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# **Committee on Economic Development**

**Thursday, March 6, 2008  
1:45 PM – 4:00 PM  
Reed Hall**

**Marco Rubio  
Speaker**

**Don Davis  
Chair**



# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

### Committee on Economic Development

**Start Date and Time:** Thursday, March 06, 2008 01:45 pm

**End Date and Time:** Thursday, March 06, 2008 04:00 pm

**Location:** Reed Hall (102 HOB)

**Duration:** 2.25 hrs

#### Consideration of the following bill(s):

HB 293 Corporate Income Tax Credits by Weatherford

HB 585 Unemployment Compensation by Dorworth

HB 593 Florida Research Commercialization Matching Grant Program by Precourt

HB 733 Tax Credit for Research and Development Expenses by Grant

#### Workshop Issues:

Finalize discussion on criteria/framework for economic development initiatives  
Incentives, rural economic development, and growing Florida business

#### Presentation:

Space Industry Legislative Priorities

Mr. Adrian Laffitte, Lockheed Martin Space Systems

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m. Wednesday, March 5, 2008.

By request of Acting Chair Hukill, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, March 5, 2008.

**NOTICE FINALIZED on 03/04/2008 16:14 by DGR**







**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 293 Corporate Income Tax Credits

**SPONSOR(S):** Weatherford and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 850

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	_____	West <i>SPW</i>	Croom <i>SAC</i>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

The program provides state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for qualified investments in Florida low-income communities.

The intent of HB 293 is 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 building a state "piggy-back" on tax credits offered by the federal program.

The credit provided under this bill is 8.33 percent per year for six years after the original date of the investment. Over six years this credit totals 50 percent of the investment. 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 89 percent of the purchase price of the investment in tax credits. Any amount of the tax credit may be carried forward for future taxable years, however all tax credits expire December 31, 2029. The tax credits are allocated on a first-come, first-serve basis.

A total of \$105 million in tax credits may be awarded for the duration of the program with no more than \$15 million claimed in each state fiscal year. The annual limit of \$15 million in tax credits claimed does not include credits carried forward from previous tax years.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill grants separate rule-making authority to the Department of Revenue (DOR) and the Office of Tourism, Trade, and Economic Development (OTTED) for the purpose of administering the provisions set out in this bill including the recapture provision and the allocation of tax credits issued for qualified equity investments and recapture of these credits.

Ensure Lower Taxes: This bill provides tax credits to entities making investments in low-income communities in Florida.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

##### ***Certified Capital Companies***

Currently, Florida offers direct tax credits for premium insurance tax through the Certified Capital Company Act (CAPCO).

The 1998 Florida Legislature enacted the Certified Capital Company Act<sup>1</sup> to encourage private investment in venture capital by providing direct tax credits for investment in qualified businesses. The stated purpose of this act is to stimulate a substantial increase in venture capital investments in Florida by providing an incentive for insurance companies to invest in state-certified capital companies (CAPCOs) which, in turn, will invest in new or expanding businesses.<sup>2</sup> Eligible insurance companies are granted insurance premium tax credits in amounts equal to investments in CAPCOs. The increase in investment capital is intended to contribute to employment growth, create high-paying jobs, and expand or diversify Florida's economy.

To date, the insurance industry has invested \$150 million in three state-certified CAPCOs. The insurance companies may claim insurance premium tax credits totaling \$15 million each year for ten years.

According to information in the most recent annual OPPAGA report on the CAPCO program, there were 47 qualified businesses in which the CAPCOs had invested as of December 31, 2004.<sup>3</sup> Examples of industries represented by the qualified businesses are electronic imaging, medical technology, boat manufacturing, credit card payment processing, vehicle fleet management systems, an internet portal for fishermen, and a cookie manufacturer. The most recent investments include businesses predominantly in the child daycare, landscaping, and restaurant industries. The total number of full-time jobs in qualified businesses at the time of the initial investments in the 47 companies was 1,218. The total number of full-time jobs in all qualified businesses as of December 31, 2004 was 1,009.

<sup>1</sup> Section 288.99, F.S.

<sup>2</sup> Section 288.99(2), F.S.

<sup>3</sup> Section 288.99(12), F.S., requires OTTED to report annually on the performance of the CAPCO program. The following information was compiled from the latest annual report issued in 2004. Executive Office of the Governor, Office of Tourism, Trade & Economic Development, *Certified Capital Company Act Annual Report on Performance*, June 2005.



While as many as nine states have created CAPCOs, this type of program is increasingly viewed by researchers as the more "problematic" of the Venture Capital Funds (VCF) programs, in terms of

"...its high cost, poor design and target-inefficiency. Unlike any other VCF program, the CAPCO program provides a 100% premium tax credit to insurance company investors. In effect, the government underwrites the entire investment risk."<sup>4</sup>

### ***Federal New Markets Tax Credit***

The New Markets Tax Credit 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 realize a return on their investments in CDEs prior to the conclusion of the seven-year period.<sup>5</sup>

An organization wishing to receive awards under the 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 a 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.<sup>6</sup>

### ***Community Development Entities in Florida, Investment by State***

There are 56 CDEs in Florida.<sup>7</sup> Florida trails only New York (121), California (116), Texas (66), Pennsylvania (59), and Illinois (58) in total number of CDEs.<sup>8</sup> The federal program has awarded New Markets Tax Credits to at least 179 CDEs nationwide; these CDEs would be eligible to utilize the state program created in this bill.<sup>9</sup>

Under the federal program, loans have been used to finance a range of activities, such as the rehabilitation of historic buildings and the operation of mixed-use real estate development. Other uses include the construction or operation of cultural arts centers, frozen pizza manufacturing, and the construction of daycare centers and charter schools.<sup>10</sup>

<sup>4</sup> Statement of Professor Daniel Sandler, University of Western Ontario, London; senior research fellow of the Taxation Law and Policy Research Institute, Melbourne; associated with Minden Gross Grafstein & Greenstein LLP, Toronto. See Daniel Sandler, *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004).

<sup>5</sup> Community Development Financial Institutes Fund; the Department of Treasury; information contained in this paragraph can be found at [http://www.cdfifund.gov/what\\_we\\_do/programs\\_id.asp?programID=5](http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5) (visited 3/15/07).

<sup>6</sup> Community Development Financial Institutes Fund; the Department of Treasury; available online at [http://www.cdfifund.gov/what\\_we\\_do/programs\\_id.asp?programID=5](http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5) (visited 3/15/07).

<sup>7</sup> Community Development Financial Institutes Fund; the Department of Treasury; available online at <http://www.cdfifund.gov/docs/certification/CDEstate.pdf>.

<sup>8</sup> Id.

<sup>9</sup> United States Government Accounting Office (GAO) *Report to Congressional Committees, Tax Policy, January, 2007, page 15.*

<sup>10</sup> Id at 30.

Florida ranked 25<sup>th</sup> in total NMTC investment dollars during fiscal years 2003-2005. The state received 1.23 percent of total loans and investments and eight total projects.<sup>11</sup>

State	Total dollar amount of loans and investment	Percentage of all loans and investment	Number of NMTC projects	Percentage of NMTC projects
1. California	\$303,081,270	9.74	58	9.95
2. New York	239,178,566	7.68	25	4.29
3. Ohio	201,857,969	6.49	69	11.84
4. Maine	153,527,250	4.93	13	2.23
5. Wisconsin	149,131,108	4.79	26	4.46
6. Missouri	146,165,868	4.70	22	3.77
7. Massachusetts	145,059,237	4.66	34	5.83
8. Kentucky	135,117,406	4.34	44	7.55
9. North Carolina	126,420,590	4.06	14	2.40
10. Washington	125,703,680	4.04	19	3.26
11. Minnesota	122,587,357	3.94	13	2.23
12. Oklahoma	112,092,186	3.60	24	4.12
13. Oregon	111,464,317	3.58	14	2.40
14. Maryland	106,171,382	3.41	14	2.40
15. New Jersey	83,439,000	2.68	7	1.20
16. Pennsylvania	77,111,177	2.48	21	3.60
17. Arizona	68,476,055	2.20	8	1.37
18. Washington D.C.	67,715,807	2.18	10	1.72
19. Texas	65,644,265	2.11	11	1.89
20. Michigan	57,541,869	1.85	10	1.72
21. Virginia	55,898,873	1.80	8	1.37
22. Rhode Island	55,235,675	1.77	3	0.51
23. Utah	53,884,716	1.73	14	2.40
24. Georgia	38,516,906	1.24	4	0.69
<b>25. Florida</b>	<b>38,261,093</b>	<b>1.23</b>	<b>8</b>	<b>1.37</b>

### Effects of Proposed Changes:

HB 293 creates the Florida New Markets Tax Credit in s. 288.991, F.S. The program will provide state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for qualified investments in Florida low-income communities.

The intent of the bill is to "piggy-back" on tax credits offered by the federal New Markets Tax Credit Program to provide greater investment in Florida.

### How the Program Works

Under this program, federally-certified CDE's, which have entered into allocation agreements with the U.S. Treasury, have the ability to apply to the Office of Tourism Trade and Economic Development (OTTED) for a certification of Florida tax credits. The CDE must show that they are prepared to invest a certain amount of capital into qualified businesses in Florida's low-income communities. The certification process would include proof of the CDEs eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding the proposed low-income community investments, a description of the CDEs efforts to partner with local community-based groups, and a non-refundable \$1,000 application fee. OTTED will also be able to request additional information deemed necessary. OTTED will certify qualified applications on a first-come, first-serve basis.

<sup>11</sup> Information found in the table came from the United States Government Accounting Office (GAO) Report to Congressional Committees, Tax Policy, January, 2007.

Once OTTED certifies a CDEs qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to make the investment in a low-income community. Thereafter, the CDE must annually report to OTTED information, including a list of low-income community investments and the amount of the investments with third-party proof that the investment was made. Any CDE that is allocated more than \$500,000 in tax credits in any state fiscal year will also be required to participate in Florida's Single Audit program. 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.

