

**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.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: CS/SB 288

INTRODUCER: Finance and Tax Committee; and Senator DiCeglie and others

SUBJECT: Florida Main Street Program and Historic Preservation Tax Credits

DATE: March 14, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 288 creates the Main Street Historic Tourism and Revitalization 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 and 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 five taxable 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 (REC) has not analyzed the committee substitute. The REC analysis for the prior version of the bill was estimated to reduce recurring General Revenue Fund receipts in Fiscal Year 2023-2024 by \$39.3 million. Beginning in Fiscal Year 2024-2025, General Revenue Fund receipts are estimated to reduce by \$39.7 million, cash and recurring.

The bill takes effect on January 1, 2024. The emergency rulemaking authority granted to the Department of Revenue takes effect upon the bill becoming a law.

## II. Present Situation:

### National Register of Historic Places

The National Register of Historic Places,<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> The National Parks Service reports that each year, “approximately 1,200 projects are approved, leveraging nearly \$6 billion annually in private investment in the rehabilitation of historic buildings across the country.”<sup>5</sup>

In Florida, there are more than 1,700 properties and districts listed on the National Register. Nominations for those properties must be submitted to the National Park Service through the Florida Department of State’s Division of Resources, following a review and recommendation by the Florida National Register Review Board.<sup>6</sup> The cumulative total of “Qualified Rehabilitation Expenses” (the value of items that can be written off by developers on their federal tax bill) for Florida projects over the most recent five-year period (FY 2017-2021) is \$161 million, resulting in \$32.2 million in federal tax credits.<sup>7</sup>

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<sup>1</sup> 54 U.S.C. § 3021.

<sup>2</sup> 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 Mar. 9, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Department of the Interior, National Park Service, *Technical Preservation Services*, available at <https://www.nps.gov/tps/tax-incentives.htm> (last visited Mar. 9, 2023).

<sup>5</sup> U.S. Department of the Interior, National Park Service, Historic Preservation Tax Incentives, *About the Incentives*, available at <https://www.nps.gov/subjects/taxincentives/about.htm> (last visited Mar. 9, 2023).

<sup>6</sup> Florida Department of State, Division of Historical Resources, *National Register of Historic Places*, available at <https://dos.myflorida.com/historical/preservation/national-register/> (last visited Mar. 9, 2023).

<sup>7</sup> U.S. Department of the Interior, National Park Service, Historic Preservation Tax Incentives, *2021 Annual Report*, available at <https://www.nps.gov/subjects/taxincentives/upload/report-2021-annual.pdf>. (last visited Mar. 9, 2023).

## Main Street America

Main Street America, a program under the National Main Street Center,<sup>8</sup> is a network of grassroots organizations that “revitalizes older and historic commercial districts to build vibrant neighborhoods and thriving economies.”<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> Florida Main Street is administered by the Division of Historical Resources (division) under the Florida Department of State.<sup>12</sup> Forty-five Florida Main Streets and 10 Orlando Main Streets have received technical assistance toward the goal of revitalizing historic downtowns and encouraging economic development.<sup>13</sup>

## Florida Initiatives

Currently, Florida does not offer a similar program that provides corporate income tax credits to offset the costs of rehabilitating historic properties. The Historic Preservation Grant Program, administered by the division, provides grants for the preservation and protection of the state’s historic and archaeological sites and properties. However, any property owned by private individuals or for-profit corporations are ineligible for such grants.<sup>14</sup>

Florida’s constitution grants any county or municipality the authority to offer ad valorem tax exemptions to owners of historic properties making preservation improvements.<sup>15</sup> Codified in the Florida Statutes under three sections, residential and commercial properties improved in a manner consistent with historic preservation standards are eligible for an exemption of up to 100 percent of the value of the improvement made to the property.<sup>16</sup> Generally, the property must be either individually listed in the National Register of Historic Places; be a contributing property to a national-register-listed district; or be designated as a historic property, or as a contributing property to a historic district. If the property is used for a governmental,

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<sup>8</sup> 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/aboutus> (last visited Mar. 9, 2023).

