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 Commerce and Tourism

BILL: SB 848

INTRODUCER: Senator Montford and others

SUBJECT: Rural Communities

DATE: January 13, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Favorable**
2.			FT	
3.			AP	

I. Summary:

SB 848 creates s. 288.062, F.S., the Florida Rural Jobs and Business Recovery Act. The bill allows investors to earn state insurance premium tax credits equal to their investment in certified growth funds. In turn, the growth funds will invest in certain businesses located in Florida's non-urbanized areas. The bill caps investment at a level that will result in no more than $5 million in tax credits cumulatively claimed each year and no more than $25 million in total credits under the program.

The Department of Economic Opportunity will administer the program by certifying growth funds, granting tax credits to investors, and if necessary, revoking the fund's tax credits and authority.

The bill provides ongoing requirements for the growth funds to meet while participating in the program, allows growth funds to reinvest their rural growth investments, and outlines steps for a growth fund to withdraw from the program.

The bill takes effect July 1, 2020, and applies to tax returns due on or after January 1, 2021.

II. Present Situation:

The U.S. Census Bureau defines urban areas as urbanized areas of 50,000 or more population and urban clusters of at least 2,500 and less than 50,000 population.[1] The U.S. Census Bureau considers anything that is not an urban area to be rural.[2] Geographically, 86.2 percent of Florida's land lies in rural areas but only 8.8 percent of Florida's population lives in those rural

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[1] U.S. Census Bureau, *Defining Rural at the U.S. Census Bureau: American Community Survey and Geography Brief*, (Dec. 2016), *available at* https://www2.census.gov/geo/pdfs/reference/ua/Defining_Rural.pdf (last visited Jan. 13, 2020).

[2] *Id.* at 1.

areas.[3] Higher population density in Florida's urban areas drives a more robust jobs market and overall economic development.[4]

Economic Development Incentives Targeted to Florida's Rural Communities

Rural Economic Development Initiative

The Rural Economic Development Initiative (REDI) encourages and facilitates the location and expansion of economic development projects of significant scale in Florida's rural communities.[5] The REDI, which is administered by the Department of Economic Opportunity (DEO), coordinates the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.[6] In particular, the REDI acts in rural areas of opportunity[7] (RAO) to promote the location or expansion of businesses to the RAO to serve as economic generators.[8]

Regional Rural Development Grants Program[9]

The Regional Rural Development Grants Program provides matching grants to build the professional capacity of Florida's regional economic development organizations (EDO).[10] A grant to an EDO is capped at $50,000, or $150,000 if located in an RAO, per year; the EDO must match the state's grant with non-state resources.[11] In Fiscal Year 2018-2019, the DEO allocated $682,300 to EDOs.[12]

Rural Infrastructure Fund[13]

The Florida Rural Infrastructure Fund (Fund) provides grants and loans to local governments and businesses to facilitate the planning, preparation, and financing of traditional economic development or nature-based tourism infrastructure projects that encourage job creation and capital investment in rural communities.[14] The amount awarded and any required local

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[3] Florida Legislature Office of Economic and Demographic Research, *Florida: An Economic Overview Focusing on County Differences*, 10 (Jan. 8, 2019), *available at* http://edr.state.fl.us/Content/presentations/economic/EconomicOverviewFocusingonCounty%20Differences.pdf (last visited Jan. 13, 2020).

[4] *Id*. at 8-13.

[5] Section 288.0656, F.S.

[6] Section 288.0656(3), F.S.

[7] Section 288.0656(2)(d), F.S., defines a "rural area of opportunity" as a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

[8] *See* ss. 288.0656(7)(c), (2)(a) F.S.

[9] Section 288.018, F.S.

[10] Section 288.018(1), F.S.

[11] Section 288.018(1), F.S.

[12] Florida Dep't of Economic Opportunity, *2019 Incentives Report*, p. 18, *available at* http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-2019-annual-incentives-report---final.pdf?sfvrsn=c2a340b0_2 (last visited Jan. 13, 2020). The DEO may allocate up to $750,000 from the Rural Community Development Revolving Loan Fund to the Regional Rural Development Grants Program. *Id.*

[13] Section 288.0655, F.S.