#### Qualified Investments

A "qualified equity investment" means any equity investment or long-term debt security by a qualified CDE that:

- Is acquired on or after July 1, 2008;
- Has at least 85 percent of its cash purchase priced invested in a qualified low-income community investments; and
- Is designated by the CDE as a qualified equity investment, regardless whether the investment was designated under the federal New Markets Tax Credit Program.

In addition, a qualified equity investment may mean an equity investment or long-term debt security that is currently a qualified equity investment.

The definition for a "qualified equity investment" in this bill expands the federal definition allowed under Sec. 45D of the Internal Revenue Code. It allows a CDE to designate a qualified investment regardless of whether it is allowed under the federal program; and it allows for long-term debt security to be a qualified investment.

"Long-term debt security" means any debt instrument issued by a CDE, "at par value or a premium, having an original maturity date of at least seven years following the date of its issuance, with no acceleration of repayment, amortization, or prepayment features before its original maturity date, and having no distribution, payment, or interest features related to the profitability of the qualified community development entity or performance of the qualified community development entity's investment portfolio."

#### Qualified Active Low-Income Community Business

A "qualified active low-income community business" is defined as having the same meaning as what is provided in federal law. It also includes language different from federal law that states the business must not derive 15 percent or more of its annual revenue from the rental or sale of real estate. Businesses such as golf courses, country clubs, massage parlors, tanning salons, liquor stores, and establishments that permit gambling are not eligible for this program.

A low-income community is defined as any population census tract within the state for which the federal individual poverty rate of such tract is at least 20 percent. For census tracts not located within a metropolitan area to qualify as a low-income community, the median family income must not exceed 80 percent of the statewide median income. For census tracts located within a metropolitan area, the median family income must not exceed 80 percent of the greater of statewide median family income or the metropolitan area median income.

## Tax Credits

The bill allows a tax credit to be taken annually only after the investment has been made and held for a full year. The credit provided under this bill is 8.33 percent per year for six years after the originally date of the investment. Over six years this credit totals 50 percent of the investment. Any unused portion of the tax credit may be carried forward for future taxable years; however, all tax credits expire on December 31, 2029. No more than \$15 million in tax credits may be claimed in any fiscal year. The amount of investments that may be used to calculate a CDE's tax credit is capped at \$10 million annually.

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 89 percent of the purchase price of the investment in tax credits.

A business would qualify for credits as follows:

Year	State Program	Federal Program
1	0%	5%
2	8.33%	5%
3	8.33%	5%
4	8.33%	6%
5	8.33%	6%
6	8.33%	6%
7	8.33%	6%
<b>Total</b>	<b>49.98%</b>	<b>39%</b>

OTTED certifies an investment to the Department of Revenue (DOR). The CDE is required to provide DOR the anticipated dollar amount of an investment in the state during the first 12-month period following the initial credit allowance date. DOR is required to adjust future credits if the actual amount of the investment is different from the estimated amount.

The bill 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.

Any investor that receives an annual allocation of tax credits that exceeds \$500,000 shall be treated as a recipient pursuant to s. 215.97(2), F.S., and required to participate in a state single audit pursuant to the provisions of s. 215.97, F.S.

The department shall recapture tax credits available to an investor if:

- For any reason the federal government recaptures a related tax credit;
- The CDE redeems any principal repayment related to the investment prior to its seventh anniversary;
- The requirement to maintain at least 85 percent of the investment in low-income community investments in Florida is not met;
- The CDE fails to provide to OTTED and DOR any of the information or reports required by this bill; or
- A taxpayer received credits to which they were not entitled.

The bill gives DOR and OTTED the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of this bill. OTTED must submit an annual report each July 1, beginning in 2010 to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing all qualified low-income community investments made in Florida, their location, the total dollar amount invested, the number of jobs created or retained, and the value of applicable tax credits claimed for the most recent year.

C. SECTION DIRECTORY:

**Section 1** - Creates s. 288.991, F.S., the New Markets Tax Credit.

**Section 2** - Amends subsection (8) of s. 220.02, F.S., to provide legislative intent for the application of tax credits.

**Section 3** - Amends paragraph (a) of subsection (1) of s. 220.13, F.S., to define "adjusted federal income" and provide additions to taxable income.

**Section 4** - Creates subsection (19) of s. 213.053, F.S., to allow DOR to share information with OTTED and to provide confidentiality to taxpayers utilizing the program created by this bill.

**Section 5** - Provides an effective date of July 1, 2008 and provides that the program created by this bill applies to tax years ending after December 31, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments".

2. Expenditures:

See "Fiscal Comments".

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Investments may assist existing and new businesses.

**D. FISCAL COMMENTS:**

Over seven years, the total fiscal impact of the program is limited to \$105 million in tax credits. The bill further limits the amount of tax credits claimed each year to \$15 million plus any unused credits that have been carried forward. If CDEs carry forward a substantial amount of unused credits and claim them in a single year, there is no guarantee that the amount of credits claimed in any year, besides year two of the program, would be \$15 million or less.<sup>12</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

**2. Other:**

**B. RULE-MAKING AUTHORITY:**

This bill grants separate rule-making authority to DOR and OTTED for the purpose of administering the provisions set out by this bill including the recapture provision and the allocation of tax credits issued for qualified equity investments.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

DOR performed an analysis of this bill and recommended deleting the tax credit election language in lines 273 through 282 (288.991(3)(f)). The section requires a CDE to elect the type of tax liability to apply its earned credit against. Insurers are required to apply an earned credit against their insurance premium tax liability so they have no choice of how to apply their tax credit.

**D. STATEMENT OF THE SPONSOR:**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

<sup>12</sup> Year two of the program created by this bill is the first year in which tax credits may be claimed by a CDE.  
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A bill to be entitled  
 An act relating to corporate income tax credits; creating  
 part XIII of ch. 288, F.S., consisting of s. 288.991,  
 F.S.; creating the New Markets Tax Credit Program;  
 providing definitions; authorizing the Office of Tourism,  
 Trade, and Economic Development to qualify certain equity  
 investments as eligible for tax credits; providing an  
 application process; requiring an application fee;  
 providing for the certification of an investment;  
 providing for notice to the applicant and the Department  
 of Revenue; providing for a limit on the amount of  
 investments the office may certify; requiring the  
 certified equity investments to be issued within a certain  
 timeframe; requiring the taxpayer to elect how the credit  
 will be applied; providing that a taxpayer who holds a  
 qualified equity investment in a qualified low-income  
 business on the credit allowance date of the investment is  
 entitled to a nonrefundable, nontransferable tax credit  
 for the taxable year in which the credit allowance date  
 falls; providing how the amount of tax credits available  
 to the taxpayer will be calculated; limiting the amount of  
 the tax credit that may be redeemed in a fiscal year;  
 authorizing a taxpayer to carry over any amount of the tax  
 credit that the taxpayer is prohibited from redeeming in a  
 taxable year to a subsequent taxable year; providing for  
 the redemption of tax credits earned by certain business  
 entities and by the partners, members, or shareholders of  
 those entities; specifying how tax credits may be claimed

29 by insurance companies; requiring the calculations to be  
 30 certified and accompanied by audited financial statements  
 31 and notarized affidavits; requiring the department to  
 32 recapture tax credits from certain taxpayers under certain  
 33 circumstances; requiring notice; requiring community  
 34 development entities that have certified investments to  
 35 report certain information to the office; requiring the  
 36 office to prepare annual reports on low-income community  
 37 investments made in this state; authorizing the department  
 38 to conduct examinations to verify receipt and application  
 39 of tax credits; authorizing the department to pursue  
 40 recovery of certain funds; authorizing the office to  
 41 revoke or modify certain decisions relating to eligibility  
 42 for tax credits under certain circumstances; providing for  
 43 applicant liability for costs and fees relating to  
 44 investigations of fraudulent claims; providing for  
 45 taxpayer liability for reimbursement of fraudulently  
 46 claimed tax credits; providing a penalty; authorizing the  
 47 office and the department to adopt rules; providing for  
 48 future repeal of the tax credit program; amending s.  
 49 220.02, F.S.; revising legislative intent with respect to  
 50 the order of tax credits to include the New Markets Tax  
 51 Credit; amending s. 220.13, F.S.; revising a definition;  
 52 amending s. 213.053, F.S.; authorizing the Department of  
 53 Revenue to share confidential taxpayer information with  
 54 the Office of Tourism, Trade, and Economic Development;  
 55 providing for application of the tax credit; providing an  
 56 effective date.



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Be It Enacted by the Legislature of the State of Florida:

Section 1. Part XIII of chapter 288, Florida Statutes, consisting of section 288.991, is created to read:

288.991 New Markets Tax Credit.--

(1) PURPOSE.--The New Markets Tax Credit Program is established to encourage capital investment in rural and urban low-income communities by allowing state taxpayers to receive future credit against specified state taxes by investing in community development entities that make quality equity investments in qualified active low-income community businesses that create jobs by leveraging credit available from the federal New Markets Tax Credit Program.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Adjusted purchase price" means the product of the amount paid at issuance for a qualified equity investment and a fraction of which:

1. The numerator is the dollar amount of qualified low-income community investments made in this state from the issuance of a qualified equity investment held by a qualified community development entity on the applicable credit allowance date; and

2. The denominator is the total dollar amount of qualified low-income community investments made from the issuance of a qualified equity investment held by a qualified community development entity on the applicable credit allowance date.

