

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 1310

INTRODUCER: Senator Rodriguez

SUBJECT: Florida Main Street Program and Historic Preservation Tax Credits

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Covin</u>	<u>Babin</u>	<u>FT</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1310 creates the Main Street Historic Tourism and Revitalization Act (Act), which provides a tax credit against corporate income taxes and insurance premium taxes for qualified expenses incurred in the rehabilitation of a certified historic structure.

The tax credit may not exceed 20 percent of qualified expenses incurred in the rehabilitation of a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit *or* 30 percent of the total qualified expenses incurred in the rehabilitation of a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit that is located within a local program area of an Accredited Main Street Program.

Any unused amount may be carried forward for a period of up to 10 years. Tax credits may also be sold or transferred. There is no limit on the total number of transactions for the sale or transfer of all or part of a tax credit. However, qualified expenses may only be counted once in determining the amount of an available tax credit, and no more than one taxpayer may claim a tax credit for the same qualified expenses.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. Staff estimates a significant reduction to General Revenue Fund receipts.

The bill takes effect on July 1, 2022.

II. Present Situation:

National Register of Historic Places

The National Register of Historic Places,¹ under the National Park Service, is “part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America’s historic and archeological resources.”² The program reviews property nominations and lists eligible properties in the National Register; offers guidance on evaluating, documenting, and listing historic places; and helps qualified historic properties receive preservation benefits and incentives.³

Properties listed in the National Register are eligible for federal preservation tax credits. A 20 percent income tax credit is available for the rehabilitation of historic, income-producing buildings that are determined by the Secretary of the Interior, through the National Park Service, to be certified historic structures.⁴

Main Street America

Main Street America, a program under the National Main Street Center,⁵ is a network of grassroots organizations that “revitalizes older and historic commercial districts to build vibrant neighborhoods and thriving economies.”⁶ The program offers community-based revitalization initiatives to transform downtowns. In order to be designated as either an affiliate or accredited member of Main Street America, a community must first become a member of the National Main Street Center and meet certain requirements.⁷ Main Street America has coordinating programs that are organized at the state, county, and city level which partner with the National Main Street Center to provide support and training to Main Street America communities.

Florida has two coordinating programs: Florida Main Street America located in Tallahassee and Orlando Main Street located in Orlando.⁸ Florida Main Street is administered by the Division of Historical Resources (division) under the Florida Department of State.⁹ Forty-five Florida Main

¹ 54 U.S.C. § 3021.

² U.S. Department of the Interior, National Park Service, National Register of Historic Places, *What is the National Register of Historic Places?*, available at <https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm> (last visited Jan. 27, 2022).

³ *Id.*

⁴ U.S. Department of the Interior, National Park Service, *Technical Preservation Services*, available at <https://www.nps.gov/tps/tax-incentives.htm> (last visited Jan. 26, 2022).

⁵ The National Main Street Center was established in 1980 as a program of the National Trust for Historic Preservation as a way to address issues facing aging and historic downtowns. The Center launched the Main Street America program in 2015. See Main Street America, *About Us*, available at <https://www.mainstreet.org/about-us> (last visited Jan. 27, 2022).

⁶ Main Street America, *About Us*, available at <https://www.mainstreet.org/about-us> (last visited Jan. 27, 2022).

⁷ Main Street America, *Designation*, available at [https://higherlogicdownload.s3.amazonaws.com/NMSC/390e0055-2395-4d3b-af60-81b53974430d/UploadedImages/Main Street America Tier System Overview - 2021 July Update.pdf](https://higherlogicdownload.s3.amazonaws.com/NMSC/390e0055-2395-4d3b-af60-81b53974430d/UploadedImages/Main%20Street%20America%20Tier%20System%20Overview%20-%202021%20July%20Update.pdf) (last visited Jan. 27, 2022).

⁸ Main Street America, *Coordinating Programs*, available at [https://higherlogicdownload.s3.amazonaws.com/NMSC/390e0055-2395-4d3b-af60-81b53974430d/UploadedImages/The Programs/2020 Coordinating Program List.pdf](https://higherlogicdownload.s3.amazonaws.com/NMSC/390e0055-2395-4d3b-af60-81b53974430d/UploadedImages/The%20Programs/2020%20Coordinating%20Program%20List.pdf) (last visited Jan. 27, 2022).

⁹ Section 267.031(5), F.S.

Streets and 10 Orlando Main Streets have received technical assistance toward the goal of revitalizing historic downtowns and encouraging economic development.¹⁰

Corporate Income Tax

Florida levies a 5.5 percent tax on certain income of corporations and financial institutions doing business in Florida.¹¹ Florida utilizes the taxable income determined for federal income tax purposes as a starting point to determine the total amount of Florida corporate income tax due.¹² This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed when determining taxable income for federal tax purposes as it does when determining taxable income for state taxation purposes.