[14] Section 288.0655(2)(b), F.S.

government match vary based on whether the project is located in an RAO, a catalyst site, or rural community.[15] In Fiscal Year 2018-2019, the DEO awarded $2,711,307 through the Fund.[16]

Federal Rural Business Investment Company and Small Business Investment Programs[17,18]

Rural Business Investment Companies (RBIC) and Small Business Investment Companies (SBIC) are privately owned and managed investment funds that are licensed and regulated by the U.S. Department of Agriculture and Rural Development[19] and Small Business Administration (SBA)[20] respectively, that make capital investments in small businesses located in rural communities or other qualifying businesses.

An RBIC or SBIC program offers incentives for private capital to invest in small businesses, startups, low-income areas, or regions otherwise under economic distress. These programs often include special criteria for a certain quantity of the credit to focus on rural or underdeveloped areas.

Economic Development Incentives that use Tax Credits

Rural Job Tax Credit Program[21]

The Florida Rural Job Tax Credit Program offers a tax credit incentive for eligible businesses that are located within a designated qualified rural area to create new jobs. The tax credit ranges from $1,000 to $1,500 per qualified employee and can be taken against either the businesses' corporate income tax or sales and use tax liabilities. A business is limited to no more than $500,000 of tax credits per year.[22] The DEO administers this program, and may approve up to $5 million in tax credits per year; in calendar year 2018, the DEO approved $141,000 in rural job tax credits.[23]

Florida New Markets Development Program[24]

The Florida New Markets Development Program (NMDP), similar to the program created in this bill, uses tax credits to spur economic development. The NMDP allows Florida taxpayers to earn tax credits against corporate income tax and insurance premium tax by investing in qualified community development entities (CDEs) that make investments in qualified low-income community businesses. CDEs are domestic corporations or partnerships that have a primary role in administering the tax credit program and act as intermediaries between the investors,

[15] *See* Florida Dep't of Economic Opportunity, *Rural Infrastructure Fund, available at* http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund (last visited Jan. 13, 2020).
[16] Florida Dep't of Economic Opportunity, *supra* note 12, at 18.
[17] 7 U.S.C. s. 2009cc *et seq.*; 7 C.F.R. s. 4290 *et seq*. (2009).
[18] 15 U.S.C. s. 681-688.
[19] United Stated Department of Agriculture and Rural Development, *Rural Business Investment Program, available at* https://www.rd.usda.gov/programs-services/rural-business-investment-program (last visited Jan. 13, 2020).
[20] U.S. Small Business Administration, *Become an SBIC, available at* https://www.sba.gov/partners/sbics/apply-be-sbic (last visited Jan. 13, 2020).
[21] Sections 212.098, and 220.1895, F.S.
[22] Section 212.098(6)(d), F.S.
[23] Florida Dep't of Economic Opportunity, *supra* note 12, at 19.
[24] Sections 288.991-.9922, F.S.

financiers, and low-income community businesses. The NMDP is modeled after the federal New Markets Tax Credit program.[25] The NMDP is capped at a cumulative investment that would result in no more than $216.34 million in tax credits, and an annual investment that would result in no more than $36.6 million in a single fiscal year.[26] The NMDP has exhausted its credit allocation. It has not issued tax credits since Fiscal Year 2014-2015.[27]

Examples of Similar Rural Jobs Acts in Other States

Utah passed a substantially similar bill, the Utah Rural Jobs Act, which authorizes up to $42 million in tax credits, and caps the total contributions one entity may make under the program at $24.36 million. Additionally, Utah assesses a $50,000 annual fee that is split between all the certified growth fund entities.[28]

In 2017, Georgia created the Georgia Agribusiness and Rural Jobs Act, which is designed to spur $100 million in capital investments in rural businesses in the state. Investors may redeem up to $15 million in tax credits annually for four years (for a total of $60 million tax credits) against their corporate income tax and premium tax liabilities.[29]

Similar legislation has been proposed in several other states, including Kentucky[30] and Washington. Additionally, New Markets Tax Credit Programs, which are structurally similar to the program created by the bill, are active in several other states, including Florida.[31]

