

STORAGE NAME: h0741.grr

DATE: January 28, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: HB 741 (PCB TU 00-01a)

RELATING TO: Corporate Tax Credits for Investments in Historic Preservation

SPONSOR(S): Committee on Tourism, Representative Starks and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) TOURISM YEAS 5 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

HB 741 establishes a corporate tax incentives program for the rehabilitation of qualified historic buildings. It allows a tax credit against the tax liability of a corporate taxpayer for up to 50 percent of the total dollars spent for the cost of rehabilitating a historic building that will be used for a commercial purpose.

The Department of State's Division of Historical Resources is charged with administering the program. The program is limited to \$1 million annually for the total amount of tax credits granted for all projects approved, and to a minimum of \$5,000 and a maximum of \$200,000 for a single approved project. Any unused portion of a tax credit may be carried over for up to five years if a taxpayer has insufficient tax liability.

A historic building qualifies for the program if the property at the time the exemption is granted is listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended; or is a contributing property to a National Register Historic District; or is designated as a historic property, or as a contributing property to a historic district, under the terms of a local preservation ordinance. Provides that no rehabilitation expenditures made prior to January 1, 2001, shall qualify for the program. Defines "qualified rehabilitation expenditure" to mean any amount properly chargeable to capital accounts in connection with the rehabilitation of a qualified historic building. Also, any improvements to a historic property must meet certain state and federal criteria in order for a project to gain approval and subsequently qualify for a tax credit. The rehabilitation expenditures must be substantial and meet the definition of qualified expenditures in the bill. A project must be completed within 24 months of approval of the written architectural plans and specifications.

If the rehabilitated historic property is not used for a commercial purpose pursuant to a corporate tax return filed the year following project completion, the corporate taxpayer must repay the credit received in an amount prorated according to the time the property was not in commercial use.

The bill requires the Department of State to notify the Department of Revenue in writing as to the amount of tax credit for which a corporation has qualified.

The bill authorizes the Department of Revenue and the Department of State to promulgate rules necessary to ensure the orderly implementation and administration of this act.

The bill's fiscal impact is limited to \$1 million annually from the General Revenue Fund for the total amount of tax credits available to corporate taxpayers participating in the program.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill provides the Department of Revenue and Department of State with the authority to make necessary rules to implement the corporate tax incentives program. The Department of State will have the responsibility of administering the program, including approving projects and certifying their compliance with program specifications. The Department of Revenue will be responsible for administering tax credits when they become applicable. Staff from the Department of Revenue did not project a fiscal impact for implementation because the department currently administers various corporate tax credits.

The bill provides up to a maximum of \$1 million statewide for corporate tax credits for historic preservation. See the "Effects of Proposed Changes" section for details.

B. PRESENT SITUATION:

Chapter 220, F.S., relating to the Income Tax Code, provides for the taxation of corporations and other entities for the privilege of conducting business, deriving income, or existing within this state. The Code also provides that the tax levied by this code be construed to be an excise or privilege tax measured by net income and that such tax not be deemed or construed to be a property tax, or a tax measured by the value of property for any purpose.

Chapter 220, F.S., also provides for programs establishing credits to the tax liability of corporations. For example, the community contribution tax credit authorized in s. 220.183, F.S., is an incentive for corporations to make donations to approved community development projects in enterprise zones. The community contribution tax credit allows up to 50 percent of the donation amount to be credited against the tax liability of a corporation.

Section 220.02(10), F.S., provides that credits against taxes paid in corporate income tax or franchise tax must be applied in this specific order: ss. 220.68, 220.18, 631.828, 220.191, 220.181, 220.183, 220.182, 220.1895, 221.02, 220.184, 220.186, 220.188, 220.1845, 220.19, and 220.185, F.S. Effective July 1, 2000, s. 220.68, F.S., will be eliminated from the order of application of tax credits.

Current Incentives for Preservation of Historic Properties in Florida

Currently, there are five available types of tax incentives for the preservation of historic properties in Florida. The tax exemptions discussed first are local option tax incentives. Local governments must adopt ordinances to enact them and they apply to privately owned historic properties, those properties used for nonprofit or governmental use only, and those properties used for certain commercial or nonprofit purposes. In the fifth incentive, a tax deferral program, the property owner is restricted in the use of the property or must convey development rights to the county. This particular incentive has never been used.

Tax Exemptions

Section 3(e), Art. VII, Fla. Const. (1999), provides:

Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

This section is implemented through ss. 196.1997, 196.1998, and 196.1961, F.S., and provides ad valorem tax incentives for the preservation of historic properties in Florida.

