

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 627 Community Contribution Tax Credits

SPONSOR(S): Economic Development and Tourism Subcommittee; Moraitis, Jr.

TIED BILLS: **IDEN./SIM. BILLS:** SB 868

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N, As CS	Lukis	Duncan
2) Finance & Tax Committee	13 Y, 0 N	Pewitt	Langston
3) Economic Affairs Committee	14 Y, 0 N	Lukis	Pitts

SUMMARY ANALYSIS

The Florida Legislature created the Community Contribution Tax Credit Program (CCTCP) to encourage private sector participation in community revitalization and housing projects. The CCTCP offers a corporate income tax credit, an insurance premium tax credit, or a refund against sales tax to businesses or persons (donor) that contribute to eligible projects undertaken by approved CCTCP sponsors. The credit or refund is calculated as 50 percent of the donor's annual contribution, but a donor may not receive more than \$200,000 in credits or refunds in any one year.

Eligible CCTCP sponsors under the program include a wide variety of community development organizations, housing organizations, and units of state and local government. An eligible project includes activity undertaken by an eligible sponsor that is designed to:

- construct, improve or substantially rehabilitate housing that is affordable to low or very-low income households;
- provide housing opportunities for persons with special needs;
- provide commercial, industrial, or public resources and facilities; or
- improve entrepreneurial and job-development opportunities for low-income persons.

Contributions to eligible sponsor projects may only be in the following forms:

- cash or other liquid assets;
- real property;
- goods or inventory; or
- other physical resources as identified by the Department of Economic Opportunity (DEO or department).

The bill specifies that the donation of "real property" in the CCTCP includes the transfer of "100 percent ownership of a real property holding company." The bill defines "real property holding company" to mean a Florida entity, such as a Florida limited liability company, that must meet four requirements:

- 1) is wholly owned by the donor;
- 2) is the sole owner of the real property;
- 3) is a disregarded entity for federal income tax purposes; and
- 4) at the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

See FISCAL COMMENTS.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1980, the Legislature established the Community Contribution Tax Credit Program (CCTCP) to encourage private sector participation in community revitalization and housing projects. Broadly, the CCTCP offers tax credits to businesses or persons (donor) that make certain contributions to eligible projects undertaken by approved CCTCP sponsors.¹

Eligible sponsors under the CCTCP include a wide variety of organizations and entities, including community development agencies, housing organizations, historic preservation organizations, units of state and local government, regional workforce boards, and any other agency that the Department of Economic Opportunity (department or DEO) designates by rule.² There are currently 122 approved sponsors in Florida.³

Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

- to construct, improve, or substantially rehabilitate housing that is affordable to low-income or very-low-income households as defined in s. 420.9071(19) and (28), F.S.;
- to provide housing opportunities for persons with special needs as defined in s. 420.0004, F.S.;
- to provide commercial, industrial, or public resources and facilities; or
- to improve entrepreneurial and job-development opportunities for low-income persons.⁴

Additionally, eligible projects must be located in an area previously designated as an enterprise zone pursuant to Ch. 290, F.S., as of May 1, 2015, or a Front Porch Florida Community.⁵ However, the law permits an exception for three types of projects:

- any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S.,⁶
- any project designed to construct or rehabilitate housing opportunities for persons with special needs as defined in s. 420.0004, F.S.;⁷ and
- any project designed to provide increased access to high-speed broadband capabilities that includes coverage of an area designated as a rural enterprise zone as of May 1, 2015.⁸

Any eligible sponsor wishing to participate in the program must submit a proposal to DEO, which sets forth the sponsor, the project, the area in which the project is located, and any supporting information as may be prescribed by rule.⁹ The proposal must also contain a resolution from the local governmental unit in which it is located certifying that the project is consistent with local plans and regulations.¹⁰

¹ See ss. 212.08(5)(p); 220.183; and 624.5105, F.S. The contributing taxpayer may not have a financial interest in the eligible sponsor.

² See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

³ Department of Economic Opportunity, 2016 Agency Legislative Bill Analysis for HB 627, page 3, December 2, 2015.

⁴ Sections 212.08(5)(p)2.b.; 220.183(2)(b); 624.5105(2)(b); and 220.03(1)(t), F.S.

⁵ Sections 212.08(p)2.d.; 220.183(2)(d); and 624.5102(2)(d), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* The infrastructure of such projects may be located in any area of a rural county (inside or outside of the zone).

⁹ Sections 212.08(5)(p)3.a.; 220.183(3)(a); and 624.5105(3)(a), F.S.

