits a pattern of failed investments in Florida where 50 percent of investments fail over a three-year period;
- The requirement to maintain at least 85 percent of the investment in low-income community investments in Florida is not met;
- The CDE fails to make qualified low-income community investments in qualified active low-income communities;
- The CDE fails to provide to OTTED and DOR any of the information or reports required by this CS; or
- A taxpayer received credits to which they were not entitled.

The CS gives DOR and OTTED the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of this CS. OTTED must submit an annual report each July 1, beginning in 2010 to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing all qualified low-income community investments made in Florida, the business location, the total dollar amount invested, the number of jobs created or retained, and the value of applicable tax credits claimed for the most recent year.

The Washington Economic Group conducted a study on the potential economic impact of a Florida New Markets Tax Credit Program. The study found that a Florida NMTC program would result in \$540 million in development capital and would generate \$34.5 million in annual revenue. Approximately 3,000 jobs will be created in the first year of the program. It is estimated that the state would attract \$392 million in low-income community investments over the life of the program.<sup>8</sup>

#### C. SECTION DIRECTORY:

**Section 1** - Creates s. 288.991, F.S., the New Markets Tax Credit.

**Section 2** - Amends subsection (8) of s. 220.02, F.S., to provide legislative intent for the application of tax credits.

**Section 3** - Amends paragraph (a) of subsection (1) of s. 220.13, F.S., to define “adjusted federal income” and provide additions to taxable income.

**Section 4** - Creates subsection (19) of s. 213.053, F.S., to allow DOR to share information with OTTED and to provide confidentiality to taxpayers utilizing the program created by this CS.

**Section 5** - Provides an effective date of July 1, 2008 and provides that the program created by this CS applies to tax years ending after December 31, 2008.

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<sup>8</sup> Information contained in this paragraph is from: The Potential Economic Benefits of a Florida New Markets Tax Credit Program: An Economic Impact Brief. The Washington Economics Group. December 10, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
See "Fiscal Comments".
2. Expenditures:  
See "Fiscal Comments".

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Investments may assist existing and new businesses.

### D. FISCAL COMMENTS:

Over seven years, the total fiscal impact of the program is limited to \$70 million in tax credits. The CS further limits the amount of tax credits claimed each year to \$10 million plus any unused credits that have been carried forward. If CDEs carry forward a substantial amount of unused credits and claim them in a single year, there is no guarantee that the amount of credits claimed in any year, besides year two of the program, would be \$10 million or less.<sup>9</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This CS does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This CS does not reduce the percentage of state tax shared with counties or municipalities. This CS does not reduce the authority that municipalities have to raise revenue.

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<sup>9</sup> Year two of the program created by this bill is the first year in which tax credits may be claimed by a CDE.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This CS grants separate rule-making authority to DOR and OTTED for the purpose of administering the provisions set out by this CS including the recapture provision and the allocation of tax credits issued for qualified equity investments.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR:**

None submitted.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On Thursday March 6, 2008, the Committee on Economic Development reported the bill favorably with a strike-all amendment with title amendment. The amendment:

- Changed the number of credit allowance dates from five to six due to a bill drafting error;
- Removed language relating to the election of tax credits that was deemed unnecessary by the Department of Revenue;
- Added a provision to allow OTTED and EFI to develop a list of industries eligible for this program that will provide positive economic impact to the state;
- Allows OTTED to disqualify and recoup tax credits when a CDE exhibits a pattern of failed investments in Florida, where 50 percent of investments fail over a three-year period;
- Makes any CDE that is disqualified from the federal program disqualified for the Florida program;
- Inserts additional language that requires a CDE to submit other information as prescribed by OTTED and verification of continuation with the federal program; and
- Deletes the requirement for OTTED to create forms and applications by rule.

On Tuesday April 8, 2008, the Economic Expansion and Infrastructure Council reported the bill favorably with a strike-all amendment as a Council Substitute. The CS:

- Changes the tax credit from 8.33% over six years (50% total) to 6.5 % over six years (39% total);
- Changes total credit allocation from \$15 million over seven years (\$105 million total) to \$10 million over seven years (\$70 million total);

- Requires all jobs created must pay an average wage of at least 115% of federal poverty guidelines;
- Allows OTTED to make proportional decision on tax credit amounts when multiple applications are received on the same day;
- Allows OTTED to determine the application fee which shall support the cost of administering the program; and
- Clarifies language related to the recapture of tax credits and rulemaking authority for OTTED and DOR.