(b) "Credit allowance date" means:

85        1. The first anniversary of the date that a qualified  
 86 equity investment is initially made; and  
 87        2. Each of the five subsequent anniversaries of that date.  
 88        (c) "Department" means the Department of Revenue.  
 89        (d) "Long-term debt security" means a debt instrument  
 90 issued by a qualified community development entity, at par value  
 91 or a premium, having an original maturity date of at least 7  
 92 years from the date of issuance, with no acceleration for  
 93 repayment, amortization, or prepayment features before its  
 94 original maturity date and having no distribution, payment, or  
 95 interest features related to the profitability of the qualified  
 96 community development entity or the performance of the entity's  
 97 investment portfolio. This paragraph does not limit the holder's  
 98 ability to accelerate payments on the debt instrument in  
 99 situations where the qualified community development entity has  
 100 defaulted on covenants designed to ensure compliance with this  
 101 section or s. 45D of the Internal Revenue Code of 1986, as  
 102 amended.  
 103        (e) "Low-income community" means any population census  
 104 tract within the state where:  
 105        1. The federal individual poverty rate is at least 20  
 106 percent; or  
 107        2. In the case of a tract that is:  
 108        a. Not located within a metropolitan area, the median  
 109 family income does not exceed 80 percent of the statewide median  
 110 family income; or  
 111        b. Located within a metropolitan area, the median family  
 112 income does not exceed 80 percent of the greater of the

113 statewide median family income or the metropolitan area median  
 114 income.

115 (f) "Office" means the Office of Tourism, Trade, and  
 116 Economic Development.

117 (g) "Qualified active low-income community business" has  
 118 the same meaning as in s. 45D of the Internal Revenue Code of  
 119 1986, as amended, but excludes any trade or business:

120 1. That derives or projects to derive 15 percent or more  
 121 of its annual revenue from the rental or sale of real estate;

122 2. That engages predominantly in the development or  
 123 holding of intangibles for sale or license;

124 3. That operates a private or commercial golf course,  
 125 country club, massage parlor, hot tub facility, suntan facility,  
 126 racetrack, or other facility used for gambling, or a store the  
 127 principal business of which is the sale of alcoholic beverages  
 128 for consumption off premises; or

129 4. The principal activity of which is farming if the sum  
 130 of the aggregate unadjusted bases or the fair market value of  
 131 the assets owned by the business which are used in such trade or  
 132 business, whichever is greater, and the aggregate value of the  
 133 assets leased by the business used in such trade or business  
 134 exceeds \$500,000. For the purposes of this subparagraph, two or  
 135 more trades or businesses are treated as a single trade or  
 136 business.

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138 A business shall be considered a qualified active low-income  
 139 community business for the duration of the qualified community  
 140 development entity's investment in or loan to the business if

141 the entity reasonably expects, at the time it makes the  
 142 investment or loan that the business will continue to satisfy  
 143 the requirements of being a qualified active low-income  
 144 community business throughout the entire period of the  
 145 investment or loan. The subsequent insolvency, including  
 146 reorganization or liquidation in bankruptcy, receivership,  
 147 winding up, or dissolution of a business does not disqualify the  
 148 business from being a qualified active low-income community  
 149 business if all other requirements of this section continue to  
 150 be met.

151 (h) "Qualified community development entity" means an  
 152 entity that is certified as a qualified community development  
 153 entity by the Community Development Financial Institutions Fund  
 154 of the United States Department of the Treasury pursuant to s.  
 155 45D of the Internal Revenue Code of 1986, as amended, and that  
 156 has entered into an allocation agreement with the fund with  
 157 respect to tax credits authorized by section 45D, and includes  
 158 this state within the service area set forth in the agreement.

159 (i) "Qualified equity investment" means an equity  
 160 investment or long-term debt security issued by a qualified  
 161 community development entity which:

- 162 1. Is acquired on or after July 1, 2008, solely in  
 163 exchange for cash at the time of its original issuance;
- 164 2. Has at least 85 percent of its cash purchase price used  
 165 by the qualified community development entity to make qualified  
 166 low-income community investments within the 12-month period  
 167 beginning on the date the cash is paid by the purchaser to the  
 168 entity; and

169 3. Is certified by the Office of Tourism, Trade, and  
 170 Economic Development as a qualified equity investment pursuant  
 171 to this section.

172 (j) "Qualified low-income community investment" means a  
 173 capital or equity investment in or loan to a qualified active  
 174 low-income community business which is made after July 1, 2008.  
 175 The maximum amount of debt or equity issued by any one qualified  
 176 active low-income community business on a collective basis with  
 177 all of its affiliates, which may be included in the calculation  
 178 of the numerator described in paragraph (a), is \$10 million,  
 179 whether the investment is issued to one or more qualified  
 180 community development entities.

181 (3) QUALIFIED EQUITY INVESTMENTS.--

182 (a) A qualified community development entity that seeks to  
 183 have an equity investment or long-term debt security designated  
 184 as a qualified equity investment and eligible for tax credits  
 185 under this section shall apply to the office. The qualified  
 186 community development entity must submit an application on a  
 187 form that the office prescribes by rule, and that includes, but  
 188 need not be limited to:

189 1. The name, address, tax identification number of the  
 190 entity, and evidence of the entity's certification as a  
 191 qualified community development entity;

192 2. A copy of the allocation agreement executed by the  
 193 entity and the Community Development Financial Institutions  
 194 Fund;

195 3. A certificate executed by an executive officer of the  
 196 entity attesting that the allocation agreement remains in effect

197 and has not been revoked or cancelled by the Community  
 198 Development Financial Institutions Fund;  
 199 4. A description of the proposed amount, structure, and  
 200 purchaser of the equity investment or long-term debt security;  
 201 5. The name and tax identification number of any taxpayer  
 202 eligible to redeem tax credits earned as a result of the  
 203 issuance of the qualified equity investment;  
 204 6. Information regarding the proposed use of proceeds from  
 205 the issuance of a qualified equity investment, which must  
 206 include the types of qualified active low-income community  
 207 businesses that will be funded and an estimate of the percentage  
 208 of qualified low-income community investments that will be made  
 209 statewide;  
 210 7. A statement setting forth the entity's plans for the  
 211 development of relationships with community-based organizations,  
 212 local community development offices and organizations, and  
 213 economic development organizations, as well as any steps the  
 214 entity has taken to implement these relationships; and  
 215 8. A nonrefundable application fee of \$1,000 per  
 216 application submitted.  
 217 (b) Within 30 days after receipt of a completed  
 218 application containing the information necessary for the office  
 219 to certify a potential qualified equity investment, including  
 220 payment of the application fee, the office shall grant or deny  
 221 the application in full or in part. If the office denies any  
 222 part of the application, it shall inform the qualified community  
 223 development entity of the grounds for the denial. If the  
 224 qualified community development entity provides any additional

225 information required by the office or otherwise completes its  
 226 application within 15 days after the notice of denial, the  
 227 application shall be considered completed as of the original  
 228 date of submission. If the qualified community development  
 229 entity fails to provide the information or complete its  
 230 application within the 15-day period, the application remains  
 231 denied and must be resubmitted in full with a new submission  
 232 date.

233 (c) If an application is deemed complete, the office shall  
 234 certify the proposed equity investment or long-term debt  
 235 security as a qualified equity investment and eligible for tax  
 236 credits under this section. The office shall provide written  
 237 notice of the certification to the qualified community  
 238 development entity and the department. The notice must include  
 239 the maximum amount of tax credits that may be earned from the  
 240 issuance of the qualified equity investment, which shall be  
 241 calculated with reference to the estimate of the percentage of  
 242 qualified low-income community investments made in this state by  
 243 the qualified community development entity included in the  
 244 application, and the names of those taxpayers who are eligible  
 245 to redeem the credits and their respective credit amounts. The  
 246 office shall certify qualified equity investments in the order  
 247 applications are received. Applications received on the same day  
 248 shall be deemed to have been received simultaneously.

249 (d) Once the office has certified qualified equity  
 250 investments that, on a cumulative basis, are eligible for \$105  
 251 million in tax credits, of which no more than \$15 million may be  
 252 claimed per state fiscal year exclusive of tax credits carried

253 forward, and on or after June 30, 2015, the office may not  
 254 certify any more qualified equity investments. If a pending  
 255 request cannot be fully certified, the office shall certify the  
 256 portion that may be certified unless the qualified community  
 257 development entity elects to withdraw its request rather than  
 258 receive partial credit.

259 (e) Within 30 days after receiving notice of  
 260 certification, the qualified community development entity shall  
 261 issue the qualified equity investment and receive cash in the  
 262 amount of the certified amount. The qualified community  
 263 development entity must provide the office with evidence of the  
 264 receipt of the cash investment within 10 business days after  
 265 receipt. If the qualified community development entity does not  
 266 receive the cash investment and issue the qualified equity  
 267 investment within 30 days following receipt of the certification  
 268 notice, the certification lapses and the entity may not issue  
 269 the qualified equity investment without reapplying to the office  
 270 for certification. A certification that lapses reverts back to  
 271 the office and must be reissued in accordance with the  
 272 application process outlined in this subsection.

273 (f) On the date that a qualified equity investment is  
 274 initially made, the purchaser must make an election to apply the  
 275 credit against taxes due under s. 220.11 or s. 624.509 or  
 276 against a stated combination of the two taxes, and must provide  
 277 notice of such election to the office and department. The  
 278 purchaser or subsequent holder of the qualified equity  
 279 investment or a member, partner, or shareholder of the holder  
 280 who is eligible to take the credit or a portion of the credit



281 may not alter this election without prior notice to and approval  
 282 from the department.

283 (4) TAX CREDITS.--

284 (a) A taxpayer that makes a qualified equity investment  
 285 earns a vested tax credit against taxes imposed by s. 220.11 or  
 286 s. 624.509. The taxpayer or a subsequent holder of the qualified  
 287 equity investment on the credit allowance date of the qualified  
 288 equity investment may use a portion of the vested tax credit  
 289 equal to 8.33 percent of the adjusted purchase price of the  
 290 qualified equity investment during the calendar year in which  
 291 the credit allowance date falls.

