

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 Community Affairs

BILL: SB 868

INTRODUCER: Senator Smith

SUBJECT: Community Contribution Tax Credits

DATE: January 29, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Present | Yeatman | CA | Favorable |
| 2. | _____ | _____ | FT | _____ |
| 3. | _____ | _____ | AP | _____ |

I. Summary:

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

- Is wholly owned by the person;
- Is the sole owner of real property located in this state;
- Is disregarded as an entity separate from its owner for federal income tax purposes; and
- At the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

II. Present Situation:

Community Contribution Tax Credit Program

In 1980, the Legislature established the Community Contribution Tax Credit Program (CCTCP) to encourage private sector participation in community revitalization and housing projects. Broadly, the CCTCP offers tax credits to businesses or persons (donors) that make certain contributions to eligible projects undertaken by approved CCTCP sponsors.¹

Eligible sponsors under the CCTCP include a wide variety of organizations and entities, including community development agencies, housing organizations, historic preservation organizations, units of state and local government, regional workforce boards, and any other

¹ See ss. 212.08(5)(p); 220.183; and 624.5105, F.S. The contributing taxpayer may not have a financial interest in the eligible sponsor.

agency that the Department of Economic Opportunity (DEO) designates by rule.² There are currently 122 approved sponsors in Florida.³

Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income or very-low-income households as defined in s. 420.9071(19) and (28), F.S.;
- To provide housing opportunities for persons with special needs as defined in s. 420.0004, F.S.;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.⁴

Additionally, eligible projects must be located in an area previously designated as an enterprise zone pursuant to ch. 290, F.S., as of May 1, 2015, or a Front Porch Florida Community.⁵

However, the law permits the following three exceptions:

- Any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S.;⁶
- Any project designed to construct or rehabilitate housing opportunities for persons with special needs as defined in s. 420.0004, F.S.;⁷ and
- Any project designed to provide increased access to high-speed broadband capabilities that includes coverage of an area designated as a rural enterprise zone as of May 1, 2015.⁸

Any eligible sponsor wishing to participate in the program must submit a proposal to DEO, which sets forth the sponsor, the project, the area in which the project is located, and any supporting information as may be prescribed by rule.⁹ The proposal must also contain a resolution from the local governmental unit in which it is located certifying that the project is consistent with local plans and regulations.¹⁰

Contributions to eligible sponsor projects may only be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources as identified by DEO.¹¹ If the donation is of real property, it must be made directly from the donor to the eligible sponsor via a deed.¹²

² See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

³ Department of Economic Opportunity, 2016 Agency Legislative Bill Analysis for HB 627/SB 868, page 3, December 2, 2015.

⁴ Sections 212.08(5)(p)2.b.; 220.183(2)(b); 624.5105(2)(b); and 220.03(1)(t), F.S.

⁵ Sections 212.08(p)2.d.; 220.183(2)(d); and 624.5102(2)(d), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* The infrastructure of such projects may be located in any area of a rural county (inside or outside of the zone).

⁹ Sections 212.08(5)(p)3.a.; 220.183(3)(a); and 624.5105(3)(a), F.S.

¹⁰ *Id.*

¹¹ Sections 212.08(5)(p)2.a.; 220.183(2)(a); 624.5105(5)(a); and 220.03(1)(d), F.S.

¹² See s. 192.001(12), F.S., for the definition of real property.

Donors wishing to participate in the program must submit an application for a tax credit to DEO.¹³ The application sets forth the sponsor, project, and the type, value, and purpose of the contribution.¹⁴ The sponsor must verify the terms of the application and indicate its receipt of the contribution, which verification must be in writing and accompany the application for tax credit.¹⁵

Once DEO approves a taxpayer's application for a community contribution tax credit under the program, the donor must claim the credit from the Department of Revenue.¹⁶ The credit is calculated as 50 percent of the donor's annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.¹⁷ The donor may use the credit against corporate income tax, insurance premium tax, or as a refund against sales tax.¹⁸ Unused credits against corporate income taxes and insurance premium taxes may be carried forward for 5 years.¹⁹ Unused credits against sales taxes may be carried forward for 3 years.²⁰

The DEO may approve \$18.4 million in Fiscal Year (FY) 2015-16; \$21.4 million in FY 2016-17; and \$21.4 million in FY 2017-18 for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low or very-low income households. The DEO may approve \$3.5 million in those same FYs for all other types of eligible projects.²¹

As of December 2015, in FY 2015-16, DEO has approved approximately \$11.2 million of the \$18.4 million available for tax credits for homeownership projects and housing projects for persons with special needs.²² Approximately \$3.6 million worth of tax credits were requested for all other projects, resulting in a pro-rata approval rate of 95 percent of each tax credit application.²³

The CCTCP expires June 30, 2018.²⁴

III. Effect of Proposed Changes:

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

- Is wholly owned by the person;

¹³ Sections 212.08(5)(p)3.b.; 220.183(3)(b); and 624.5105(3)(b), F.S. Taxpayers must submit separate applications for each individual contribution that it makes to each individual project. Sections 212.08(5)(p)3.c.; 220.183(3)(c); and 624.5105(3)(c), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Sections 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

¹⁷ Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

¹⁸ *See* ss. 212.08(5)(p); 220.183; and 624.5105, F.S. A donor may only apply the credits toward one tax obligation.

¹⁹ Sections 220.183(1)(e); and 624.5105(e), F.S.

²⁰ Section 212.08(5)(p)1.b. and f., F.S.

²¹ Sections 212.08(5)(p)1.e.; 220.183(1)(c); and 624.5105(1)(c), F.S.

²² Department of Economic Opportunity, 2016 Agency Bill Analysis for HB 627/SB 868, December 2, 2015.

²³ *Id.*

²⁴ Sections 212.08(5)(p)5.; 220.183(5); and 624.5105(6), F.S.

- Is the sole owner of real property, as defined in s. 192.001(12), F.S., located in this state;
- Is disregarded as an entity separate from its owner for federal income tax purposes pursuant to 26 C.F.R. s. 301.7701-3(b)(1)(ii); and
- At the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

Section 2 amends s. 220.03, F.S., relating to corporate income taxes, to provide that the donation of “real property” in the CCTCP includes the transfer of ownership interests in a real property holding company. The same definition is used for the term “real property holding company.”

Section 3 amends s. 624.5105, F.S., relating to insurance premium taxes, to provide that the donation of “real property” in the CCTCP includes the transfer of ownership interests in a real property holding company. The same definition is used for the term “real property holding company.”

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Revenue Estimating Conference (REC) estimated that the bill would have no fiscal impact on state funds.²⁵ The REC analysis on the bill notes that the proposed language “does not affect eligibility or restrict access to the credits, which were already assumed to reach the allotted cap in each of the two respective fiscal years for which they are authorized under current law. As such, the result of the language would be to possibly shift credits between otherwise eligible entities but would not have an impact in the aggregate.”²⁶

²⁵ Revenue Estimating Conference Analysis, HB 627/SB 868, 12/2/2015.

²⁶ *Id.*

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

VIII. Statutes Affected:

This bill substantially amends sections 212.08, 220.03, and 624.5105 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.