III. Effect of Proposed Changes:

The bill creates s. 288.062, F.S., the "Florida Rural Job and Business Recovery Act." The bill uses tax credits against the state insurance premium tax to incentivize investors to give funds to certified growth fund entities that, in turn, will make capital or equity investments, or loans with a maturity date of at least one year, in growth businesses located in non-urbanized areas of the state or in an urbanized area within a county designated by Federal Emergency Management Agency declaration FEMA-4399-DR if the urbanized area had sustained winds in excess of 100 miles per hour during Hurricane Michael. The bill caps the amount of investments at a level that will result in no more than $5 million in tax credits claimed under the program each year and $25 million in tax credits claimed under the program in total.

A growth business is one that:

- Has fewer than 200 employees;

[25] Florida Legislature Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, 32-36 (Mar. 2017), *available at* http://edr.state.fl.us/content/returnoninvestment/ROISELECTPROGRAMS2017final.pdf (last visited Jan. 13, 2020).
[26] Section 288.9914(3)(c), F.S.
[27] Florida Dep't of Economic Opportunity, *2017 Incentives Report*, 11 *available at* http://www.floridajobs.org/docs/default-source/reports-and-legislation/2017-annual-incentives-report.pdf?sfvrsn=4 (last visited Jan. 13, 2020).
[28] Utah Code Annotated s. 63N-4-301, et seq. (2017).
[29] Ga. Code Annotated s. 33-1-25, et seq. (2017).
[30] Kentucky House Bill 203 (2019), https://apps.legislature.ky.gov/record/19rs/hb203.html (last visited Jan. 13, 2020).
[31] Doug Farquhar, *Jump-Starting Rural Economies* (Apr. 2018), *available at* http://www.ncsl.org/research/environment-and-natural-resources/jump-starting-rural-economies.aspx (last visited Jan. 13, 2020).

- Has its principal place of business operations in an area of Florida that is defined as not urbanized by the U.S. Census Bureau; and
- Participates in approved agriculture, forestry, fishing, hunting; mining, oil, and gas extraction; utilities; construction; manufacturing; transportation and warehousing; professional, scientific, or technical services; healthcare and social assistance; or any industry determined by the DEO to be beneficial to the area.

The DEO will administer the program and monitor jobs created or retained as a result of the growth fund entities' investments in growth businesses.

Tax Credit Application, Approval, and Allocation

Beginning September 1, 2020, the DEO must accept applications for approval as a growth fund. The application must include the following:

- Total investment authority sought by the applicant;
- Evidence that the applicant or an affiliate of the applicant is licensed as a rural business investment company or small business investment company, as defined in federal law;[32]
- Evidence that at least one principal in the rural business investment company or small business investment company is, and has been for at least four years, an officer or employee of the applicant or an affiliate of the applicant on the date the application is submitted;
- Evidence that the applicant or its affiliates have invested at least $100 million in private companies that are located in nonmetropolitan counties;
- An estimate of the total number of new annual jobs that will be created and jobs retained in the state as a result of the applicant's growth investments;
- A business plan that includes a 10-year revenue impact estimate of the proposed growth investments, including the investment's effect on state and local tax revenues, and state expenditures. This business plan must be prepared by an independent third-party economic forecasting firm that uses a dynamic economic forecasting model;
- A signed affidavit from the applicant's investors stating the investment each commits to make; and
- A commitment by the growth fund applicant to give first priority to growth investments located in those counties designated by Federal Emergency Management Agency declaration FEMA-4399-DR.

The DEO must grant or deny an application within 45 days of its receipt. The DEO must deny an application if:

- The application is incomplete;
- The applicant does not qualify as a growth fund;
- The business plan does not evidence that the positive revenue impact on this state over a 10-year period will be greater than the cumulative amount of tax credits that would be issued to the applicant's investors;

[32] *See* 7 U.S.C. s. 2009cc *et seq.* and 15 U.S.C. s. 681 *et* seq.

- The growth fund has failed to commit investor contributions equal to at least 75 percent of the investment authority it seeks; or
- The DEO has already approved the investment authority permitted.