First, s.196.1997, F.S., authorizes the board of county commissioners of any county or the governing board of any municipality to adopt an ordinance to allow an ad valorem tax exemption of up to 100 percent of the assessed value of all improvements for private property owners subject to the following requirements:

- exemptions apply only to taxes levied by the unit of government granting the exemption and do not apply to taxes pledged to the repayment of debt;
- property owners must enter into a covenant requiring maintenance on the property receiving the exemption;
- improvements must be in keeping with the character of the property for the exemption period;
- the property must be a historic property listed on the National Register of Historic Places or designated as a landmark under a local historic preservation ordinance, or must contribute to the significance of a National Register Historic District or a historic district designated by local ordinance (eligible historic properties may be owner-occupied residences or income-producing properties);
- the period of exemption may be for up to 10 years, which must be determined by the required local ordinance; and
- the property must be undergoing renovations or have undergone renovations on or after the day the ordinance was adopted by the board of county commissioners of any county or the governing body.

Section 196.1998, F.S., authorizes an ad valorem tax exemption subject to the same requirements as described above for s. 196.1997, F.S., for up to 100 percent of the

assessed value of historic property used for nonprofit or governmental purposes provided that:

- the property qualifies as a historic property under the criteria described in s. 196.1997, F.S.;
- the property is regularly and frequently open for the public's use; and
- has undergone rehabilitation or renovation equal to at least 50 percent of the total assessed value of the property.

The following tax exemption, the implementation of s. 196.1961, F.S., was contingent upon the adoption of Amendment One to the Florida Constitution in the 1998 general election. This amendment was adopted and the statute section became effective January 1, 1999. Section 196.1961, F.S., provides for an ad valorem tax exemption up to 50 percent of the assessed value of certain historic property used for commercial purposes or used by a not-for-profit organization under s. 501(c)(3) or s. 501(c)(6) of the Internal Revenue Code of 1986 provided that the property meet the following additional criteria:

- Be listed in the National Register of Historic Places, as defined in s. 267.021, F.S.; or must be a contributing property to a National Register Historic District; or must be designated as a historic property or as a contributing property to a historic district, under the terms of a local preservation ordinance.
- Be regularly open to the public a minimum of 40 hours per week for 45 weeks per year, or an equivalent of 1,800 hours per year.
- To retain the exemption, the historic character of the property must be maintained in good repair and condition to the extent necessary to preserve the historic value and significance of the property.

Only those portions of the property used predominantly for the purposes specified shall be exempt.

Classification and Assessment

Section 4(d), Art. VII Fla. Const., (1999), provides:

The Legislature may, by general law, for assessment purposes and subject to the provisions of this sub-section, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

This section was incorporated into section 4, Art. VII, Fla. Const., with the adoption of Amendment One in the 1998 general election. The implementation, including the eligibility criteria for properties, is provided in s. 193.503, F.S., which became effective on January 1, 1999. Eligible properties are only those that are used for commercial purposes or by certain not-for-profit organizations. Other criteria for the eligible properties mirror that contained in s. 196.1961, F.S. Any reduction in property taxes as a result of a use assessment ordinance may be recaptured for up to 10 years if there is a change in the status, use, or qualifying criteria of the property.

Deferral of Tax Liability for Historic Properties

In addition to the tax exemptions described above, the statutes provide for the deferral of tax liability for historic properties. In addition to the local option program specified in the Florida Constitution, s. 193.505, F.S., provides a mechanism for owners of improved, historically significant real property to defer ad valorem tax liability. The owner either conveys all development rights to the county or enters into a covenant with the local governing body to not use the property for any purpose inconsistent with historic preservation; in return, the property owner has ad valorem taxes deferred on the property for a period of up to ten years. Upon expiration of this agreement, the deferred tax liability, that is, the difference between the taxes due on the property assessed at its use value rather than its fair market value, becomes due within 90 days. Although this tax deferral program has been in existence since 1984, it has never been used. The following are possible reasons why the tax deferral provision is not used:

- A property owner has no way of knowing in advance how much the deferral amount will be.
- A sizeable tax bill can be due at the end of the deferral period.
- The property owner loses unrestricted rights to develop the property to its fullest economic advantage.

Incentives Used for Historic Preservation in Other States

Several states have instituted some type of tax relief for the rehabilitation and preservation of historic properties. Corporate tax incentive programs are currently being used in several states as a tool to leverage private investment in historic preservation. These incentives are viewed as inducements to invest in rehabilitating older buildings, reviving decaying neighborhoods, preserving historic housing stock and rebuilding the fiscal base of older towns and cities. The eligibility requirements, qualifying criteria, and specific provisions of the tax credits vary; however, all are designed to encourage private investment in historic preservation. A January 1997 interim study by the House Committee on Tourism, entitled "Funding and Promoting Florida's Cultural and Historical Resources," examined programs in six states: Colorado, Maryland, New Mexico, North Carolina, West Virginia, and Wisconsin.