292 (b) A taxpayer's cash investment in a qualified equity  
 293 investment is considered a qualified low-income community  
 294 investment only to the extent that the cash is invested within  
 295 the 12-month period beginning on the date the cash is paid by  
 296 the taxpayer to the community development entity.

297 (c) A taxpayer may not redeem any portion of a tax credit  
 298 in a tax year in which the tax credit exceeds the taxpayer's  
 299 state tax liability for the tax year. Such portion may be  
 300 carried forward for use in a subsequent tax year; however, all  
 301 unused tax credits expire on December 31, 2029.

302 (d) A tax credit authorized under this section is not  
 303 refundable or transferable. However, if a qualified equity  
 304 investment is transferred, any unused tax credits transfer with  
 305 the investment. Tax credit amounts, including any carryover  
 306 amounts, from credit allowance dates before the date of transfer  
 307 do not transfer with the qualified equity investment. Tax  
 308 credits earned by a partnership, limited liability company, S

309 corporation, or other pass-through entity may be allocated to  
 310 the partners, members, or shareholders of such entity for direct  
 311 redemption in accordance with any agreement between the  
 312 partners, members, or shareholders.

313 (e) Tax credits for taxpayers who are insurance companies  
 314 subject to the insurance premium tax under s. 624.509 must be  
 315 claimed against the insurance premium tax. An insurance company  
 316 claiming a credit against the insurance premium tax is not  
 317 required to pay any additional retaliatory tax levied pursuant  
 318 to s. 624.5091. Because credits under this section are available  
 319 to an insurance company, s. 624.5091 does not limit such credit  
 320 in any manner.

321 (5) CALCULATION OF CREDIT.--

322 (a) Within 30 days after each credit allowance date, each  
 323 qualified community development entity shall submit to the  
 324 office the following with respect to each qualified equity  
 325 investment issued by the entity:

326 1. A listing, certified by an executive officer of the  
 327 entity, of all qualified low-income community investments made  
 328 by the entity from the proceeds of a qualified equity investment  
 329 and held as of the credit allowance date, which must include the  
 330 name of each qualified active low-income community business  
 331 funded, the location of the principal office of each such  
 332 business, the type of business, the amount of the qualified low-  
 333 income community investment in each business, and the total of  
 334 qualified low-income community investments by all community  
 335 development entities in each business;

336 2. Bank records, records of wire transfers of funds, or

337 other similar documents that reflect the investments listed  
 338 above;

339 3. A calculation, certified by the chief financial or  
 340 accounting officer of the entity, of the amount of qualified  
 341 low-income community investments made in this state using  
 342 proceeds from the issuance of the qualified equity investment  
 343 held by the entity as of the credit allowance date, and the  
 344 total qualified low-income community investments made using  
 345 proceeds of the issuance of the qualified equity investment held  
 346 by the entity on the credit allowance date. In making this  
 347 calculation, an investment shall be deemed to be held by a  
 348 qualified community development entity even if the investment  
 349 has been sold or repaid if the entity reinvests an amount equal  
 350 to the capital returned to or recovered from the original  
 351 investment, exclusive of any profits realized, in another  
 352 qualified low-income community investment within 12 months after  
 353 receipt of such capital. An entity is not required to reinvest  
 354 capital returned from a qualified low-income community  
 355 investment after the sixth anniversary of the issuance of the  
 356 qualified equity investment for which the proceeds were used to  
 357 make the qualified low-income community investment, and the  
 358 qualified low-income community investment shall be deemed to be  
 359 held by the entity through the seventh anniversary of the  
 360 qualified equity investment's issuance;

361 4. An attestation from the entity's chief financial or  
 362 accounting officer that no redemption or principal payment was  
 363 made with respect to the qualified equity investment since the  
 364 previous credit allowance date; and

365 5. Any information relating to the recapture of any  
 366 federal tax credits available with respect to a qualified equity  
 367 investment which the entity received since the prior credit  
 368 allowance date.

369 (b) Within 20 days after receipt of the information listed  
 370 in paragraph (a), the office shall certify in writing to the  
 371 qualified community development entity and to the department the  
 372 amount of credit that is eligible for use for the credit  
 373 allowance date. The notice must include a listing of those  
 374 taxpayers that are eligible to redeem the tax credit for the  
 375 credit allowance date.

376 (6) AUDIT AND RECAPTURE.--

377 (a) A qualified community development entity that receives  
 378 an annual allocation of tax credits in an amount equal to or in  
 379 excess of \$500,000 shall be treated as a recipient and required  
 380 to participate in a state single audit pursuant to s. 215.97.  
 381 The office shall be deemed the state awarding agency and  
 382 coordinating agency. In addition to the required financial  
 383 reporting package, the audit must attest to the entity's  
 384 adherence to the performance conditions enumerated in this  
 385 section as they relate to the recapture of the tax credit under  
 386 paragraph (b). Taxpayers that are not qualified community  
 387 development entities may not be treated as subrecipients or  
 388 otherwise required to participate in the state single audit  
 389 program since such persons do not control adherence to the  
 390 performance standards of this program.

391 (b) The office shall order recapture of any tax credit  
 392 authorized under this section with respect to a qualified equity

393 investment if:

394 1. Any amount of any federal tax credit which is eligible  
 395 for a tax credit under this section is recaptured under s. 45D  
 396 of the Internal Revenue Code of 1986, as amended;

397 2. The qualified community development entity redeems or  
 398 makes a principal repayment before the seventh anniversary of  
 399 the issuance of the qualified equity investment;

400 3. The qualified community development entity fails to  
 401 maintain at least 85 percent of the proceeds of the qualified  
 402 equity investment in qualified low-income community investments  
 403 at any time before the seventh anniversary of the issuance of  
 404 the qualified equity investment and remains in compliance with  
 405 subparagraph (2)(i)2.;

406 4. The qualified community development entity fails to  
 407 provide to the office and the department any of the information  
 408 or reports required by this section; or

409 5. The office determines as a result of a state single  
 410 audit or an examination by the office that a taxpayer received  
 411 tax credits pursuant to this section to which the taxpayer was  
 412 not entitled.

413 (c) The office shall provide notice to the qualified  
 414 community development entity and to the department of any  
 415 proposed recapture of tax credits pursuant to this subsection.  
 416 The entity shall have 90 days to cure any deficiency indicated  
 417 in the office's original recapture notice and avoid such  
 418 recapture. If the entity fails or is unable to cure such  
 419 deficiency within the 90-day period, the office shall provide  
 420 the entity and the department with a final order of recapture.

421 The qualified community development entity is responsible for  
 422 providing copies of the final order of recapture to taxpayers  
 423 owning the tax credits at issue.

424 (d) Any tax credit for which a final recapture order has  
 425 been issued shall be recaptured by the department from the  
 426 taxpayer who claimed the tax credit on a tax return, or in the  
 427 case of multiple succeeding entities, in the order of tax-credit  
 428 succession, and such funds shall be paid into the General  
 429 Revenue Fund. Such action by the department does not constitute  
 430 an audit or otherwise alter the department's ability to audit  
 431 the taxpayer.

432 (7) ANNUAL REPORTING.--

433 (a) Within 120 days after the end of a calendar year that  
 434 includes a credit allowance date, each community development  
 435 entity that has an equity investment or long-term debt security  
 436 certified as a qualified equity investment under this section  
 437 shall provide the office with:

438 1. The entity's annual financial statements for the  
 439 immediately preceding calendar year, audited by an independent  
 440 certified public accountant;

441 2. Using the North American Industry Classification System  
 442 Code, the types of businesses funded, the counties where the  
 443 qualified active low-income community businesses are located,  
 444 the dollars invested, and the number of jobs created and  
 445 retained by qualified active low-income community businesses  
 446 funded in a form satisfactory to the office; and

447 3. A statement describing the relationships that the  
 448 entity has established with community-based organizations, local

449 community development offices and organizations, and economic  
 450 development organizations, and a summary of the outcomes  
 451 resulting from those relationships.

452 (b) The office shall prepare an annual report of all  
 453 qualified low-income community investments made in this state  
 454 from the proceeds of qualified equity investments, which  
 455 includes relevant statistics from the North American Industry  
 456 Classification System Code, the county or counties where the  
 457 qualified low-income community investments are located, the  
 458 dollars invested, the number of jobs created and retained by  
 459 business in which qualified low-income community investments  
 460 have been made, and the value of applicable state tax credits  
 461 claimed for the latest year for which such information is  
 462 available. The office shall submit a copy to the Governor, the  
 463 President of the Senate, and the Speaker of the House of  
 464 Representatives each July 1, beginning in 2010, and may post the  
 465 annual report on the office's website.

466 (8) EXAMINATION.--

467 (a) The office may conduct examinations to verify that tax  
 468 credits under this section have been received and applied  
 469 according to the requirements of this section and to verify  
 470 information provided by qualified community development entities  
 471 to the office.

472 (b) The office may revoke or modify any written decision  
 473 qualifying, certifying, or otherwise granting eligibility for  
 474 tax credits under this section if it is discovered that the  
 475 qualified community development entity submitted any false  
 476 statement, representation, or certification in any application,

477 record, report, plan, or other document filed in an attempt to  
 478 receive the tax credits.

479 (c) A qualified community development entity that submits  
 480 information under this section which includes fraudulent  
 481 information is liable for reimbursement of the reasonable costs  
 482 and fees associated with the review, processing, investigation,  
 483 and prosecution of the fraudulent claim plus a penalty in an  
 484 amount double the credit amount certified and claimed by the  
 485 holders of the entity's qualified equity investments, which  
 486 penalty is in addition to any criminal penalty to which the  
 487 taxpayer is liable for the same acts.

488 (9) RULEMAKING AUTHORITY.--

489 (a) The office may adopt rules pursuant to ss. 120.536(1)  
 490 and 120.54 to administer this section.

491 (b) The department may adopt rules pursuant to ss.  
 492 120.536(1) and 120.54 to administer this section.

