

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 Committee on Finance and Tax

BILL: CS/SB 868

INTRODUCER: Finance and Tax Committee and Senator Smith

SUBJECT: Community Contribution Tax Credits

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Favorable
2.	Babin	Diez-Arguelles	FT	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 868 provides that a donation of real property under the Community Contribution Tax Credit Program includes the transfer of a 100-percent ownership interest 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, which:

- Is wholly owned by the person making the contribution;
- Is the sole owner of real property located in this state;
- Is disregarded as an entity separate from its owner for federal income tax purposes; and
- At the time of the contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

The bill is effective July 1, 2016.

II. Present Situation:

Community Contribution Tax Credit Program

In 1980, the Legislature established the Community Contribution Tax Credit Program (CCTCP) to encourage private sector participation in community revitalization and housing projects.¹ The

¹ Chapter 80-249, Laws of Fla.

CCTCP offers tax credits to businesses or persons (donors) that make certain contributions to eligible projects undertaken by approved CCTCP sponsors.²

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 (DEO) designates by rule.³ There are currently 122 approved sponsors in Florida.⁴

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.⁵

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.⁶

However, the law permits the following three exceptions:

- 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.;⁷
- Any project designed to construct or rehabilitate housing opportunities for persons with special needs as defined in s. 420.0004, F.S.;⁸ 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, 2015.⁹

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.¹⁰ 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.¹¹

² 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.

³ See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

⁴ Department of Economic Opportunity, *House Bill 627/Senate Bill 868 Fiscal Analysis*, page 3, (Dec. 2, 2015) (on file with the Senate Committee on Finance and Tax).

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

⁶ Sections 212.08(p)2.d.; 220.183(2)(d); and 624.5102(2)(d), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* The infrastructure of such projects may be located in any area of a rural county (inside or outside of the zone).

¹⁰ Sections 212.08(5)(p)3.a.; 220.183(3)(a); and 624.5105(3)(a), F.S.

¹¹ *Id.*

Contributions to eligible 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.¹² If the donation is of real property, it must be made directly from the donor to the eligible sponsor via a deed.¹³ Donors wishing to participate in the program must submit an application for a tax credit to DEO.¹⁴ The application sets forth the sponsor, project, and the type, value, and purpose of the contribution.¹⁵ 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.¹⁶

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.¹⁷ 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.¹⁸ The donor may use the credit against corporate income tax, insurance premium tax, or as a refund against sales tax.¹⁹ Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.²⁰ Unused credits against sales taxes may be carried forward for three years.²¹

The DEO may approve \$18.4 million in Fiscal Year 2015-2016; \$21.4 million in Fiscal Year 2016-2017; and \$21.4 million in Fiscal Year 2017-2018 for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low or very-low income households. The DEO may approve \$3.5 million in those same fiscal years for all other types of eligible projects.²²

As of December 2015, in Fiscal Year 2015-2016, 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.²³ Approximately \$3.6 million worth of tax credits were requested for all other projects, resulting in a pro-rata approval rate of 95 percent of each tax credit application.²⁴

The CCTCP expires June 30, 2018.²⁵

¹² Sections 212.08(5)(p)2.a.; 220.183(2)(a); 624.5105(5)(a); and 220.03(1)(d), F.S.

¹³ See s. 192.001(12), F.S., for the definition of real property.

¹⁴ 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. Sections 212.08(5)(p)3.c.; 220.183(3)(c); and 624.5105(3)(c), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Sections 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

¹⁸ Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

¹⁹ See ss. 212.08(5)(p); 220.183; and 624.5105, F.S. A donor may only apply the credits toward one tax obligation.

²⁰ Sections 220.183(1)(e); and 624.5105(e), F.S.

²¹ Section 212.08(5)(p)1.b. and f., F.S.

²² Sections 212.08(5)(p)1.e.; 220.183(1)(c); and 624.5105(1)(c), F.S.

²³ Department of Economic Opportunity, *House Bill 627/Senate Bill 828 Fiscal Analysis* (Dec. 2, 2015) (on file with the Senate Committee on Finance and Tax).

²⁴ *Id.*

²⁵ Sections 212.08(5)(p)5.; 220.183(5); and 624.5105(6), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 220.03, F.S., relating to corporate income tax, to provide that a donation of real property in the CCTCP includes the transfer of a 100-percent ownership interest 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, which:

- Is wholly owned by the business firm;
- Is the sole owner of real property, as defined in s. 192.001(12), F.S., located in this state;
- Is disregarded as an entity separate from its owner for federal income tax purposes pursuant to 26 C.F.R. s. 301.7701-3(b)(1)(ii); and
- At the time of the contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

Section 2 amends s. 212.08, F.S., relating to sales and use tax, to provide that the donation of real property in the CCTCP includes the transfer of a 100-percent ownership interest of a real property holding company. The same definition is used for the term “real property holding company” as stated in section 1 of the bill.

Section 3 amends s. 624.5105, F.S., relating to insurance premium tax, to provide that the donation of real property in the CCTCP includes the transfer of a 100-percent ownership interest of a real property holding company. The same definition is used for the term “real property holding company” as stated in section 1 of the bill.

Section 4 provides an effective date of July 1, 2016.

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 estimated that CS/SB 868 would have no fiscal impact on state funds.²⁶

²⁶ Revenue Estimating Conference Analysis, *House Bill 627/Senate Bill 868* (Dec. 12, 2015) (on file with the Senate Committee on Finance and Tax).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.08, 220.03, and 624.5105.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Finance and Tax on February 16, 2016:

The CS clarifies that 100 percent of the ownership interest in the real property holding company must be contributed in order to qualify as a contribution of real property.

B. Amendments:

None.