Benefits of Historic Preservation

According to the Advisory Council on Historic Preservation, some of the economic and revenue implications of historic preservation land uses include tourism, private investment, new businesses and jobs; increased property values; enhanced quality of life; sense of neighborhood and community pride; compatible land use patterns; increased property and sales taxes, and diluted pockets of deterioration and poverty.

Historic preservation is labor intensive and is one of the highest job-generating economic development options available. Donovan Rypkema, a well-known nationally recognized historic preservation consultant with Real Estate Services Group, states that roughly half of new construction expenditures go for labor and half for materials. He further states that in a typical historic rehabilitation project between 60 and 70 percent of the total cost goes toward labor; such labor is nearly always hired locally and spend their wages locally. Direct local purchases from both retailers and wholesalers is greater, dollar for dollar, for a rehabilitation project than for a new construction project. According to Rypkema, the local direct purchases, combined with the locally recirculated wages of construction workers, have a surprisingly large economic impact.

C. EFFECT OF PROPOSED CHANGES:

The proposed bill creates s. 220.1855, F.S., to allow for a corporate tax credit of up to 50 percent of the total dollars spent for the cost of rehabilitation of a historic building that is to be used for commercial purposes against the tax liability of a corporate taxpayer. The Division of Historical Resources of the Department of State is charged with administering the program.

The program is limited to \$1 million annually for the total amount of tax credits granted for all projects approved, and to a minimum of \$5,000 and a maximum of \$200,000 for a single approved project. Any unused portion of a tax credit may be carried over for up to five years if a taxpayer has insufficient tax liability. In order to qualify, the rehabilitation must be substantial (as determined by the Department of State), expenditures must be qualified expenditures as defined in the section, and the project must be completed within 24 months of approval of the written architectural plans and specifications. No expenditure prior to the effective date of the bill can count as a qualified rehabilitation expenditure.

A historic building qualifies for the program if at the time the exemption is granted the property:

- is listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended;
- is a contributing property to a National Register Historic District; or
- is designated as a historic property, or as a contributing property to a historic district, under the terms of a local preservation ordinance.

Additionally, in order for an improvement to a historic property to qualify the property for exemption, the improvement must: (a) be consistent with the Secretary of the Interior's Standards for Rehabilitation, and (b) be determined by the Division of Historical Resources to meet criteria established in rules adopted by the Department of State.

The bill also states that it shall be the responsibility of the taxpayer to affirmatively demonstrate to the satisfaction of the Department of Revenue that the historic property meets the requirements of this act.

The bill provides that a corporate taxpayer that receives a credit under this act must certify to the Department of Revenue in its corporate tax return filed the year following completion that the rehabilitated building was used for a commercial purpose. If not, the corporate taxpayer is to repay the credit received in an amount prorated according to the time the property was not in commercial use.

The bill also prescribes the time frame (i.e., 5 years) and the method by which any unused portion of the credit shall be carried over to subsequent tax periods.

Finally, the bill provides protection against "double dipping" into funds by corporate taxpayers participating in this program.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 220.1855, F.S., establishing a program to allow for a corporate tax credit of up to 50 percent of the total dollars spent for the cost of rehabilitation of a historic building that is to be used for commercial purposes to be applied against the tax liability of a corporate taxpayer. The Division of Historical Resources (Division) of the Department of State is charged with administering the program.

The program is limited to \$1 million annually for the total amount of tax credits granted for all projects approved and to a minimum of \$5,000 and a maximum of \$200,000 for a single approved project. Any unused portion of a tax credit may be carried over for up to five years if a taxpayer has insufficient tax liability. Additionally, in order to qualify, the rehabilitation must be substantial (as determined by the Department of State), expenditures must be qualified expenditures as defined in this section, and the project must be completed within 24 months of approval of the written architectural plans and specifications. No expenditure prior to January 1, 2001, can count as a qualified rehabilitation expenditure. A "qualified rehabilitation expenditure" is defined as any amount properly chargeable to capital accounts in connection with the rehabilitation of a qualified historic building.

A historic building qualifies for the program if at the time the exemption is granted the property:

- is listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended;
- is a contributing property to a National Register Historic District; or
- is designated as a historic property, or as a contributing property to a historic district, under the terms of a local preservation ordinance.

In order for an improvement to a historic property to qualify the property for exemption, the improvement must be consistent with the Secretary of the Interior's Standards for Rehabilitation and be determined by the Division to meet criteria in departmental rules.