493 (10) EXPIRATION.--This section expires December 31, 2029.

494 Section 2. Subsection (8) of section 220.02, Florida  
 495 Statutes, is amended to read:

496 220.02 Legislative intent.--

497 (8) It is the intent of the Legislature that credits  
 498 against either the corporate income tax or the franchise tax be  
 499 applied in the following order: those enumerated in s. 631.828,  
 500 those enumerated in s. 220.191, those enumerated in s. 220.181,  
 501 those enumerated in s. 220.183, those enumerated in s. 220.182,  
 502 those enumerated in s. 220.1895, those enumerated in s. 221.02,  
 503 those enumerated in s. 220.184, those enumerated in s. 220.186,  
 504 those enumerated in s. 220.1845, those enumerated in s. 220.19,



505 those enumerated in s. 220.185, those enumerated in s. 220.187,  
 506 those enumerated in s. 220.192, ~~and~~ those enumerated in s.  
 507 220.193, and those enumerated in s. 288.991.

508 Section 3. Paragraph (a) of subsection (1) of section  
 509 220.13, Florida Statutes, is amended to read:

510 220.13 "Adjusted federal income" defined.--

511 (1) The term "adjusted federal income" means an amount  
 512 equal to the taxpayer's taxable income as defined in subsection  
 513 (2), or such taxable income of more than one taxpayer as  
 514 provided in s. 220.131, for the taxable year, adjusted as  
 515 follows:

516 (a) Additions.--There shall be added to such taxable  
 517 income:

518 1. The amount of any tax upon or measured by income,  
 519 excluding taxes based on gross receipts or revenues, paid or  
 520 accrued as a liability to the District of Columbia or any state  
 521 of the United States which is deductible from gross income in  
 522 the computation of taxable income for the taxable year.

523 2. The amount of interest which is excluded from taxable  
 524 income under s. 103(a) of the Internal Revenue Code or any other  
 525 federal law, less the associated expenses disallowed in the  
 526 computation of taxable income under s. 265 of the Internal  
 527 Revenue Code or any other law, excluding 60 percent of any  
 528 amounts included in alternative minimum taxable income, as  
 529 defined in s. 55(b)(2) of the Internal Revenue Code, if the  
 530 taxpayer pays tax under s. 220.11(3).

531 3. In the case of a regulated investment company or real  
 532 estate investment trust, an amount equal to the excess of the

533 net long-term capital gain for the taxable year over the amount  
 534 of the capital gain dividends attributable to the taxable year.

535 4. That portion of the wages or salaries paid or incurred  
 536 for the taxable year which is equal to the amount of the credit  
 537 allowable for the taxable year under s. 220.181. This  
 538 subparagraph shall expire on the date specified in s. 290.016  
 539 for the expiration of the Florida Enterprise Zone Act.

540 5. That portion of the ad valorem school taxes paid or  
 541 incurred for the taxable year which is equal to the amount of  
 542 the credit allowable for the taxable year under s. 220.182. This  
 543 subparagraph shall expire on the date specified in s. 290.016  
 544 for the expiration of the Florida Enterprise Zone Act.

545 6. The amount of emergency excise tax paid or accrued as a  
 546 liability to this state under chapter 221 which tax is  
 547 deductible from gross income in the computation of taxable  
 548 income for the taxable year.

549 7. That portion of assessments to fund a guaranty  
 550 association incurred for the taxable year which is equal to the  
 551 amount of the credit allowable for the taxable year.

552 8. In the case of a nonprofit corporation which holds a  
 553 pari-mutuel permit and which is exempt from federal income tax  
 554 as a farmers' cooperative, an amount equal to the excess of the  
 555 gross income attributable to the pari-mutuel operations over the  
 556 attributable expenses for the taxable year.

557 9. The amount taken as a credit for the taxable year under  
 558 s. 220.1895.

559 10. Up to nine percent of the eligible basis of any  
 560 designated project which is equal to the credit allowable for  
 561 the taxable year under s. 220.185.

562 11. The amount taken as a credit for the taxable year  
 563 under s. 220.187.

564 12. The amount taken as a credit for the taxable year  
 565 under s. 220.192.

566 13. The amount taken as a credit for the taxable year  
 567 under s. 220.193.

568 14. Any portion of a qualified equity investment, as  
 569 defined in s. 288.991, which is claimed as a deduction by the  
 570 taxpayer for the purpose of calculating the taxpayer's net  
 571 income.

572 Section 4. Subsection (19) is added to section 213.053,  
 573 Florida Statutes, to read:

574 213.053 Confidentiality and information sharing.--

575 (19) Information relative to tax credits taken by a  
 576 taxpayer under s. 288.991 may be disclosed to the Office of  
 577 Tourism, Trade, and Economic Development or its employees or  
 578 agents that have been identified in writing by the office to the  
 579 department for use in performance of their official duties. All  
 580 information so obtained is subject to the same confidentiality  
 581 as imposed on the department.

582 Section 5. This act shall take effect July 1, 2008, and  
 583 applies to tax years ending after December 31, 2008.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 293

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Committee on Economic Development

Representative Weatherford offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Part XIII of chapter 288, Florida Statutes, consisting of section 288.991, is created to read:

288.991 New Markets Tax Credit.--

(1) PURPOSE.--The New Markets Tax Credit Program is established to encourage capital investment in rural and urban low-income communities by allowing state taxpayers to receive future credit against specified state taxes by investing in community development entities that make quality equity investments in qualified active low-income community businesses that create jobs by leveraging credit available from the federal New Markets Tax Credit Program.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Adjusted purchase price" means the product of the amount paid at issuance for a qualified equity investment and a fraction of which:

1. The numerator is the dollar amount of qualified

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 low-income community investments made in this state from the  
24 issuance of a qualified equity investment held by a qualified  
25 community development entity on the applicable credit allowance  
26 date; and

27 2. The denominator is the total dollar amount of qualified  
28 low-income community investments made from the issuance of a  
29 qualified equity investment held by a qualified community  
30 development entity on the applicable credit allowance date.

31 (b) "Credit allowance date" means:

32 1. The first anniversary of the date that a qualified  
33 equity investment is initially made; and

34 2. Each of the six subsequent anniversaries of that date.

35 (c) "Department" means the Department of Revenue.

36 (d) "Long-term debt security" means a debt instrument  
37 issued by a qualified community development entity, at par value  
38 or a premium, having an original maturity date of at least 7  
39 years from the date of issuance, with no acceleration for  
40 repayment, amortization, or prepayment features before its  
41 original maturity date and having no distribution, payment, or  
42 interest features related to the profitability of the qualified  
43 community development entity or the performance of the entity's  
44 investment portfolio. This paragraph does not limit the holder's  
45 ability to accelerate payments on the debt instrument in  
46 situations where the qualified community development entity has  
47 defaulted on covenants designed to ensure compliance with this  
48 section or s. 45D of the Internal Revenue Code of 1986, as  
49 amended.

50 (e) "Low-income community" means any population census  
51 tract within the state where:

52 1. The federal individual poverty rate is at least 20  
53 percent; or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 2. In the case of a tract that is:

55 a. Not located within a metropolitan area, the median  
56 family income does not exceed 80 percent of the statewide median  
57 family income; or

58 b. Located within a metropolitan area, the median family  
59 income does not exceed 80 percent of the greater of the  
60 statewide median family income or the metropolitan area median  
61 income.

62 (f) "Office" means the Office of Tourism, Trade, and  
63 Economic Development.

64 (g) "Qualified active low-income community business" has  
65 the same meaning as in s. 45D of the Internal Revenue Code of  
66 1986, as amended, but excludes any trade or business:

67 1. That derives or projects to derive 15 percent or more  
68 of its annual revenue from the rental or sale of real estate;

69 2. That engages predominantly in the development or  
70 holding of intangibles for sale or license;

71 3. That operates a private or commercial golf course,  
72 country club, massage parlor, hot tub facility, suntan facility,  
73 racetrack, or other facility used for gambling, or a store the  
74 principal business of which is the sale of alcoholic beverages  
75 for consumption off premises;

76 4. The principal activity of which is farming if the sum  
77 of the aggregate unadjusted bases or the fair market value of  
78 the assets owned by the business which are used in such trade or  
79 business, whichever is greater, and the aggregate value of the  
80 assets leased by the business used in such trade or business  
81 exceeds \$500,000. For the purposes of this subparagraph, two or  
82 more trades or businesses are treated as a single trade or  
83 business; and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

84 5. A business shall be considered a qualified active low-  
85 income community business for the duration of the qualified  
86 community development entity's investment in or loan to the  
87 business if the entity reasonably expects, at the time it makes  
88 the investment or loan that the business will continue to  
89 satisfy the requirements of being a qualified active low-income  
90 community business throughout the entire period of the  
91 investment or loan. The subsequent insolvency, including  
92 reorganization or liquidation in bankruptcy, receivership,  
93 winding up, or dissolution of a business does not disqualify the  
94 business from being a qualified active low-income community  
95 business if all other requirements of this section continue to  
96 be met.

97 (h) "Qualified community development entity" means an  
98 entity that is certified as a qualified community development  
99 entity by the Community Development Financial Institutions Fund  
100 of the United States Department of the Treasury pursuant to s.  
101 45D of the Internal Revenue Code of 1986, as amended, and that  
102 has entered into an allocation agreement with the fund with  
103 respect to tax credits authorized by section 45D, and includes  
104 this state within the service area set forth in the agreement.

105 (i) "Qualified equity investment" means an equity  
106 investment or long-term debt security issued by a qualified  
107 community development entity which:

108 1. Is acquired on or after July 1, 2008, solely in  
109 exchange for cash at the time of its original issuance;

110 2. Has at least 85 percent of its cash purchase price used  
111 by the qualified community development entity to make qualified  
112 low-income community investments within the 12-month period  
113 beginning on the date the cash is paid by the purchaser to the  
114 entity; and



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115 3. Is certified by the Office of Tourism, Trade, and  
116 Economic Development as a qualified equity investment pursuant  
117 to this section.

