

Council Substitute for
Committee Substitute for House Bill No. 485

An act relating to fast track economic stimulus for small businesses; amending s. 213.053, F.S.; authorizing the Department of Revenue to share certain confidential taxpayer information with the Office of Tourism, Trade, and Economic Development; preserving certain confidentiality of such information; amending s. 220.02, F.S.; revising legislative intent with respect to the order of tax credits to include the New Markets Development Program tax credit; amending s. 220.13, F.S.; revising a definition; creating ss. 288.991-288.9922, F.S.; providing a short title; establishing the New Markets Development Program; providing a purpose; providing definitions; providing for a tax credit for making certain qualified equity investments; specifying a credit amount; providing for uses of the credit; prohibiting sale or transfer of such credits; authorizing allocation of the credit; specifying limitations on such credits; specifying application and certification requirements and procedures for the Office of Tourism, Trade, and Economic Development to qualify certain equity investments as eligible for tax credits; providing for application fees; providing duties and responsibilities of the Department of Revenue; limiting the amount of investments the office may certify; providing requirements and limitations on issuance of certified equity investments; providing for calculation of tax credits; limiting the amount of the tax credit that may be redeemed in a fiscal year; providing for carryover of unredeemed tax credits under certain circumstances; providing for redemption of tax credits; specifying how tax credits may be claimed by insurance companies; requiring the calculations to be certified and accompanied by audited financial statements and notarized affidavits; providing requirements for recapture of tax credits under certain circumstances; requiring notice of proposed recapture; providing requirements for compliance and audits of qualified equity investments; providing annual reporting requirements for certain community development entities; providing annual reporting requirements for the office; authorizing the office to conduct certain examinations; authorizing the office to revoke or modify tax credit authorizations under certain circumstances; providing for taxpayer liability for reimbursement of fraudulently claimed tax credits; providing penalties; authorizing the office and the department to adopt rules; providing for future repeal of the tax credit program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (19) is added to section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.—

(19) The department may disclose information relative to tax credits taken by a taxpayer pursuant to s. 288.9916 to the Office of Tourism, Trade, and Economic Development or its employees or agents. Such employees must be identified in writing by the office to the department. All information disclosed under this subsection is subject to the same requirements of confidentiality and the same penalties for violation of the requirements as the department.

Section 2. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, those enumerated in s. 220.187, those enumerated in s. 220.192, ~~and those enumerated in s. 220.193, and those enumerated in s. 288.9916.~~

Section 3. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 “Adjusted federal income” defined.—

(1) The term “adjusted federal income” means an amount equal to the taxpayer’s taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.—There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

12. The amount taken as a credit for the taxable year under s. 220.192.

13. The amount taken as a credit for the taxable year under s. 220.193.

14. Any amount in excess of \$25,000 allowable as a deduction for federal income tax purposes under s. 179 of the Internal Revenue Code of 1986, as amended, for the taxable year.

15. Any amount allowable as a deduction for federal income tax purposes under s. 167 or s. 168 of the Internal Revenue Code of 1986, as amended, for the taxable year to the extent that such amount includes bonus depreciation allowable as deduction under s. 168(k).

16. Any portion of a qualified investment, as defined in s. 288.9913, which is claimed as a deduction by the taxpayer and taken as a credit against income tax pursuant to s. 288.9916.

Section 4. Section 288.991, Florida Statutes, is created to read:

288.991 Short title.—Sections 288.991-288.9922 may be cited as the “New Markets Development Program Act.”

Section 5. Section 288.9912, Florida Statutes, is created to read:

288.9912 New Markets Development Program; purpose.—The New Markets Development Program is established to encourage capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that make qualified low-income community investments in qualified active low-income community businesses to create and retain jobs.

Section 6. Section 288.9913, Florida Statutes, is created to read:

288.9913 Definitions.—As used in ss. 288.991-288.9922, the term:

(1) “Credit allowance date” means:

(a) The date on which a qualified investment is made; and

(b) Each of the six anniversaries of that date.

(2) “Department” means the Department of Revenue.

(3) “Long-term debt security” means a debt instrument issued by a qualified community development entity at par value or a premium which has a maturity date of at least 7 years following the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date, except in instances of default.

(4) “Low-income community” means any population census tract within the state where:

1. The poverty rate of such tract is at least 20 percent; or

2. In the case of a tract that is:

a. Not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the statewide median family income; or

b. Located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of the statewide median family income or the metropolitan area median income.

(5) “Office” means the Office of Tourism, Trade, and Economic Development.

(6) “Purchase price” means the amount of cash paid to a qualified community development entity in exchange for a qualified investment.