If the DEO denies an application on certain grounds, the applicant has 15 days to cure the defect. The DEO must review the additional filing and issue an ultimate decision within 30 days of the application's initial submission. Additionally, the DEO may not approve or deny an application that is submitted after another for which additional information was needed until it approves or denies the "first" or "initial" application with additional information.

Upon approval of an application, the DEO must provide a notice to the applicant that certifies it as a growth fund, states the fund's investment authority, and specifies the investor contributions required. Ten percent of the fund's investment authority must consist of equity investments contributed by the fund's affiliates.

The DEO may not reduce the growth fund's investment authority from that requested on its application unless such an allocation would cause the DEO to exceed the year's permitted tax credits. If the DEO approves applications received on the same day that seek investment authorities that would collectively exceed the permitted annual tax credits, the DEO must approve both applicants, but proportionally reduce each applicant's investment authority and investor contributions to comply with the tax credit limit.

Within 60 days of its certification, a growth fund must collect all of its committed investor contributions and any additional cash investments. The fund must provide proof to the DEO that it collected all required contributions and investments within 65 days of certification. A fund's certification will be subject to revocation if it fails to perform these duties.

The DEO must provide tax credit certificates to investors upon notice from a certified fund that it collected the investor's contribution.

Tax Credit Established

An investor in a fund is vested with an earned credit against its state premium tax liability equal to the value of its contribution to the fund. The investor may not sell, transfer, or allocate the credit to any entity other than an affiliate of the fund.

An investor may claim 20 percent of its credit each taxable year from the year that the fund collects the investor contributions and any additional investments (defined in the bill as the "closing date") through the fourth anniversary of such date. If an investor's annual tax credit portion exceeds its state premium tax liability for the year, the investor may carry forward the excess for up to 10 years. In order to claim a credit, the investor must submit a copy of the tax credit certificate with its tax return for each taxable year it claims the credit.

The DEO must provide the Department of Revenue (DOR) with the names and Federal Employment Identification Numbers of insurance companies that are allocated tax credits under the program and the amount of credit awarded to each company.

Revocation of Tax Credit Certificates and Exit From the Program

The DEO must revoke a tax credit certificate if:

- The fund fails to collect all of its investor contributions and any other required investments;
- The fund does not invest 100 percent of its investment authority in state growth investments within two years after the closing date;
- The fund fails to maintain investments equal to 100 percent of its investment authority until the sixth anniversary of its closing date (with a permitted 12 months between receipt of capital and reinvestment of that capital);
- The fund makes a distribution or payment that results in the fund having less than 100 percent of its investment authority invested in Florida growth investments, or available for state growth investments and held in cash or other securities; or
- The fund invests in a growth business that directly, or indirectly through an affiliate, owns, has the right to acquire an ownership interest in, makes a loan to, or makes an investment in the fund, an affiliate of the fund, or an investor of the fund.

The DEO must give a growth fund notice of a pending revocation and the fund has 90 days to cure any violation. If the DEO revokes tax credits after a growth fund has collected its investor contribution obligations, then the revoked growth fund's investment authority and collected investor contributions will not count toward the program's limit on investment authority and investor contributions.

On or after the seventh anniversary of the closing date, a growth fund may apply to the DEO to exit the program. The DEO must approve the request within 30 days if no tax credit certificates issued to the fund's investors have been revoked, and the fund's certification has not been revoked or is not currently subject to revocation.

The DEO may not revoke a tax credit certificate after a fund exits the program.

Growth Fund's Reporting Obligations

Each fund must submit an annual report to the DEO on or before the fifth business day after each anniversary of its closing date. The report must include:

- A bank statement evidencing each of the fund's investments;
- The name, location, and industry of each growth business that receives a growth investment or evidence that a growth business qualified as such at the time the fund made the investment;
- The number of employment positions at the growth business on the date of the fund's initial investment;
- The number of new and retained annual jobs and their average salary at each growth business;
- The cumulative amount of growth investments made in the growth business;
- Any other information required by the DEO; and
- If available, a report on redeemed or repaid growth investments.

Distributions to the Growth Fund's Equity Holders

A growth fund that has not exited the program may not make any distribution that results in the diminishment of its investments below its certified investment authority.