<sup>9</sup> Main Street America, *About Us*, available at <https://www.mainstreet.org/aboutus> (last visited Mar. 9, 2023).

<sup>10</sup> 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 Mar. 9, 2023).

<sup>11</sup> 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 Mar. 9, 2023).

<sup>12</sup> Section 267.031(5), F.S.

<sup>13</sup> Visit Florida, *Florida Main Street Programs Have Stories to Tell*, available at <https://www.visitflorida.com/travel-ideas/articles/florida-main-street/> (last visited Mar. 9, 2023).

<sup>14</sup> Section 267.0617(2), F.S.

<sup>15</sup> FLA. CONST. Art. VII, s. 3.

<sup>16</sup> See ss. 196.1961, 196.1997, and 196.1998, F.S.

not-for-profit, or commercial purpose, it must be open to the public on a regular basis. Additionally, property used for governmental or nonprofit purposes are eligible to have the entire value of the property exempted.<sup>17</sup>

### **Corporate Income Tax**

Florida levies a 5.5 percent tax on certain income of corporations and financial institutions doing business in Florida.<sup>18</sup> 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.<sup>19</sup> 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, a 1 percent tax on annuity premiums; and a 1.6 percent tax on self-insurers.<sup>20</sup> Insurance premium taxes are paid by insurance companies and remitted to the Department of Revenue (DOR). The revenues are distributed to General Revenue. In addition, some insurers pay a retaliatory tax to the extent the insurer's state of domicile would impose a greater tax burden than Florida imposes.

## **III. Effect of Proposed Changes:**

The bill creates the Main Street Historic Tourism and Revitalization Act which provides a tax credit against corporate income tax and insurance premium tax for qualified expenses<sup>21</sup> incurred in the rehabilitation of a certified historic structure.

### **Eligibility**

An applicant must apply to the DOS to receive a tax credit no later than 6 months after the date the certified historic structure is placed in service and must document that:

- The rehabilitation is a certified rehabilitation;<sup>22</sup>
- The structure is a certified historic structure,<sup>23</sup> is income-producing, is located within the state, and was rehabilitated and placed into service on or after January 1, 2024;

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<sup>17</sup> Section 196.1998, F.S.

<sup>18</sup> Section 220.11(2), F.S.

<sup>19</sup> Section 220.12, F.S.

<sup>20</sup> Section 624.509, F.S., and s. 624.4621, F.S.

<sup>21</sup> 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).

<sup>22</sup> 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

<sup>23</sup> 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

- The applicant had an ownership interest or a long-term leasehold interest in the certified historic structure in the year during which the certified historic structure was placed into service;
- The total amount of qualified expenses incurred in rehabilitating the certified historic structure exceeded \$5,000;
- The qualified expenses were incurred in Florida, and
- The applicant received a tax credit for the qualified expenses under the federal historic rehabilitation tax credit provision.<sup>24</sup>

In the application, the applicant must also provide the division with the following:

- An official certificate of eligibility from the division attesting that the project has been approved by the National Park Service. The attestation must identify if the project is 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 applicant must submit an audited cost report that itemizes the qualified expenses incurred in rehabilitating the structure. The applicant may submit an audited cost report that was created for purposes of applying for the federal historic rehabilitation tax credit;
- An attestation of the total qualified expenses incurred by the applicant in rehabilitating the certified historic structure; 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.

Applicants may begin the process for a determination of eligibility before the certified historic structure is placed in service; however, final determination is withheld until the certified historic structure is placed in service.

Within 90 days after receipt of the information detailed above or the certified historic structure is placed in service, whichever is later, the division shall approve or deny the application. If 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 to the DOR a copy of the certification and the information provided by the applicant within 10 days after the division's approval.

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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.