Insurance Premium Tax

Florida imposes a 1.75 percent tax on most Florida insurance premiums.¹³ Insurance premium taxes are paid by insurance companies under chapter 624, F.S., and are remitted to the Department of Revenue (DOR). These revenues are distributed to General Revenue.

III. Effect of Proposed Changes:

The bill creates the Main Street Historic Tourism and Revitalization Act (Act) which provides a tax credit against corporate income tax and insurance premium tax for qualified expenses¹⁴ incurred in the rehabilitation of a certified historic structure.

Eligibility

A taxpayer must apply to the DOR for a tax credit before taking a credit on its return and must document that:

- The rehabilitation is a certified rehabilitation;¹⁵
- The structure is a certified historic structure,¹⁶ is income-producing, is located within the state, and was rehabilitated and placed into service on or after July 1, 2022;

¹⁰ Visit Florida, *Florida Main Street Programs Have Stories to Tell*, available at <https://www.visitflorida.com/travel-ideas/articles/florida-main-street/> (last visited Jan. 27, 2022).

¹¹ Section 220.11(2), F.S.

¹² Section 220.12, F.S.

¹³ Section 624.509, F.S.

¹⁴ The bill defines “qualified expenses” as qualified rehabilitation expenditures (defined in 26 U.S.C., §47(c)(2)) and structural components (defined in 26 C.F.R., § 1.48-1(e)(2)) at the time of project certification by the U.S. Secretary of the Interior and the U.S. Internal Revenue Service (IRS).

¹⁵ The bill defines “certified rehabilitation” as the rehabilitation of a certified historic structure that the U.S. Secretary of the Interior has certified to the U.S. Secretary of the Treasury as being consistent with the historic character of the certified historic structure and, if applicable, consistent with the registered historic district in which the structure is located. *See* 36 C.F.R., § 67.2

¹⁶ The bill defines a “certified historic structure” as a building and its structural components which is of a character subject to the allowance for depreciation provided in s. 167 of the Internal Revenue Code and which is listed on the National Register of Historic Places or located within a registered historic district and certified by the U.S. Secretary of the Interior as being of historic significance to the registered historic district.

- The taxpayer had an ownership interest in the certified historic structure in the year during which the certified historic structure was placed into service after the certified rehabilitation was complete; and
- The total amount of qualified expenses incurred in rehabilitating the certified historic structure exceeded \$5,000.

Filing Requirements

Before claiming or transferring a tax credit, the taxpayer must provide the following information to the DOR:

- An official certificate of eligibility from the division attesting that the project has been approved by the National Park Service and confirming whether the project is or is not located within a Main Street local program area;
- National Park Service Form 10-168c, signed by the National Park Service attesting that the completed rehabilitation meets the U.S. Secretary of the Interior's Standards for Rehabilitation and is consistent with the historic character of the property and, if applicable, the district in which the completed rehabilitation is located;
- Identification of the dates during which the structure was rehabilitated, the date the structure was first placed into service after certified rehabilitation was completed, and evidence that the structure was placed into service after the certified rehabilitation was completed;
- A list of total qualified expenses incurred by the taxpayer in rehabilitation the certified historic structure. For certified rehabilitations with qualified expenses that exceeded \$750,000, the taxpayer must submit an audited cost report that itemizes the qualified expenses incurred in rehabilitating the structure as provided in the Florida Single Audit Act.
- An attestation of the total qualified expenses incurred by the taxpayer in rehabilitating the certified historic structure;
- A completed "Florida Corporate Income/Franchise Tax Return" or other appropriate tax form issued by the DOR for insurance premium tax reporting; and
- The information required to be reported by the DOR to enable the DOR to compile its annual report based on the tax credit applications submitted and approved.

Amount and Carryforward of Tax Credit

The tax credit may be used to offset the corporate income tax and the insurance premium tax. The total tax credit claimed annually may not exceed the amount of tax due after any other applicable tax credits and may not exceed:

- Twenty percent of the total qualified expenses incurred in rehabilitating a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit; or
- Thirty percent of the total qualified expenses incurred in rehabilitating a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit and that is located within a local program area of an Accredited Main Street Program.

If a taxpayer is eligible for a tax credit that exceeds taxes owed, the taxpayer may carry the unused tax credit forward for a period of up to 10 years.

Sale or Transfer of Tax Credit

The bill provides that there is no limit on the total number of transactions for the sale or transfer of all or part of a tax credit. However, qualified expenses may only be counted once in determining the amount of an available tax credit, and more than one taxpayer may not claim a tax credit for the same qualified expenses.

