The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 98

INTRODUCER: Senators Richter and Abruzzo

SUBJECT: New Markets Development Program

DATE: February 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	**Favorable**
2.	Biehl	Yeatman	CA	**Favorable**
3.			AFT	
4.			AP	
5.				
6.				

I. Summary:

SB 98 increases the cumulative amount of tax credits that may be awarded to the Florida New Markets Tax Credit Program from $163.8 million to $263.8 million. This bill also increases the amount of tax credits that the state may award to the program in a single fiscal year from $33.6 million to $53.6 million.

This bill substantially amends section 288.9914 of the Florida Statutes.

II. Present Situation:

Florida New Markets Program

Florida's New Markets Tax Credits Program was enacted in 2009.[1] The program was "established to encourage capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that make qualified low-income community investments in qualified active low-income community businesses to create and retain jobs."[2]

Under this program, federally-certified Community Development Entities (CDE), which have entered into allocation agreements with the U.S. Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits.[3] The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income

[1] Florida's New Markets Development Program Act is codified at ch. 288, part XII, F.S.
[2] Section 288.9912, F.S.
[3] Section 288.9914, F.S.

communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups. DEO is also able to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO 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 invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:

- The entity's audited financial statements;
- The industries for the investments;
- The counties where investments were made;
- The number of jobs created and retained; and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.[4]

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.[5]

Tax Credits

The Florida New Markets Tax Credit Program allows a tax credit to be taken against the corporate income tax under s. 220.11, F.S., or the insurance premium tax under s. 624.509, F.S.[6] This credit may be claimed after the investment has been made and held for a minimum of 2 years. Therefore, no credit can be claimed in the first 2 years. In year 3, the annual credit is equal to 7 percent of the investment, and from the fourth year through the seventh year the annual credit is equal to 8 percent. Over 7 years this credit totals 39 percent of the total investment. Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.

Additionally, the program has a cap of $163.8 million on the total tax credits allowed to be allocated to all investments with the caveat that no more than $33.6 million in tax credits may be claimed in a single state fiscal year. Current law does not allow the transfer or sale of tax credits, but does allow a tax credit to subsequent purchasers of a qualified investment.

Federal New Markets Tax Credit[7]

Florida's New Markets Tax Credit Program was mirrored after the federal program. The Federal 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.[8] The CDE must, in turn, invest the qualified equity investments in low-income

[4] Section 288.9918, F.S.
[5] Section 288.9920, F.S.
[6] Section 288.9916, F.S.
[7] Information on the federal New Markets Tax Credit Program can be found at http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited December 13, 2012).
[8] 15 U.S.C. sec. 689, *et. seq*.

communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a 7-year period. In each of the first 3 years, the investor receives a credit equal to 5 percent of the total amount paid for the stock or capital interest at the time of purchase. For the final 4 years, the credit is equal to 6 percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the 7-year period. An organization wishing to receive allocations under the federal 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 an entity's governing board or advisory board.

As stated above, the federal program and the state program each provide credits totaling 39 percent of the investment over a 7-year period. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over 7 years. In addition to the tax credits that are received, the investor also has the potential to receive benefits from the results of the investment and eventual return of their principal.

III. Effect of Proposed Changes:

Section 1 amends s. 288.9914, F.S., by increasing the cumulative amount of tax credits that may be awarded to the New Markets Tax Credit program from $163.8 million to $263.8 million. This bill also increases the amount of tax credits that the state may award in a single fiscal year towards the program from $33.6 million to $53.6 million.

Section 2 provides that the bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the impact of this bill.

B. Private Sector Impact:

The New Markets Development program is intended to attract private sector investment into low-income rural and urban communities that may not otherwise have occurred.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.