¹⁰ *Id.*

Contributions to eligible sponsor projects may only be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources as identified by DEO.¹¹ If the donation is of real property, it must be made directly from the donor to the eligible sponsor via a deed.¹²

Donors wishing to participate in the program must submit an application for a tax credit to DEO.¹³ The application sets forth the sponsor, project, and the type, value, and purpose of the contribution.¹⁴ The sponsor must verify the terms of the application and indicate its receipt of the contribution, which verification must be in writing and accompany the application for tax credit.¹⁵

Once DEO approves a taxpayer's application for a community contribution tax credit under the program, the donor must claim the credit from the Department of Revenue.¹⁶ The credit is calculated as 50 percent of the donor's annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.¹⁷ The donor may use the credit against corporate income tax, insurance premium tax, or as a refund against sales tax.¹⁸ Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.¹⁹ Unused credits against sales taxes may be carried forward for three years.²⁰

The department may approve credits totaling \$18.4 million in Fiscal Year (FY) 2015-16, \$21.4 million in FY 2016-17, and \$21.4 million in FY 2017-18 for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low or very-low income households. The department may approve \$3.5 million in those same FYs for all other types of eligible projects.²¹

As of December 2015, in FY 2015-16, DEO has approved approximately \$11.2 million of the \$18.4 million available for tax credits for homeownership projects and housing projects for persons with special needs.²² Approximately \$3.6 million worth of tax credits were requested for all other projects, resulting in a pro-rata approval rate of 95% of each tax credit application.²³

The CCTCP expires June 30, 2018.²⁴

Effect of Proposed Changes

The bill specifies that the donation of "real property" in the CCTCP includes the transfer of "100 percent ownership of a real property holding company." The bill defines "real property holding company" to mean a Florida entity, such as a Florida limited liability company, that must meet four requirements:

- 1) is wholly owned by the donor;
- 2) is the sole owner of the real property;
- 3) is a disregarded entity for federal income tax purposes; and
- 4) at the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

¹¹ Sections 212.08(5)(p)2.a.; 220.183(2)(a); 624.5105(5)(a); and 220.03(1)(d), F.S.

¹² See s. 192.001(12), F.S.

¹³ Sections 212.08(5)(p)3.b.; 220.183(3)(b); and 624.5105(3)(b), F.S. Taxpayers must submit separate applications for each individual contribution that it makes to each individual project. ¹³ Sections 212.08(5)(p)3.c.; 220.183(3)(c); and 624.5105(3)(c), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Sections 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

¹⁷ Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

¹⁸ See ss. 212.08(5)(p); 220.183; and 624.5105, F.S. A donor may only apply the credits toward one tax obligation.

¹⁹ Sections 220.183(1)(e); and 624.5105(e), F.S.

²⁰ Section 212.08(5)(p)1.b. and f., F.S.

²¹ Sections 212.08(5)(p)1.e.; 220.183(1)(c); and 624.5105(1)(c), F.S.

²² Department of Economic Opportunity, 2016 Agency Bill Analysis for HB 627, December 2, 2015. Analysis on file with House staff.

²³ *Id.*

²⁴ Sections 212.08(5)(p)5.; 220.183(5); and 624.5105(6), F.S.

B. SECTION DIRECTORY:

- Section 1: Amends s. 220.03(1)(d), F.S., relating to corporate income taxes, allowing the transfer of “ownership interests in a real property holding company” as an eligible donation under the CCTCP and defining “real property holding company.”
- Section 2: Amends s. 212.08(5)(p), F.S., relating to sales and use taxes, allowing the transfer of “ownership interests in a real property holding company” as an eligible donation under the CCTCP and defining “real property holding company.”
- Section 3: Amends s. 624.5105(5)(a), F.S., relating to insurance premium taxes, allowing the transfer of “ownership interests in a real property holding company” as an eligible donation under the CCTCP and defining “real property holding company.”

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) estimated that the bill would have no fiscal impact on state funds.²⁵ The REC analysis on the bill notes that the proposed language “does not affect eligibility or restrict access to the credits, which were already assumed to reach the allotted cap in each of the two respective fiscal years for which they are authorized under current law. As such, the result of the language would be to possibly shift credits between otherwise eligible entities but would not have an impact in the aggregate.”²⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

²⁵ Revenue Estimating Conference Analysis, HB 627/SB 868, 12/2/2015. Analysis on file with House staff.

²⁶ *Id.*

Not applicable. The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Economic Development and Tourism Subcommittee adopted one amendment to the bill. The amendment specifies that a donation of a “real property holding company” as prescribed in the bill must be a transfer of 100 percent of the ownership of the holding company.

This analysis has been updated to reflect the amendment.