(7) “Qualified active low-income community business” means a corporation, including a nonprofit corporation, or partnership that:

(a)1. Derives at least 50 percent of its total gross income from the active conduct of business within any low-income community for any taxable year;

2. Uses a substantial portion of its tangible property, whether owned or leased, within any low-income community for any taxable year;

3. Performs a substantial portion of its services through its employees in a low-income community for any taxable year;

4. Attributes less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity to collectibles, as defined in 26 U.S.C. s. 408(m)(2), other than collectibles that are held primarily for sale to customers in the ordinary course of the business for any taxable year; and

5. Attributes less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity to nonqualified financial property, as defined in 26 U.S.C. s. 1397C(e), for any taxable year.

(b) Is reasonably expected by a qualified community development entity at the time of an investment to continue to satisfy the requirements of paragraphs (a), (c), and (d) for the duration of the investment.

(c) Satisfies the requirements of paragraphs (a) and (b), but does not:

1. Derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate;

2. Engage predominantly in the development or holding of intangibles for sale or license;

3. Operate a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack, gambling facility, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; or

4. Engage principally in farming and owns or leases assets the sum of the aggregate unadjusted bases or the fair market value of which exceeds \$500,000.

(d) Will create or retain jobs that pay an average wage of at least 115 percent of the federal poverty income guidelines for a family of four.

(8) “Qualified community development entity” means an entity that:

(a)1. Is certified by the Secretary of the United States Department of the Treasury as a qualified community development entity under 26 U.S.C. s. 45D; and

2. Has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to tax credits under 26 U.S.C. s. 45D and is authorized to serve businesses in this state under the agreement; or

(b) Is Enterprise Florida, Inc., or an entity created by Enterprise Florida, Inc.

(9) “Qualified investment” means an equity investment in, or a long-term debt security issued by, a qualified community development entity that:

(a) Is issued solely in exchange for cash; and

(b) Is designated by the qualified community development entity as a qualified investment under this paragraph and is approved by the office as a qualified investment.

(10) “Qualified low-income community investment” means a capital or equity investment in, or loan to, any qualified active low-income community business.

Section 7. Section 288.9914, Florida Statutes, is created to read:

288.9914 Certification of qualified investments; investment issuance reporting.—

(1) ELIGIBLE INDUSTRIES.—

(a) The office, in consultation with Enterprise Florida, Inc., shall designate industries using the North American Industry Classification System which are eligible to receive low-income community investments. The designated industries must be those industries that have the greatest potential to create strong positive impacts on or benefits to the state, regional, and local economies.

(b) A qualified community development entity may not make a qualified low-income community investment in a business unless the principal activities of the business are within an eligible industry. The office may waive this limitation if the office determines that the investment will have a positive impact on a community.

(2) APPLICATION.—A qualified community development entity must submit an application to the office to approve a proposed investment as a qualified investment. The application must include:

(a) The name, address, and tax identification number of the qualified community development entity.

(b) Proof of certification as a qualified community development entity under 26 U.S.C. s. 45D.

(c) A copy of an allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund, which authorizes the entity to serve businesses in this state.

(d) A verified statement by the chief executive officer of the entity that the allocation agreement remains in effect.

(e) A description of the proposed amount, structure, and purchaser of an equity investment or long-term debt security.

(f) The name and tax identification number of any person authorized to claim a tax credit earned as a result of the purchase of the proposed qualified investment.

(g) A detailed explanation of the proposed use of the proceeds from a proposed qualified investment.

(h) A nonrefundable application fee of \$1,000, payable to the office.

(i) A statement that the entity will invest only in the industries designated by the office.

(j) The entity's plans for the development of relationships with community-based organizations, local community development offices and organizations, and economic development organizations. The entity must also explain steps it has taken to implement its plans to develop these relationships.

(k) A statement that the entity will not invest in a qualified active low-income community business unless the business will create or retain jobs that pay an average wage of at least 115 percent of the federal poverty income guidelines for a family of four.

(3) REVIEW.—

(a) The office shall review applications to approve an investment as a qualified investment in the order received. The office shall approve or deny an application within 30 days after receipt.

(b) If the office intends to deny the application, the office shall inform the applicant of the basis of the proposed denial. The applicant shall have 15 days after it receives the notice of the intent to deny the application to submit a revised application to the office. The office shall issue a final order approving or denying the revised application within 30 days after receipt.

(c) The office may not approve a cumulative amount of qualified investments that may result in the claim of more than \$97.5 million in tax credits during the existence of the program or more than \$20 million in tax credits in a single state fiscal year. However, the potential for a taxpayer to carry forward an unused tax credit may not be considered in calculating the annual limit.