<sup>24</sup> 26 U.S.C. s. 47

### **Certified Rehabilitation Tax Credit**

For taxable years beginning on or after January 1, 2024, there is allowed a credit against the corporate income or insurance premium tax in an amount equal to:

- 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 five taxable 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 no more than one taxpayer may 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 30<sup>th</sup> 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 and Division Audit Authority**

The 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 the DOR.

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 the tax credit claimed. 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 a report annually by December 1 which 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 a cooperative agreement with the division; adopt 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 and the division are granted rulemaking authority and the DOR is granted additional emergency rulemaking authority to administer the Act.

The DOR is authorized to make available to the division and the Secretary of the Department of the Interior of the United States information relating to the Act.

The bill makes conforming changes.

The bill applies to taxable years beginning on or after January 1, 2024.

The bill takes effect on January 1, 2024. The emergency rulemaking authority granted to the DOR takes effect upon the bill becoming a law.

#### **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, section 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, section 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 (REC) has not analyzed the committee substitute. The REC analysis for the prior version of the bill estimated that the bill would reduce recurring General Revenue Fund receipts in Fiscal Year 2023-2024 by \$39.3 million. Beginning in Fiscal Year 2024-2025, General Revenue Fund receipts are estimated to reduce by \$39.7 million, cash and recurring.



**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:**

The DOR determined that in Fiscal Year 2024-2025, \$91,488 in non-recurring funds is necessary to implement the bill. The funds will be used to update the state's tax software system and modify necessary forms.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires the DOR to annually report specific information to the President of the Senate and the Speaker of the House of Representatives. The report must include 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 rehabilitation.

Information provided to the DOR contained in returns, reports, accounts, or declarations received by the DOR is confidential, except for official purposes.<sup>26</sup> Limited use of the tax credit program might limit the ability to aggregate information sufficiently to overcome confidentiality restrictions.

Clearly establishing who is an "employee hired" will provide guidance to the DOR on who to include in the statistics. For example, employees might include the number of employees hired by the contractors or subcontractors that perform the construction phases or might include only employees hired by the applicant during the construction phases.

The information for the report must be collected from the applicant by the division at the time of application, which is 90 days after the structure is placed in service. Clearly establishing what documentation is required to substantiate affordable housing units will provide guidance to the DOR on what units to include in the statistics. Unless the applicant has contractually restricted units for affordable housing, the DOR may not have the information necessary to confirm if units are affordable housing units.

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<sup>25</sup> Florida Dep't of Revenue, *Senate Bill 288 Bill Analysis* (Feb. 01, 2023) (on file with the Senate Committee on Finance and Tax

<sup>26</sup> Section 213.053(2)(a), F.S.

**VIII. Statutes Affected:**

This bill creates section 220.197 of the Florida Statutes.

The bill amends the following sections of the Florida Statutes: 213.053, 220.02, 220.13, and 624.509.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Finance and Tax on March 14, 2023:**

The committee substitute:

- Replaces the term “taxpayer” with “applicant” to clarify that a person other than a corporate income tax taxpayer may apply and receive a tax credit.
- Creates an application deadline whereby an applicant must apply to the Division of Historical Resources of the Department of State within 6 months after the structure is placed in service.
- Removes a requirement to confirm the project is within a local program area and replaces it with an attestation if the project is located in such an area.
- Requires a determination of tax credit eligibility to occur only after the structure is placed in service.
- Clarifies that the Division of Historical Resources of the Department of State must evaluate and approve or deny an application within 90 days after receipt of the application or after the structure is placed in service, whichever is later.
- Clarifies that the tax credit is equal to either 20 percent or 30 percent of total qualified expenses, rather than such amount annually.
- Allows the tax credit to be taken against the corporate income tax and franchise tax under chapter 220.
- Clarifies how a tax credit may be sold or transferred.
- Adds a definitions for “placed in service,” “taxpayer,” and “affordable housing.”
- Makes other technical changes.

**B. Amendments:**

None.