118 (j) "Qualified low-income community investment" means a  
119 capital or equity investment in or loan to a qualified active  
120 low-income community business which is made after July 1, 2008.  
121 The maximum amount of debt or equity issued by any one qualified  
122 active low-income community business on a collective basis with  
123 all of its affiliates, which may be included in the calculation  
124 of the numerator described in paragraph (a), is \$10 million,  
125 whether the investment is issued to one or more qualified  
126 community development entities.

127 (3) QUALIFIED EQUITY INVESTMENTS.--

128 (a) The office shall designate a comprehensive list of  
129 industries using the North American Industry Classification  
130 System, in consultation with Enterprise Florida, Inc., that will  
131 be used to direct investments for this program. The industries  
132 listed should lead to strong positive impacts on or benefits to  
133 the state and regional economies. The office shall submit a copy  
134 of the list to the President of the Senate and the Speaker of  
135 the House of Representatives upon completion of the list and any  
136 further modifications.

137 (b) A qualified community development entity that seeks to  
138 have an equity investment or long-term debt security designated  
139 as a qualified equity investment and eligible for tax credits  
140 under this section shall apply to the office. The qualified  
141 community development entity must submit an application on a  
142 form that the office prescribes, and that includes, but need not  
143 be limited to:

144 1. The name, address, tax identification number of the  
145 entity, and evidence of the entity's certification as a

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146 qualified community development entity;

147 2. A copy of the allocation agreement executed by the  
148 entity and the Community Development Financial Institutions  
149 Fund;

150 3. A certificate executed by an executive officer of the  
151 entity attesting that the allocation agreement remains in effect  
152 and has not been revoked or cancelled by the Community  
153 Development Financial Institutions Fund;

154 4. A description of the proposed amount, structure, and  
155 purchaser of the equity investment or long-term debt security;

156 5. The name and tax identification number of any taxpayer  
157 eligible to redeem tax credits earned as a result of the  
158 issuance of the qualified equity investment;

159 6. Information regarding the proposed use of proceeds from  
160 the issuance of a qualified equity investment, which must  
161 include the types of qualified active low-income community  
162 businesses that will be funded and an estimate of the percentage  
163 of qualified low-income community investments that will be made  
164 statewide;

165 7. A statement setting forth the entity's plans to invest  
166 in only those entities engaged in industries identified for this  
167 program by the office;

168 8. A statement setting forth the entity's plans for the  
169 development of relationships with community-based organizations,  
170 local community development offices and organizations, and  
171 economic development organizations, as well as any steps the  
172 entity has taken to implement these relationships; and

173 9. A nonrefundable application fee of \$1,000 per  
174 application submitted.

175 (c) Within 30 days after receipt of a completed  
176 application containing the information necessary for the office

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177 to certify a potential qualified equity investment, including  
178 payment of the application fee, the office shall grant or deny  
179 the application in full or in part. If the office denies any  
180 part of the application, it shall inform the qualified community  
181 development entity of the grounds for the denial. If the  
182 qualified community development entity fails to provide the  
183 information or complete its application within the 15-day  
184 period, the application remains denied and must be resubmitted  
185 in full with a new submission date.

186 (d) If an application is deemed complete, the office may  
187 certify the proposed equity investment or long-term debt  
188 security as a qualified equity investment and eligible for tax  
189 credits under this section. The office shall provide written  
190 notice of the certification to the qualified community  
191 development entity and the department. The notice must include  
192 the maximum amount of tax credits that may be earned from the  
193 issuance of the qualified equity investment, which shall be  
194 calculated with reference to the estimate of the percentage of  
195 qualified low-income community investments made in this state by  
196 the qualified community development entity included in the  
197 application, and the names of those taxpayers who are eligible  
198 to redeem the credits and their respective credit amounts. The  
199 office shall certify qualified equity investments in the order  
200 applications are received. Applications received on the same day  
201 shall be deemed to have been received simultaneously.

202 (e) Once the office has certified qualified equity  
203 investments that, on a cumulative basis, are eligible for \$105  
204 million in tax credits, of which no more than \$15 million may be  
205 claimed per state fiscal year exclusive of tax credits carried  
206 forward, and on or after June 30, 2015, the office may not  
207 certify any more qualified equity investments. If a pending

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208 request cannot be fully certified, the office shall certify the  
209 portion that may be certified unless the qualified community  
210 development entity elects to withdraw its request rather than  
211 receive partial credit.

212 (f) Within 30 days after receiving notice of  
213 certification, the qualified community development entity shall  
214 issue the qualified equity investment and receive cash in the  
215 amount of the certified amount. The qualified community  
216 development entity must provide the office with evidence of the  
217 receipt of the cash investment within 10 business days after  
218 receipt. If the qualified community development entity does not  
219 receive the cash investment and issue the qualified equity  
220 investment within 30 days following receipt of the certification  
221 notice, the certification lapses and the entity may not issue  
222 the qualified equity investment without reapplying to the office  
223 for certification. A certification that lapses reverts back to  
224 the office and must be reissued in accordance with the  
225 application process outlined in this subsection.

226 (4) TAX CREDITS.--

227 (a) A taxpayer that makes a qualified equity investment  
228 earns a vested tax credit against taxes imposed by s. 220.11 or  
229 s. 624.509. The taxpayer or a subsequent holder of the qualified  
230 equity investment on the credit allowance date of the qualified  
231 equity investment may use a portion of the vested tax credit  
232 equal to 8.33 percent of the adjusted purchase price of the  
233 qualified equity investment during the calendar year in which  
234 the credit allowance date falls.

235 (b) A taxpayer's cash investment in a qualified equity  
236 investment is considered a qualified low-income community  
237 investment only to the extent that the cash is invested within  
238 the 12-month period beginning on the date the cash is paid by

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239 the taxpayer to the community development entity.

240 (c) A taxpayer may not redeem any portion of a tax credit  
241 in a tax year in which the tax credit exceeds the taxpayer's  
242 state tax liability for the tax year. Such portion may be  
243 carried forward for use in a subsequent tax year; however, all  
244 unused tax credits expire on December 31, 2029.

245 (d) A tax credit authorized under this section is not  
246 refundable or transferable. However, if a qualified equity  
247 investment is transferred, any unused tax credits transfer with  
248 the investment. Tax credit amounts, including any carryover  
249 amounts, from credit allowance dates before the date of transfer  
250 do not transfer with the qualified equity investment. Tax  
251 credits earned by a partnership, limited liability company, S  
252 corporation, or other pass-through entity may be allocated to  
253 the partners, members, or shareholders of such entity for direct  
254 redemption in accordance with any agreement between the  
255 partners, members, or shareholders.

256 (e) Tax credits for taxpayers who are insurance companies  
257 subject to the insurance premium tax under s. 624.509 must be  
258 claimed against the insurance premium tax. An insurance company  
259 claiming a credit against the insurance premium tax is not  
260 required to pay any additional retaliatory tax levied pursuant  
261 to s. 624.5091. Because credits under this section are available  
262 to an insurance company, s. 624.5091 does not limit such credit  
263 in any manner.

264 (5) CALCULATION OF CREDIT.--

265 (a) Within 30 days after each credit allowance date, each  
266 qualified community development entity shall submit to the  
267 office the following with respect to each qualified equity  
268 investment issued by the entity:

269 1. A listing, certified by an executive officer of the

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270 entity, of all qualified low-income community investments made  
271 by the entity from the proceeds of a qualified equity investment  
272 and held as of the credit allowance date, which must include the  
273 name of each qualified active low-income community business  
274 funded, the location of the principal office of each such  
275 business, the type of business, the amount of the qualified low-  
276 income community investment in each business, and the total of  
277 qualified low-income community investments by all community  
278 development entities in each business;

279 2. Bank records, records of wire transfers of funds, or  
280 other similar documents that reflect the investments listed  
281 above;

282 3. A calculation, certified by the chief financial or  
283 accounting officer of the entity, of the amount of qualified  
284 low-income community investments made in this state using  
285 proceeds from the issuance of the qualified equity investment  
286 held by the entity as of the credit allowance date, and the  
287 total qualified low-income community investments made using  
288 proceeds of the issuance of the qualified equity investment held  
289 by the entity on the credit allowance date. In making this  
290 calculation, an investment shall be deemed to be held by a  
291 qualified community development entity even if the investment  
292 has been sold or repaid if the entity reinvests an amount equal  
293 to the capital returned to or recovered from the original  
294 investment, exclusive of any profits realized, in another  
295 qualified low-income community investment within 12 months after  
296 receipt of such capital. An entity is not required to reinvest  
297 capital returned from a qualified low-income community  
298 investment after the sixth anniversary of the issuance of the  
299 qualified equity investment for which the proceeds were used to  
300 make the qualified low-income community investment, and the

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301 qualified low-income community investment shall be deemed to be  
302 held by the entity through the seventh anniversary of the  
303 qualified equity investment's issuance;

304 4. An attestation from the entity's chief financial or  
305 accounting officer that no redemption or principal payment was  
306 made with respect to the qualified equity investment since the  
307 previous credit allowance date; and

308 5. Any information relating to the recapture of any  
309 federal tax credits available with respect to a qualified equity  
310 investment which the entity received since the prior credit  
311 allowance date.

312 (b) Within 20 days after receipt of the information listed  
313 in paragraph (a), the office shall certify in writing to the  
314 qualified community development entity and to the department the  
315 amount of credit that is eligible for use for the credit  
316 allowance date. The notice must include a listing of those  
317 taxpayers that are eligible to redeem the tax credit for the  
318 credit allowance date.

319 (6) AUDIT AND RECAPTURE.--

320 (a) A qualified community development entity that receives  
321 an annual allocation of tax credits in an amount equal to or in  
322 excess of \$500,000 shall be treated as a recipient and required  
323 to participate in a state single audit pursuant to s. 215.97.  
324 The office shall be deemed the state awarding agency and  
325 coordinating agency. In addition to the required financial  
326 reporting package, the audit must attest to the entity's  
327 adherence to the performance conditions enumerated in this  
328 section as they relate to the recapture of the tax credit under  
329 paragraph (b). Taxpayers that are not qualified community  
330 development entities may not be treated as subrecipients or  
331 otherwise required to participate in the state single audit

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332 program since such persons do not control adherence to the  
333 performance standards of this program.

334 (c) The office shall disqualify a qualified community  
335 development entity from receiving additional Florida markets tax  
336 credits if more than 50 percent of qualified equity investments  
337 during the first three years of operation become insolvent,  
338 reorganized or liquidated in bankruptcy, receivership, winding  
339 up, or dissolved. In addition, the office shall recapture 50  
340 percent of all credits issued to such qualified community  
341 development entity.

342 (b) The office shall order recapture of any tax credit  
343 authorized under this section with respect to a qualified equity  
344 investment if:

345 1. Any amount of any federal tax credit which is eligible  
346 for a tax credit under this section is recaptured under s. 45D  
347 of the Internal Revenue Code of 1986, as amended;

348 2. The qualified community development entity is not  
349 deemed to be a qualified community development entity under the  
350 federal New Markets Tax Credit Program;

351 3. The qualified community development entity redeems or  
352 makes a principal repayment before the seventh anniversary of  
353 the issuance of the qualified equity investment;

354 4. The qualified community development entity fails to  
355 make qualified low-income community investments in qualified  
356 active low-income community businesses;

357 5. The qualified community development entity fails to  
358 maintain at least 85 percent of the proceeds of the qualified  
359 equity investment in qualified low-income community investments  
360 at any time before the seventh anniversary of the issuance of  
361 the qualified equity investment and remains in compliance with  
362 subparagraph (2)(i)2.;



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363 6. The qualified community development entity fails to  
364 provide to the office and the department any of the information  
365 or reports required by this section; or

366 7. The office determines as a result of a state single  
367 audit or an examination by the office that a taxpayer received  
368 tax credits pursuant to this section to which the taxpayer was  
369 not entitled.

370 (c) The office shall provide notice to the qualified  
371 community development entity and to the department of any  
372 proposed recapture of tax credits pursuant to this subsection.  
373 The entity shall have 90 days to cure any deficiency indicated  
374 in the office's original recapture notice and avoid such  
375 recapture. If the entity fails or is unable to cure such  
376 deficiency within the 90-day period, the office shall provide  
377 the entity and the department with a final order of recapture.  
378 The qualified community development entity is responsible for  
379 providing copies of the final order of recapture to taxpayers  
380 owning the tax credits at issue.

381 (d) Any tax credit for which a final recapture order has  
382 been issued shall be recaptured by the department from the  
383 taxpayer who claimed the tax credit on a tax return, or in the  
384 case of multiple succeeding entities, in the order of tax-credit  
385 succession, and such funds shall be paid into the General  
386 Revenue Fund. Such action by the department does not constitute  
387 an audit or otherwise alter the department's ability to audit  
388 the taxpayer.

389 (7) ANNUAL REPORTING.--

390 (a) Within 120 days after the end of a calendar year that  
391 includes a credit allowance date, each community development  
392 entity that has an equity investment or long-term debt security  
393 certified as a qualified equity investment under this section

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394 shall provide the office with:

395 1. The entity's annual financial statements for the  
396 immediately preceding calendar year, audited by an independent  
397 certified public accountant;

398 2. Using the North American Industry Classification System  
399 Code, the types of businesses funded, the counties where the  
400 qualified active low-income community businesses are located,  
401 the dollars invested, and the number of jobs created and  
402 retained by qualified active low-income community businesses  
403 funded in a form satisfactory to the office; and

404 3. A statement describing the relationships that the  
405 entity has established with community-based organizations, local  
406 community development offices and organizations, and economic  
407 development organizations, and a summary of the outcomes  
408 resulting from those relationships.

409 4. Other information as prescribed by the office and  
410 documentation to demonstrate continued certification by the  
411 federal program.

412 (b) The office shall prepare an annual report of all  
413 qualified low-income community investments made in this state  
414 from the proceeds of qualified equity investments, which  
415 includes relevant statistics from the North American Industry  
416 Classification System Code, the county or counties where the  
417 qualified low-income community investments are located, the  
418 dollars invested, the number of jobs created and retained by  
419 business in which qualified low-income community investments  
420 have been made, and the value of applicable state tax credits  
421 claimed for the latest year for which such information is  
422 available. The office shall submit a copy to the Governor, the  
423 President of the Senate, and the Speaker of the House of  
424 Representatives each July 1, beginning in 2010, and may post the

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425 annual report on the office's website.

426 (8) EXAMINATION.--

427 (a) The office may conduct examinations to verify that tax  
428 credits under this section have been received and applied  
429 according to the requirements of this section and to verify  
430 information provided by qualified community development entities  
431 to the office.

432 (b) The office may revoke or modify any written decision  
433 qualifying, certifying, or otherwise granting eligibility for  
434 tax credits under this section if it is discovered that the  
435 qualified community development entity submitted any false  
436 statement, representation, or certification in any application,  
437 record, report, plan, or other document filed in an attempt to  
438 receive the tax credits.

439 (c) A qualified community development entity that submits  
440 information under this section which includes fraudulent  
441 information is liable for reimbursement of the reasonable costs  
442 and fees associated with the review, processing, investigation,  
443 and prosecution of the fraudulent claim plus a penalty in an  
444 amount double the credit amount certified and claimed by the  
445 holders of the entity's qualified equity investments, which  
446 penalty is in addition to any criminal penalty to which the  
447 taxpayer is liable for the same acts.

448 (9) RULEMAKING AUTHORITY.--

449 (a) The office may adopt rules pursuant to ss. 120.536(1)  
450 and 120.54 to administer this section.

451 (b) The department may adopt rules pursuant to ss.  
452 120.536(1) and 120.54 to administer this section.

453 (10) EXPIRATION.--This section expires December 31, 2021.

454 Section 2. Subsection (8) of section 220.02, Florida  
455 Statutes, is amended to read:

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456 220.02 Legislative intent.--

457 (8) It is the intent of the Legislature that credits  
458 against either the corporate income tax or the franchise tax be  
459 applied in the following order: those enumerated in s. 631.828,  
460 those enumerated in s. 220.191, those enumerated in s. 220.181,  
461 those enumerated in s. 220.183, those enumerated in s. 220.182,  
462 those enumerated in s. 220.1895, those enumerated in s. 221.02,  
463 those enumerated in s. 220.184, those enumerated in s. 220.186,  
464 those enumerated in s. 220.1845, those enumerated in s. 220.19,  
465 those enumerated in s. 220.185, those enumerated in s. 220.187,  
466 those enumerated in s. 220.192, ~~and~~ those enumerated in s.  
467 220.193, and those enumerated in s. 288.991.

468 Section 3. Paragraph (a) of subsection (1) of section  
469 220.13, Florida Statutes, is amended to read:

470 220.13 "Adjusted federal income" defined.--

471 (1) The term "adjusted federal income" means an amount  
472 equal to the taxpayer's taxable income as defined in subsection  
473 (2), or such taxable income of more than one taxpayer as  
474 provided in s. 220.131, for the taxable year, adjusted as  
475 follows:

476 (a) Additions.--There shall be added to such taxable  
477 income:

478 1. The amount of any tax upon or measured by income,  
479 excluding taxes based on gross receipts or revenues, paid or  
480 accrued as a liability to the District of Columbia or any state  
481 of the United States which is deductible from gross income in  
482 the computation of taxable income for the taxable year.

483 2. The amount of interest which is excluded from taxable  
484 income under s. 103(a) of the Internal Revenue Code or any other  
485 federal law, less the associated expenses disallowed in the  
486 computation of taxable income under s. 265 of the Internal

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487 Revenue Code or any other law, excluding 60 percent of any  
488 amounts included in alternative minimum taxable income, as  
489 defined in s. 55(b)(2) of the Internal Revenue Code, if the  
490 taxpayer pays tax under s. 220.11(3).

491 3. In the case of a regulated investment company or real  
492 estate investment trust, an amount equal to the excess of the  
493 net long-term capital gain for the taxable year over the amount  
494 of the capital gain dividends attributable to the taxable year.

495 4. That portion of the wages or salaries paid or incurred  
496 for the taxable year which is equal to the amount of the credit  
497 allowable for the taxable year under s. 220.181. This  
498 subparagraph shall expire on the date specified in s. 290.016  
499 for the expiration of the Florida Enterprise Zone Act.

500 5. That portion of the ad valorem school taxes paid or  
501 incurred for the taxable year which is equal to the amount of  
502 the credit allowable for the taxable year under s. 220.182. This  
503 subparagraph shall expire on the date specified in s. 290.016  
504 for the expiration of the Florida Enterprise Zone Act.

505 6. The amount of emergency excise tax paid or accrued as a  
506 liability to this state under chapter 221 which tax is  
507 deductible from gross income in the computation of taxable  
508 income for the taxable year.

509 7. That portion of assessments to fund a guaranty  
510 association incurred for the taxable year which is equal to the  
511 amount of the credit allowable for the taxable year.

512 8. In the case of a nonprofit corporation which holds a  
513 pari-mutuel permit and which is exempt from federal income tax  
514 as a farmers' cooperative, an amount equal to the excess of the  
515 gross income attributable to the pari-mutuel operations over the  
516 attributable expenses for the taxable year.

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517 9. The amount taken as a credit for the taxable year under  
518 s. 220.1895.