(4) APPROVAL.—

(a) The office shall provide a copy of the final order approving an investment as a qualified investment to the qualified community development entity and to the department. The notice shall include the identity of the taxpayers who are eligible to claim the tax credits and the amount that may be claimed by each taxpayer.

(b) The office shall approve an application for part of the amount of the proposed investment if the amount of tax credits available are insufficient.

(c) If more than one application is found to comply with subsection (3) on the same day and the amount of tax credits available are insufficient for all of the applications, the tax credits available to each applicant shall be in proportion to the proposed purchase price to the total purchase price of all of the proposed investments.

(5) DURATION OF APPROVAL.—The qualified community development entity must issue the qualified investment in exchange for cash within 60 days after it receives the order approving an investment as a qualified investment, otherwise the order is void.

(6) REPORT OF ISSUANCE OF A QUALIFIED INVESTMENT.—The qualified community development entity must provide the office with evidence of the receipt of the cash in exchange for the qualified investment within 30 business days after receipt.

Section 8. Section 288.9915, Florida Statutes, is created to read:

288.9915 Use of proceeds from qualified investments; recordkeeping.—

(1) A qualified community development entity may not make cash interest payments on a long-term debt security that is a qualified investment in excess of the entity's operating income for 6 years following the issuance of the security.

(2) A qualified community development entity shall keep detailed records showing the use of proceeds from qualified investments to fund qualified low-income community investments.

(3) A qualified active low-income community business, including its affiliates, may not receive more than \$10 million in qualified low-income community investments under the New Markets Development Program Act.

Section 9. Section 288.9916, Florida Statutes, is created to read:

288.9916 New markets tax credit.—

(1) A person or entity that makes a qualified investment earns a vested tax credit pursuant to the New Markets Development Program Act against taxes under s. 220.11 or s. 624.509 equal to 39 percent of the purchase price of the qualified investment. The holder of a qualified investment may claim the tax credit as follows:

(a) The holder may apply 7 percent of the purchase price against its tax liability in the tax year containing the third credit allowance date.

(b) The holder may apply 8 percent of the purchase price against its tax liability in the tax years containing the fourth through seventh credit allowance dates.

(c) A taxpayer may not claim a tax credit in excess of the taxpayer's tax liability. If the credit granted pursuant to this section is not fully used in any single year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers in the order provided in s. 220.02(8). Carryover credit amounts shall be treated as unused credits for purposes of the transfer of unused credits pursuant to paragraph (2)(b).

(d) An insurance company that is subject to the insurance premium tax under s. 624.509 must apply the tax credit against the insurance premium tax. An insurer that claims a credit against premium tax liability earned by making a qualified investment under this section is not required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming the tax credit. If the credit granted pursuant to this section is not fully used in any single year because of insufficient tax liability on the part of the taxpayer, the unused amount may be carried forward for a period not to exceed 5 years. The carryover credit may be used in a subsequent year when the tax imposed for such year exceeds the credit for such year, after applying the other credits and unused credit carryovers. Carryover credit amounts shall be treated as unused credits for purposes of the transfer of unused credits pursuant to paragraph (2)(b).

(2) A tax credit earned under this section may not be sold or transferred, except as provided in this subsection.

(a) A partner, member, or shareholder of a partnership, limited liability company, S-corporation, or other “pass-through” entity may claim the tax credit pursuant to an agreement among the partners, members, or shareholders. Any change in the allocation of a tax credit under the agreement must be reported to the office and to the department.

(b) Eligibility to claim a tax credit transfers to subsequent purchasers of a qualified investment. Such transfers must be reported to the office and to the department along with the identity, tax identification number, and tax credit amount allocated to a taxpayer pursuant to paragraph (a). The notice of transfer also must state whether unused tax credits are being transferred and the amount of unused tax credits being transferred.

Section 10. Section 288.9917, Florida Statutes, is created to read:

288.9917 Community development entity reporting after a credit allowance date; certification of tax credit amount.—

(1) A qualified community development entity that has issued a qualified investment shall submit the following to the office within 30 days after each credit allowance date:

(a) A list of all qualified active low-income community businesses in which a qualified low-income community investment was made since the last credit allowance date. The list shall also describe the type and amount of investment in each business and the address of the principal location of each business. The list must be verified by the chief executive officer of the community development entity.

(b) Bank records, wire transfer records, or similar documents that provide evidence of the qualified low-income community investments made since the last credit allowance date.