The section provides that it shall be the responsibility of the taxpayer to affirmatively demonstrate to the satisfaction of the Department of Revenue that it meets the requirements of this act.

The section also provides that a corporate taxpayer that received a credit under this act must certify to the Department of Revenue in its corporate tax return filed the year following completion that the rehabilitated building was used for a commercial purpose. If the building was not used for a commercial purpose, the corporate taxpayer must repay the credit received in an amount prorated according to the time the property was not in commercial use.

The Department of State and the Department of Revenue are authorized to adopt rules to implement the provisions of this section.

Section 2. Amends s. 220.02(10), F.S., as amended by Chapter 99-378, Laws of Florida, to include corporate income tax credits for rehabilitating historic buildings pursuant to s. 220.185, F.S., to the prescribed order of applying corporate tax credits that becomes effective on July 1, 2000.

Section 3. Amends s. 220.13(1)(a), F.S., adding that portion of the substantial rehabilitation and preservation costs which is paid for the taxable year which is equal to the credit allowable for the taxable year under s. 220.1855, F.S., to be considered taxable income. This protects against “double dipping” into funds.

Section 4. Provides an effective date of January 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. <u>Revenues:</u>	<u>2000-01*</u>	<u>2001-02**</u>
General Revenue Fund	(\$1 m)	(\$1 m)

*There could be a reduction in corporate tax revenues to the General Revenue Fund of up to \$1 million annually if participation in the corporate tax incentives program reaches its potential. The program will not start until January 1, 2001; however, it is not known how many projects will qualify during the 6 months of 2001. It is unlikely that the entire allowable amount will be committed during that period.

**This represents the maximum amount of possible loss of corporate tax revenues going into the General Revenue Fund.

2. Expenditures:

Revenues: The Department of Revenue may experience minimal cost for designing a form to use when notifying corporate taxpayers of tax credits applied to their tax liability. However, the Department of Revenue currently has similar responsibilities for implementing tax credits pursuant to other programs.

The Department of State may experience minimal start-up expense for items such as designing forms to be used by corporate taxpayers when making a proposal to participate in the program.

Expenditures: The Division of Historical Resources is required to monitor all projects in a manner consistent with available resources and to review each project upon completion. Staff from the Division indicated that to the extent possible, travel expenses would be held to a minimum by performing site inspections when travel in the area is already planned.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Tax credits may be applied to the tax liability of a participating corporate taxpayer of up to 50 percent of the cost of rehabilitation for a historic building, not to exceed a maximum of \$200,000.

There would be increased expenditures for local labor and direct local purchases from both retailers and wholesalers for the rehabilitation of historic properties. According to Donovan Rypkema, a nationally recognized historic preservation consultant, expenditures for rehabilitation projects are greater, dollar for dollar, than for new construction projects. Rypkema also reports that local direct purchases combined with the locally recirculated wages of construction workers have a surprisingly large economic impact.

One potential benefit would be on local employment markets through the increased use of local construction workers. Another is the potential for increased employment through the corporations coming to an area.

D. FISCAL COMMENTS:

The proposed corporate tax incentives program has an annual limitation of \$2 million. Information provided by the Department of Revenue states that the total amount of corporate tax revenue collected in FY 1996-97 was \$1.362 billion (\$130 million was refunded) and the total amount collected in FY 1994-95 was \$1.396 billion (\$124.4 million was refunded). There were approximately 360,000 active accounts in both fiscal years.

The positive amount of revenue realized because of increased sales tax, property tax, and any economic development effects that might be afforded the economies of state and local governments by the rehabilitation of historic properties through the corporate tax incentives program is difficult to quantify.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The Department of State and the Department of Revenue are both authorized to adopt rules to implement the provisions of this section. The language of the bill with the exception of the effective date and the maximum of amount of corporate tax credit was reviewed by the Committee on Governmental Rules and Regulations in the 1999 Session and determined to be in conformance with current practice in identifying grants of rule-making authority.

At the request of the Department of Revenue, the bill was amended to further clarify the rule-making authority language in the bill regarding the role of the Department. The amendatory language replaced lines 10-12 on page 6 of the original version of the bill. The language is as follows:

(d) The Department of Revenue shall promulgate rules to implement the procedures taxpayers must use to claim the corporate income tax credit for the rehabilitation of historic buildings authorized by this section. These rules shall include how the department will apply the credit to a taxpayer's corporate income tax liability, how unused portions of the tax credit will be carried forward, and procedures for determining if the claim for a tax credit meets all the requirements of this statute.

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Judy C. McDonald

Staff Director:

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PAGE 11

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