After its exit from the program, a growth fund may make distributions in excess of its investment authority, in accordance with certain restrictions. Specifically, a growth fund that distributes an amount greater than its investment authority to its equity holders must also make a payment to the DEO equal to the proposed distribution multiplied by the difference between one and a fraction the numerator of which is the aggregate number of new and retained annual jobs reported in the fund's annual report and the denominator of which is the projected number of new and retained annual jobs reported on the fund's application. No payment is due if the aggregate number of new and retained jobs equals or exceeds the number of new or retained jobs that were initially projected.

Additionally, after it exits the program, the fund may not make a payment to its equity holders unless it has invested at least 150 percent of its investment authority in growth investments. The fund must annually report its growth investments to the DEO until it has made the required growth investments.

Miscellaneous

A fund may request the DEO to issue a written opinion advising whether a potential investment business qualifies as a growth business; if the DEO does not respond within 15 days of the request, the business is deemed a growth business.

The bill grants the DEO rulemaking authority to implement this program.

The bill applies only to tax returns or reports originally due on or after January 1, 2021.

The bill takes effect July 1, 2020, and expires on December 21, 2031.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not yet determined the fiscal impact of this year's bill. During the 2019 Legislative Session, the REC reviewed CS/HB 739 (2019), which is substantially similar to the provisions of SB 848 (2020).[33] The REC found that CS/HB 739 (2019) would reduce General Revenue Fund receipts by $5 million a year, with a two-year lag after the bill takes effect until the first credit is taken, and would have a $5 million recurring reduction.[34] Both CS/HB 739 (2019) and SB 848 (2020) cap total credits claimed under the program at $25 million.

B. Private Sector Impact:

Businesses in non-urbanized areas may be able to access funding that would not have otherwise been available to them through traditional financing institutions, e.g., bank loans. However, these investments will still likely have fees and interest attached to them.

A certified growth fund will likely see a positive financial impact as the result of its activity under the program. Similarly, growth fund investors will see a positive impact on their tax liabilities as a result of their use of tax credits issued under the program.

C. Government Sector Impact:

The DEO may incur administrative costs to implement and operate the program.

The DOR reports that it will be required to modify the Unified Tax (SUNTAX) System and make related updates to rules and forms. The total estimated cost of these updates is $80,368.[35]

VI. Technical Deficiencies:

The DEO is required to notify the DOR of the name of each insurance company that is allocated tax credits, but it not required to provide the fund's closing date or notification of any subsequent revocation or lapse of the credits. Similarly, the DEO is not required to notify the DOR of the

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[33] Florida Legislature Office of Economic and Demographic Research, *CS/HB 739 Analysis*, 32-36 (Mar. 27, 2019), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/page289-291.pdf (last visited Jan. 13, 2020).

[34] *Id*. at 291.

[35] Florida Department of Revenue, *SB 848 Agency Analysis* pps. 5-7 (Dec. 5, 2019) (on file with the Senate Committee on Commerce and Tourism).

sale, transfer, or allocation of a credit or the identifying information of the subsequent credit recipient. The DOR will require such information to be able to determine an investor's or affiliate's eligibility to claim the credit.[36] The DOR also states that the taxpayer should be required to provide a reconciliation schedule with its tax return to assist with tracking the amount of the credit granted and used by the initial investor or its affiliate.[37]

VII. Related Issues:

It is unclear how the calculation of the program's overall investment authority will be affected if a growth fund's certification is revoked after it has otherwise claimed part of its credits, pursuant to section 11 of the bill.

Further guidance could be provided regarding how, or whether, a tax credit may be applied to an investor's insurance premium tax liability or retaliatory tax liability (which, together, constitute the "state premium tax liability" as defined on lines 164-165 of the bill). The DOR notes that it is uncertain whether a taxpayer will be able to split its credit between the two tax liabilities, or if it must exhaust one liability first before it may apply the credit to the next.[38] This may cause confusion in processing or claiming the credit.

VIII. Statutes Affected:

This bill creates section 288.062 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.

[36] *Id*. at 4.
[37] *Id*. at 4.
[38] *Id*. at 4.