(c) A verified statement by the chief financial or accounting officer of the community development entity that no redemption or principal repayment was made with respect to the qualified investment since the previous credit allowance date.

(d) Information relating to the recapture of the federal new markets tax credit since the last credit allowance date.

(2) The office shall certify in writing to the qualified community development entity and to the department the amount of the tax credit authorized for each taxpayer eligible to claim the tax credit in the tax year containing the last credit allowance date.

Section 11. Section 288.9918, Florida Statutes, is created to read:

288.9918 Annual reporting by a community development entity.—A community development entity that has issued a qualified investment shall submit an annual report to the office by April 30 after the end of each year which includes a credit allowance date. The report shall include:

(1) The entity's annual financial statements for the preceding tax year, audited by an independent certified public accountant.

(2) The identity of the types of industries, identified by the North American Industry Classification System Code, in which qualified low-income community investments were made.

(3) The names of the counties in which the qualified active low-income businesses are located which received qualified low-income community investments.

(4) The number of jobs created and retained by qualified active low-income community businesses receiving qualified low-income community investments, including verification that the average wages paid meet or exceed 115 percent of the federal poverty income guidelines for a family of four.

(5) A description of the relationships that the entity has established with community-based organizations and local community development offices and organizations and a summary of the outcomes resulting from those relationships.

(6) Other information and documentation required by the office to verify continued certification as a qualified community development entity under 26 U.S.C. s. 45D.

Section 12. Section 288.9919, Florida Statutes, is created to read:

288.9919 Audits and examinations; penalties.—

(1) AUDITS.—A community development entity that issues an investment approved by the office as a qualified investment shall be deemed a recipient of state financial assistance under s. 215.97, the Florida Single Audit Act. However, an entity that makes a qualified investment or receives a qualified low-income community investment is not a subrecipient for the purposes of s. 215.97.

(2) EXAMINATIONS.—The office may conduct examinations to verify compliance with the New Markets Development Program Act.

Section 13. Section 288.9920, Florida Statutes, is created to read:

288.9920 Recapture and penalties.—

(1) Notwithstanding s. 95.091, the office shall direct the department, at any time before December 31, 2022, to recapture all or a portion of a tax credit authorized pursuant to the New Markets Development Program Act if one or more of the following occur:

(a) The Federal Government recaptures any portion of the federal new markets tax credit. The recapture by the department shall equal the recapture by the Federal Government.

(b) The qualified community development entity redeems or makes a principal repayment on a qualified investment before the final allowance date. The recapture by the department shall equal the redemption or principal repayment divided by the purchase price and multiplied by the tax credit authorized to a taxpayer for the qualified investment.

(c)1. The qualified community development entity fails to invest at least 85 percent of the purchase price in qualified low-income community investments within 12 months after the issuance of a qualified investment; or

2. The qualified community development entity fails to maintain 85 percent of the purchase price in qualified low-income community investments until the last credit allowance date for a qualified investment.

For the purposes of this paragraph, an investment by a qualified community development entity includes principal recovered from an investment for 12 months after its recovery or principal recovered after the sixth credit allowance date. Principal held for longer than 12 months or recovered before the sixth credit allowance date is not an investment unless it is reinvested in a qualified low-income community investment.

(d) The qualified community development entity fails to provide the office with information, reports, or documentation required by the New Markets Development Program Act.

(e) The office determines that a taxpayer received tax credits to which the taxpayer was not entitled.

(2) The office shall provide notice to the qualified community development entity and the department of a proposed recapture of a tax credit. The entity shall have 90 days following the receipt of the notice to cure a deficiency identified in the notice and avoid recapture. The office shall issue a final order of recapture if the entity fails to cure a deficiency within the 90-day period. The final order of recapture shall be provided to the entity, the department, and a taxpayer otherwise authorized to claim the tax credit. Recaptured funds shall be deposited into the General Revenue Fund.

(3) An entity that submits fraudulent information to the office is liable for the costs associated with the investigation and prosecution of the fraudulent claim plus a penalty in an amount equal to double the tax credits

claimed by investors in the entity's qualified investments. This penalty is in addition to any other penalty that may be imposed by law.

Section 14. Section 288.9921, Florida Statutes, is created to read:

288.9921 Rulemaking.—The office and the department may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer ss. 288.991-288.9920.

Section 15. Section 288.9922, Florida Statutes, is created to read:

288.9922 Expiration of the New Markets Development Program Act.—Sections 288.991-288.9921 and this section expire December 31, 2022.

Section 16. This act shall take effect July 1, 2009.

Approved by the Governor May 21, 2009.

Filed in Office Secretary of State May 21, 2009.