A taxpayer that sells or transfers a tax credit and the purchaser or transferee must jointly submit written notice of the sale or transfer to the DOR no later than the 30th day after the date of the sale or transfer. The notice must include the following information:

- The date of the sale or transfer;
- The amount of the tax credit sold or transferred;
- The name and federal tax identification number of the taxpayer that sold or transferred the tax credit and the purchaser or transferee; and
- The amount of the tax credit owed by the taxpayer before the sale or transfer and the amount the selling or transferring taxpayer retained, if any, after the sale or transfer.

The sale or transfer of a tax credit does not extend the period for which a tax credit may be carried forward and does not increase the total amount of the tax credit that may be claimed.

A tax credit earned, purchased, or transferred to a partnership, limited liability company, S corporation, or other pass-through taxpayer may be allocated to the partners, members, or shareholders of that taxpayer without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure.

If the tax credit is reduced due to a determination, examination, or audit by the DOR, the tax deficiency must be recovered from the taxpayer that sold or transferred the tax credit or the purchaser or transferee that claimed the tax credit up to the amount of the tax credit taken. Any subsequent deficiencies must be assessed against the purchaser or transferee that claimed the tax credit, or in the case of multiple succeeding entities, in the order of tax credit succession.

DOR Audit Authority

The DOR is authorized to perform additional financial and technical audits and examinations, including examining the accounts, books, or records of the tax credit applicant, to verify the legitimacy of the qualified expenses included in a tax credit return and to ensure compliance.

It is grounds for forfeiture of previously claimed and received tax credits if the DOR determines that a taxpayer received a tax credit to which the taxpayer was not entitled. The taxpayer must return the forfeited tax credits to the DOR, which will then be paid into the General Revenue Fund.

The taxpayer must file an amended tax return and pay any required tax within 60 days after the taxpayer receives notification from the IRS that a previously approved tax credit has been revoked or modified, if uncontested, or within 60 days after a final order is issued following proceedings involving a contested revocation or modification order.

The DOR may issue a notice of deficiency at any time within five years after the date on which the taxpayer receives notification from the IRS that a previously approved tax credit has been revoked or modified.

The DOR may issue a notice of deficiency at any time if the taxpayer fails to notify the DOR of any change in its tax credit claimed. The amount of any proposed assessment in the notice of deficiency is limited to the amount of any deficiency from the precomputation of the taxpayer's tax for the taxable year. Furthermore, a taxpayer is subject to applicable penalties and interest for failing to report and timely paying any tax due as a result of the forfeiture of its tax credit.

Other Provisions

The DOR must provide an annual report that identifies, in the aggregate, the number of employees hired during construction phases, the use of each newly rehabilitated building, the expected number of employees hired, the number of affordable housing units created or preserved, and the property values before and after the certified rehabilitations.

The DOR must also establish any necessary forms required to claim a tax credit; provide administrative guidelines and procedures required to administer the Act, including rules establishing an entitlement to and sale or transfer of a tax credit; and provide examination and audit procedures required to administer the Act.

The DOR is granted rulemaking authority to administer the Act.

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state tax shared with them. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, s. 18 of the Florida Constitution. Therefore, the provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise a state tax or fee. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. Staff estimates a significant reduction to General Revenue receipts.

B. Private Sector Impact:

Taxpayers who have ownership interest in a certified historic structure in the year during which the structure was placed into service after the certified rehabilitation was complete may be eligible to receive a tax credit to offset corporate income taxes and insurance premium taxes for qualified expenses incurred in the rehabilitation of the certified historic structure.

C. Government Sector Impact:

According to the DOR, the bill will have a non-recurring negative fiscal impact in the amount of \$250,772 for Fiscal Year 2021-2022 in order to make modifications to the DOR's software systems, databases, and applications.¹⁷

Additionally, new rules and forms would need to be promulgated in order to administer the tax credit.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOR raised the following concerns:

- The bill does not provide for a cooperative agreement between the DOR and the division to assist with the administration of the program.
- The DOR requests emergency rulemaking authority to administer the Act.
- The DOR is authorized to perform audits to verify the legitimacy of the qualified expenses included in a tax credit return; however, the DOR lacks the expertise and experience to perform such audits. The division may need to assist the DOR with the audits.

¹⁷ Florida Department of Revenue, SB 1310 analysis (2022). On file with Senate Committee on Finance and Tax.

- The bill provides that it is grounds for forfeiture of previously claimed and received tax credits if the DOR determines, as a result of an audit or information received from the division of the U.S. Department of the Interior, that a taxpayer received a tax credit to which the taxpayer was not entitled. It is unclear how the DOR would receive information from the division or the U.S. Department of the Interior because the bill does not provide for information sharing among the three entities.
- The annual report requires the DOR to list “employees hired.” It is unclear what that term means. The report also requires the DOR to identify the number of affordable housing units created or preserved. The bill does not define the term “affordable housing unit.”

VIII. Statutes Affected:

This bill creates section 220.197 of the Florida Statutes.

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.