HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1119 New Markets Development Program
SPONSOR(S): Economic Affairs Committee; Finance & Tax Committee; Crisafulli
TIED BILLS: **IDEN./SIM. BILLS:** SB 1150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N	Fennell	Creamer
2) Finance & Tax Committee	21 Y, 0 N, As CS	Wilson	Langston
3) Economic Affairs Committee	16 Y, 0 N, As CS	Fennell	Tinker

SUMMARY ANALYSIS

HB 1119 increases the total amount of tax credits available to be allocated for the New Markets Development Program from $97.5 million to $195 million.

In addition, the legislation increases from six to seven the number of years that a qualified community development entity is prohibited from making cash interest payments in excess of their operating income on long term debt securities issued as qualified investments. The bill also clarifies how interest expenses are to be treated for purposes of certain operating income calculations.

On January 6, 2011, the Revenue Estimating Conference determined the provisions of this bill have no impact to General Revenue in the 2012-13 or the 2013-14 fiscal years. The first revenue impacts will be in Fiscal Year 2014-15 at -$18 million, then -$20 million in each of the next four years.

The bill becomes effective on July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

How the Program Works
Under this program, federally-certified Community Development Entities (CDE), which have entered into allocation agreements with the U.S. Treasury, have the ability to apply to the Department of Economic Opportunity for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups. The Department is also able to request additional information needed to verify continued certification. The Department certifies qualified applications on a first-come, first-served basis. Once the Department certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to the Department information including:

- Audited financial statements;
- the industries for the investments;
- the counties investments were made in;
- the number of jobs created; and
- verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.

Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.

Current law prohibits a CDE from making cash payments on long-term debt securities that are qualified investments in excess of the CDE's operating income for six years following the issuance of the security. Current administration of the program requires interest payments to be deducted from operating income for purposes of the above determination, which creates an artificial limitation on the ability of CDEs to make interest payments.

Tax Credits
The New Markets Tax Credit Program (NMTC) allows a tax credit to be taken against the corporate income tax found in section 220.11, Florida Statutes, or the insurance premium tax found in section 624.509, Florida Statutes. This credit may be claimed after the investment has been made and held for a minimum of two years. Therefore, no credit can be claimed in the first two years. In year three, the credit is worth seven percent of the investment, and from the fourth year through the seventh year, the credit is worth 8 percent each year. Over seven years this credit totals 39 percent of the total investment. Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022. The program has a cap of $97.5 million on the total of tax credits allowed to be allocated to all investments. Therefore, no more than $17.5 million in tax credits may be claimed in the third fiscal year and no more than $20 million in tax credits may be claimed in any of the subsequent four fiscal years. The program does not allow the transfer or sale of tax credits, but does allow a tax credit to travel with the purchase of an investment to a new owner.

Federal New Markets Tax Credit[1]

The State New Markets Development Program was mirrored after the federal program. The Federal New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). The CDE must in turn invest the qualified equity investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period. An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the US Department of Treasury. To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.

As stated above, both the federal program and the state program provide credits totaling 39 percent of the investment over a seven year period. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over seven years. In addition to the tax credits that are received, the investor also has the potential to receive benefit from the results of the investment and eventual return of their principal.

Effect of Proposed Changes

HB 1119 increases the total amount of tax credits available to be allocated for the New Markets Development Program from $97.5 million to $195 million.

In addition, the legislation increases from six to seven the number of years that a qualified community development entity is prohibited from making cash interest payments in excess of their operating income on long term debt securities issued as qualified investments. The bill further provides that interest expense on debt securities will not be included in the calculation of operating income for purposes of the above limitation.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.914, F.S., to increase the available tax credits from $97.5 million to $195 million.

Section 2: Amends 288.915, F.S., to increase the prohibition on participants making certain interest payments from 6 years to 7 years, and clarifies how interest expenses are to be treated for purposes of certain operating income calculations.

Section 3: Provides an effective date of July 1, 2012.

[1] Federal New Markets Tax Credit Program http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited on January 30, 2012)

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On January 6, 2011, the Revenue Estimating Conference determined the provisions of this bill have no impact to General Revenue in the 2012-13 or the 2013-14 fiscal years. The first revenue impacts will be in Fiscal Year 2014-15 at -$18 million, then -$20 million in each of the next four years.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The New Markets Development program draws private sector investment into low-income rural and urban communities that may not otherwise have occurred.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2012, the Finance & Tax Committee adopted an amendment that clarifies how interest expenses are to be treated for purposes of certain operating income calculations.

On February 17, 2012, the Economic Affairs Committee adopted an amendment that clarifies how interest expenses are to be treated for purposes of certain operating income calculations.

This analysis has been updated to reflect the above changes.