HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1229 New Markets Development Program
SPONSOR(S): Schenck
TIED BILLS: **IDEN./SIM. BILLS:** SB 2426

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	12 Y, 0 N	Tait	Kruse
2)	Transportation & Economic Development Appropriations Committee		Fennell	Creamer
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

In 2009, the Florida Legislature created the Florida New Markets Development Program (NMDP) to provide state tax credits for investments in low-income communities. Tax credits allocated may be used to offset corporate income or insurance premium tax liabilities. The program is designed to make the state more attractive to national investors who are deciding where to invest funds raised under the federal New Markets Tax Credits program by creating a state NMDP similar to the federal program.

The bill changes the definition of "qualified active low-income community business" to match the regulations for the federal New Markets Tax Credits. The bill allows for a business to qualify as a "qualified active low-income community business" even if it does not derive at least 50 percent of its total gross income by conducting business in a low-income community either if it uses at least 50 percent of its tangible property within a low-income community or if at least 50 percent of its services are performed through its employees in a low-income community.

The bill also amends the provision that prevents eligible companies from deriving or projecting to derive 15 percent or more of its annual revenue from the rental or sale of real estate. This change will allow companies to derive such revenues from the rental of real estate on the condition that the primary lessee and user of such real estate is another qualified active low-income community business that is owned or controlled by, or that is under common ownership or control with, such corporation or partnership. These two qualifications of common ownership and status as a "qualified active low-income community business" parallel the federal program.

The bill has no fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2009, the Florida Legislature created the Florida New Markets Development Program (NMDP) to provide state tax credits for investments in low-income communities. Tax credits allocated may be used to offset corporate income or insurance premium tax liabilities. The program is designed to make the state more attractive to national investors who are deciding where to invest funds raised under the federal New Markets Tax Credits program by creating a state NMDP similar to the federal program.

There is no credit provided for the first two years after the original date of investment. The credit provided in the third year after investment is seven percent of the investment amount. The credit provided between the fourth and seven year after the investment is equal to eight percent of the investment amount. Over seven years this credit totals 39 percent of the original investment amount.

The federal program provides credits totaling 39 percent of the investment over a seven year period. A company with a qualified investment for both the federal and state program would receive 78 percent of the purchase price of the investment in tax credits. An entity could qualify for the state program and not qualify for the federal program. If a taxpayer's state tax liability is less than their available tax credits, then the tax credits may be carried forward for future taxable years, however all tax credits expire December 31, 2022. The tax credits are allocated on a first-come, first-serve basis. Enterprise Florida, Inc. or any entity created by Enterprise Florida, Inc., is considered a qualified community development entity and may participate in the program.

Current statutes define "qualified active low-income community business" as a corporation, including a nonprofit corporation, or partnership that: 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; uses a substantial portion of its tangible property, whether owned or leased, within any low-income community for any taxable year; performs a substantial portion of its services through its employees in a low-income community for any taxable year; attributes less than 5 percent of the property of the entity to collectibles; and attributes less than 5 percent of the average of the property of the entity to nonqualified financial property.

Current statutes also prohibit any "qualified active low-income community business" from deriving 15 percent or more of its annual revenue from the rental or sale of real estate.

Effects of Proposed Changes

The bill changes the definition of "qualified active low-income community business." These changes are designed to ensure that the state program's definitions are consistent with federal regulations. In addition, these changes allow for a quantitative determination of what constitutes a "qualified active low-income community business," as there is currently no definition for "substantial portion" in the statutes.

Under the provisions of the bill, a "qualified active low-income community business" must use at least 40 percent of its tangible property, whether owned or leased, within any low-income community for any taxable year. The calculation for determining the 40 percent is defined as the "average value of the tangible property owned or leased and used within a low-income community by the corporation or partnership divided by the average value of the total tangible property owned or leased and used by the corporation or partnership during the taxable year." The value assigned to leased property must be reasonable.

The bill also requires that a "qualified active low-income community business" perform at least 40 percent of its services through its employees in a low-income community for any taxable year. The calculation for determining the 40 percent is "the amount paid by the corporation or partnership for salaries, wages, and benefits to employees in a low-income community divided by the total amount paid by the corporation or partnership for salaries, wages, and benefits during the taxable year."

The bill allows for a business to qualify as a "qualified active low-income community business" even if it does not derive at least 50 percent of its total gross income by conducting business in a low-income community either if it uses at least 50 percent of its tangible property within a low-income community or if at least 50 percent of its services are performed through its employees in a low-income community.

Option 1	Option 2	Option 3
50% of total gross income is derived from active conduct of business within in any low-income community	Gross income requirement is met if the other criteria are met as follows:	Gross income requirement is met if the other criteria are met as follows:
40% of its tangible property is used with any low-income community	**At least 50% of its tangible property is used with any low-income community**	40% of its tangible property is used with any low-income community
40% of its services are performed through its employees in a low-income community	40% of its services are performed through its employees in a low-income community	**At least 50% of its services are performed through its employees in a low-income community**
<5% of its property is attributed to collectibles (other than those held for sale to customers)	<5% of its property is attributed to collectibles (other than those held for sale to customers)	<5% of its property is attributed to collectibles (other than those held for sale to customers)
<5% of its property is attributed to nonqualified financial property	<5% of its property is attributed to nonqualified financial property	<5% of its property is attributed to nonqualified financial property

The bill also amends the provision that prevent eligible companies from deriving or projecting to derive 15 percent or more of its annual revenue from the rental or sale of real estate. This change will allow companies to derive such revenues from the rental of real estate on the condition that the primary lessee and user of such real estate is another qualified active low-income community business that is owned or controlled by, or that is under common ownership or control with, such corporation or partnership. These two qualifications of common ownership and "qualified active low-income community business" parallel the federal program, and are designed to allow these special purpose entities to shield the operating company from liability.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.9913, F.S., relating to the New Markets Development Program, amending the definition of "qualified active low-income community business".

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because the bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES