HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 247 Florida Main Street Program and Historic Preservation Tax Credits
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Salzman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	14 Y, 0 N, As CS	Walsh	Keating
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The National Register of Historic Places, 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." Properties listed in the National Register are eligible for federal preservation tax credits.

The Main Street America program offers community-based revitalization initiatives to assist in transforming 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.

Florida levies a 5.5 percent tax on certain income of corporations and financial institutions doing business in Florida. Florida also imposes a 1.75 percent tax on most Florida insurance premiums.

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 expenses incurred in the rehabilitation of a certified historic structure. The bill provides eligibility and filing requirements. Under the bill, a tax credit as authorized by the Act may be sold or transferred. The bill gives DOR the authority to audit tax credit applicants to verify the legitimacy of qualified expenditures. Under the bill, DOR is granted rulemaking authority and emergency rulemaking authority to administer the Act.

The bill does not appear to impact local government revenues or expenditures. By implementing a new tax credit, the bill will likely decrease state revenues. The bill may increase state expenditures.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

National Register of Historic Places

The National Register of Historic Places (National Register),[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 twenty percent federal 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 assist in transforming 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 that 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 Streets and ten Orlando Main Streets have received technical assistance toward the goal of revitalizing historic downtowns and encouraging economic development.[10]

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[1] 54 U.S.C., § 3201.
[2] U.S. Department of the Interior, *National Park Service, National Register of Historic Places, What is the National Register of Historic Places?*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Feb. 11, 2022).
[3] *Id.*
[4] U.S. Department of the Interior, *National Park Service, Technical Preservation Services*, https://www.nps.gov/tps/tax-incentives.htm (last visited Feb. 11, 2022).
[5] The National Main Street Center was established in 1980 as a program of the National Trust for Historic Preservation to address issues facing aging and historic downtowns. The Center launched the Main Street America program in 2015. *See* Main Street America, *About Us*, https://www.mainstreet.org/about-us (last visited Feb. 11, 2022).
[6] *Id.*
[7] Main Street America, *Designation*, https://higherlogicdownload.s3.amazonaws.com/NMSC/390e0055-2395-4d3b-af60-81b53974430d/UploadedImages/Main_Street_America_Tier_System_Overview_-_2021_July_Update.pdf (last visited Feb. 11, 2022).
[8] Main Street America, *Coordinating Programs*, https://higherlogicdownload.s3.amazonaws.com/NMSC/390e0055-2395-4d3b-af60-81b53974430d/UploadedImages/The_Programs/2020_Coordinating_Program_List.pdf (last visited Feb. 11, 2022).
[9] S. 267.031(5), F.S.
[10] Visit Florida, *Florida Main Street Programs Have Stories to Tell*, https://www.visitflorida.com/travel-ideas/articles/florida-main-street/ (last visited Feb. 11, 2022).

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 ch. 624, F.S., and are remitted to the Department of Revenue (DOR). These revenues are distributed to General Revenue.

Effect of the Bill

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 expenses[14] incurred in the rehabilitation of a certified historic structure.

To be eligible for the tax credits, a taxpayer must apply to the division for a tax credit before taking a credit on their 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 is rehabilitated and placed into service on or after January 1, 2023;
- The taxpayer had an ownership or long-term leasehold[17] interest in the certified historic structure in the year during which the certified historic structure was placed into service after the certified rehabilitation was completed;
- The total amount of qualified expenses incurred in rehabilitating the certified historic structure exceeded $5,000;
- The qualified expenses that were incurred in Florida; and
- The taxpayer received a tax credit for the qualified expenses under the federal historic rehabilitation tax credit provision.[18]

Under the bill, before a taxpayer can claim or transfer a tax credit, the taxpayer must also provide the division with the following information:

- An official certificate of eligibility from the Division of Historical Resources of the Department of State signed by the State Historic Preservation Officer or the Deputy State Historic Preservation

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[11] S. 220.11(2), F.S.
[12] S. 220.12, F.S.
[13] S. 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 United States Secretary of the Interior has certified to the United States 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 certified historic structure is located as set forth in 36 C.F.R. s. 67.2.
[16] The bill defines "certified historic structure" as a building and its structural components which are 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.
[17] The bill defines "long-term leasehold" to mean a leasehold in a nonresidential real property for a term of 39 years or more or a leasehold in a residential real property for a term of 27.5 years or more.
[18] *See* 26 U.S.C. § 47.

