

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: SB 868

INTRODUCER: Senator Smith

SUBJECT: Community Contribution Tax Credits

DATE: February 14, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Favorable
2.	Babin	Diez-Arguelles	FT	Pre-meeting
3.			AP	

I. Summary:

SB 868 provides that a donation of real property under the Community Contribution Tax Credit Program includes the transfer of ownership interests in a real property holding company. The bill defines “real property holding company” to mean an entity organized under the laws of this state 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 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

¹ Chapter 80-249, Laws of Fla.

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.

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

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

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.*

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.

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

III. Effect of Proposed Changes:

Section 1 amends s. 212.08, F.S., relating to sales and use taxes, to provide that a donation of real property in the CCTCP includes the transfer of ownership interests in a real property holding company. The bill defines "real property holding company" to mean an entity organized under the laws of this state which:

- Is wholly owned by the person;
- 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

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.

- 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. 220.03, F.S., relating to corporate income taxes, to provide that the donation of real property in the CCTCP includes the transfer of ownership interests in 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 taxes, to provide that the donation of real property in the CCTCP includes the transfer of ownership interests in 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 SB 868 would have no fiscal impact on state funds.²⁶

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is unclear as to whether the transfer of an interest in a real property holding company must be 100 percent of the holding company, or if the transfer may be less than 100 percent.

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.)

None.

B. Amendments:

None.