Officer 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 rehabilitating the certified historic structure;[19]
- An attestation of the total qualified expenses incurred by the taxpayer in rehabilitating the certified historic structure; and
- The information required to be reported by DOR to enable the agency to compile its annual report based on the tax credit applications submitted and approved.

The bill requires that within 60 days after receipt of the information, the division shall evaluate the application and recommend the applicant for certification or denial. Within 30 days after recommendation, the division must approve or deny the application. If the taxpayer is approved, the division must provide a letter to the applicant. If the taxpayer is denied, the division must inform the applicant of the grounds for denial. The division must submit a copy of the certification and the information provided by the taxpayer to DOR within 10 days after the division's approval.

Under the bill, 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 5 taxable years.

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 no more than one taxpayer may claim a tax credit for the same qualified expenses.

Under the bill, 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 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 owned by the taxpayer before the sale or transfer and the amount the selling or transferring taxpayer retained, if any, after the sale or transfer.

[19] 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. The taxpayer may submit an audited cost report that was created for purposes of applying for the federal historic rehabilitation tax credit.

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.

The bill provides that 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 and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure.

The bill provides that if the tax credit is reduced due to a determination, examination, or audit by 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.

Under the bill, DOR, with assistance from the division, 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. The division must provide technical assistance for any technical audits or examinations if requested by DOR. It is grounds for forfeiture of previously claimed and received tax credits if 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 DOR, which will then be paid into the General Revenue Fund.

The bill provides that 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. DOR may issue a notice of deficiency at any time within 5 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 bill permits DOR to issue a notice of deficiency at any time if the taxpayer fails to notify 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.

The bill provides that DOR must provide a report annually by December 1st that identifies, in the aggregate:

- The number of employees hired during construction phases;
- The use of each newly rehabilitated building and 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.

Under the bill, DOR must also establish a cooperative agreement with the division; 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 bill grants DOR rulemaking authority and emergency rulemaking authority to administer the Act.

The bill authorizes DOR to make available to the division and the Secretary of the Department of Interior of the United States information relating to the provisions of the bill.

The bill applies to taxable years beginning and for qualifying expenses incurred on or after January 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates 220.197, F.S., which creates and provides terms for the Main Street Historic Tourism and Revitalization Act.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   By implementing a new tax credit, the bill will likely decrease state revenues.

2. Expenditures:

   According to 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.[20] Additionally, new rules and forms must be promulgated in order to administer the tax credit.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers who have an ownership or long-term leasehold 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. This may lead to greater private investment in the rehabilitation of certified historic structures, which may have a positive impact on jobs and property values.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to impact county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOR to adopt rules and grants DOR emergency rulemaking authority to administer the provisions of the bill.

[20] Department of Revenue, Agency Analysis of 2022 House Bill 247, p.11 (Oct. 25, 2021).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill makes multiple references to when the certified historic structure is “placed into service,” but does not define this term.[21]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 15, 2022, the Tourism Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Adds a definition for “long-term leasehold” and revises other definitions;
- Provides that the tax credit may be taken for taxable years beginning on or after January 1, 2023;
- Requires the Division of Historical Resources of the Department of State (division), rather than the Department of Revenue (DOR), to evaluate and certify applications for the tax credit;
- Authorizes a taxpayer to submit to the division an audited cost report which was created when applying for a federal historic rehabilitation tax credit;
- Revises the evaluation process and provides duties for the division;
- Provides a date by which DOR must annually submit a report to the Legislature;
- Authorizes DOR to make certain information available relating to the tax credit;
- Authorizes DOR to adopt emergency rules; and
- Makes technical changes.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.

[21] *Id.*