519 10. Up to nine percent of the eligible basis of any  
520 designated project which is equal to the credit allowable for  
521 the taxable year under s. 220.185.

522 11. The amount taken as a credit for the taxable year  
523 under s. 220.187.

524 12. The amount taken as a credit for the taxable year  
525 under s. 220.192.

526 13. The amount taken as a credit for the taxable year  
527 under s. 220.193.

528 14. Any portion of a qualified equity investment, as  
529 defined in s. 288.991, which is claimed as a deduction by the  
530 taxpayer for the purpose of calculating the taxpayer's net  
531 income.

532 Section 4. Subsection (19) is added to section 213.053,  
533 Florida Statutes, to read:

534 213.053 Confidentiality and information sharing.--

535 (19) Information relative to tax credits taken by a  
536 taxpayer under s. 288.991 may be disclosed to the Office of  
537 Tourism, Trade, and Economic Development or its employees or  
538 agents that have been identified in writing by the office to the  
539 department for use in performance of their official duties. All  
540 information so obtained is subject to the same confidentiality  
541 as imposed on the department.

542 Section 5. This act shall take effect July 1, 2008, and  
543 applies to tax years ending after December 31, 2008.

544  
545 -----

546 T I T L E A M E N D M E N T

547 Remove the entire title and insert:

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548 An act relating to new markets tax credits; creating part  
549 XIII of ch. 288, F.S., consisting of s. 288.991, F.S.;  
550 creating the New Markets Tax Credit Program; providing  
551 definitions; authorizing the Office of Tourism, Trade, and  
552 Economic Development to develop a list of industries, in  
553 consultation with Enterprise Florida, Inc., in which  
554 equity investments can be made; qualify certain equity  
555 investments as eligible for tax credits; providing an  
556 application process; requiring an application fee;  
557 providing for the certification of an investment;  
558 providing for notice to the applicant and the Department  
559 of Revenue; providing for a limit on the amount of  
560 investments the office may certify; requiring the  
561 certified equity investments to be issued within a certain  
562 timeframe; providing that a taxpayer who holds a qualified  
563 equity investment in a qualified low-income business on  
564 the credit allowance date of the investment is entitled to  
565 a nonrefundable, nontransferable tax credit for the  
566 taxable year in which the credit allowance date falls;  
567 limiting the amount of the tax credit that may be redeemed  
568 in a fiscal year; authorizing a taxpayer to carry over any  
569 amount of the tax credit that the taxpayer is prohibited  
570 from redeeming in a taxable year to a subsequent taxable  
571 year; providing for the redemption of tax credits earned  
572 by certain business entities and by the partners, members,  
573 or shareholders of those entities; specifying how tax  
574 credits may be claimed by insurance companies; providing  
575 how the amount of tax credits available to the taxpayer  
576 will be calculated; requiring the calculations to be  
577 certified and accompanied by audited financial statements  
578 and notarized affidavits; requiring the office to

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579 disqualify community development entities under certain  
580 circumstances; requiring the department to recapture tax  
581 credits from certain taxpayers under certain  
582 circumstances; requiring notice; requiring community  
583 development entities that have certified investments to  
584 report certain information to the office; requiring the  
585 office to prepare annual reports on low-income community  
586 investments made in this state; authorizing the department  
587 to conduct examinations to verify receipt and application  
588 of tax credits; authorizing the department to pursue  
589 recovery of certain funds; authorizing the office to  
590 revoke or modify certain decisions relating to eligibility  
591 for tax credits under certain circumstances; providing for  
592 applicant liability for costs and fees relating to  
593 investigations of fraudulent claims; providing for  
594 taxpayer liability for reimbursement of fraudulently  
595 claimed tax credits; providing a penalty; authorizing the  
596 office and the department to adopt rules; providing for  
597 future repeal of the tax credit program; amending s.  
598 220.02, F.S.; revising legislative intent with respect to  
599 the order of tax credits to include the New Markets Tax  
600 Credit; amending s. 220.13, F.S.; revising a definition;  
601 amending s. 213.053, F.S.; authorizing the Department of  
602 Revenue to share confidential taxpayer information with  
603 the Office of Tourism, Trade, and Economic Development;  
604 providing for application of the tax credit; providing an  
605 effective date.







HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 585 Unemployment Compensation  
SPONSOR(S): Dorworth  
TIED BILLS: IDEN./SIM. BILLS: SB 1026

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	_____	Fennell <i>ef</i>	Croom <i>SC</i>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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SUMMARY ANALYSIS

This bill authorizes the Agency for Workforce Innovation (AWI) to develop and implement a system for the payment of Unemployment Compensation (UC) benefits by electronic funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of electronic payment that the agency determines is commercially viable and cost-effective.

The bill has no significant impact on state or local expenditures.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government - The bill decreases the responsibilities of AWI through a reduction in the number of UC mailings that would occur for each individual benefits claim.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Prior to 2003, all UC benefit payments were issued via a paper check produced by the Department of Financial Services and mailed to each claimant by the agency. During the 2003 Legislative session, s. 443.111, F.S., was amended to provide that benefits could also be paid electronically. AWI implemented an electronic funds transfer (EFT) program, which today is used by almost one-half of all UC claimants to receive their benefits. Approximately 1 million benefit payments are electronically deposited each year. However, despite half of the claimants opting for direct deposit of their benefits, the UC program still mails over 1.1 million paper checks a year.

Beginning in October 2007, the cost of mailing UC material is no longer funded directly by the U.S. Department of Labor (USDOL) through the U.S. Postal Service G-12 postal permit. Rather, USDOL annually allocates to each state the amount of funds the state may use to cover the cost of UC mailings.

Section 96 of the Workforce Innovation Act of 2000 (chapter 2000-165, Laws of Florida), created subsection (4) of s. 409.942, F.S., requiring Workforce Florida, Inc., through AWI to establish an electronic benefit transfer program for the use and management of education, training, child care, transportation and other program benefits under its direction. It further requires the workforce electronic benefit transfer (EBT) program be designed to enable an individual receiving assistance from the Department of Children and Family Services (DCF) to use the same card that DCF furnished the individual. DCF is charged with the responsibility of assisting Workforce Florida, Inc., in developing an EBT for the workforce system that is fully compatible with the DCFs EBT system.

AWI has studied the EBT program provided through DCF and learned that the card is a non-branded card that cannot be used universally like a VISA or MasterCard brand. DCFs clients can only use the benefits provided by DCF for limited purposes, as such, the card is accordingly limited in the number of business establishments that can accept the card. Since UC is not a needs-based program, but instead a benefit from employment, customers of the program are free to use their benefits in any manner dictated by their lifestyles.

##### **Effect of Proposed Changes**

HB 585 would allow AWI to develop and implement a system for the payment of UC benefits by electronic funds transfer, including, but not limited to, debit cards, electronic payment cards, or any other means of electronic payment that the agency determines is commercially viable and cost-effective.

#### C. SECTION DIRECTORY:

**Section 1.** Authorizes AWI to develop and implement an electronic system for the payment of unemployment compensation benefits through debit cards, electronic payment cards, or any other means of electronic payment that the agency deems to be commercially viable and cost-effective.

The bill also provides the agency with specific authority to adopt rules for the implementation of the electronic benefit payment system.

**Section 2.** Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Based on the percentage fee associated with point-of-sale transactions using branded EBT cards (estimated at 1%-5% of the transaction), there may be a potential increase in fees to business. However, since UC recipients are able to also utilize the proposed EBT card to withdraw available cash, the amount of any increase in fees to business is unknown.

### D. FISCAL COMMENTS:

Initially, there may be a cost related to information technology adjustments that can be absorbed within the AWI base budget, and will be offset by savings from the reduction in postage. The total recurring effect is a savings on the cost of postage estimated at over \$317,000 per year from federal funds in the Employment Security Administration Trust Fund. An additional savings may be realized by the Department of Financial Services in the reduction of printing costs for printing benefit checks.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

#### 2. Other:

### B. RULE-MAKING AUTHORITY:

HB 585 provides AWI with specific authority to adopt rules for the implementation of the electronic benefit payment system.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to unemployment compensation; amending s.  
 3           443.111, F.S.; authorizing the Agency for Workforce  
 4           Innovation to develop and implement a system for the  
 5           payment of benefits by electronic funds transfer;  
 6           authorizing the agency to adopt rules; providing an  
 7           effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Paragraph (a) of subsection (1) of section  
 12           443.111, Florida Statutes, is amended to read:

13           443.111 Payment of benefits.--

14           (1) MANNER OF PAYMENT.--Benefits are payable from the fund  
 15           in accordance with rules adopted by the Agency for Workforce  
 16           Innovation, subject to the following requirements:

17           (a) Benefits are payable by mail or electronically.  
 18           Notwithstanding s. 409.942(4), the agency may develop and  
 19           implement a system for the payment of benefits by electronic  
 20           funds transfer, including, but not limited to, debit cards,  
 21           electronic payment cards, or any other means of electronic  
 22           payment that the agency deems to be commercially viable and  
 23           cost-effective. The agency may adopt rules pursuant to ss.  
 24           120.536(1) and 120.54 to implement this paragraph.

25           Section 2. This act shall take effect July 1, 2008.










**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 593 Florida Research Commercialization Matching Grant Program

**SPONSOR(S):** Precourt and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 738, SB 1120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Economic Development		West <i>SPW</i>	Croom 
2) Economic Expansion & Infrastructure Council			
3) Policy & Budget Council			
4)			
5)			

**SUMMARY ANALYSIS**

This bill creates the Florida Research Commercialization Matching Grant Program to assist small or startup companies that take advantage of federal and state partnerships to overcome a funding gap faced by many small companies for the creation of new technology-based products. All applicants for the Florida Research Grant Program:

- Must be a small business that is registered with the Department of State; and
- Must be in the process of applying for or have received a federal award under the Small Business Innovation Research Program or the Small Business Technology Transfer Program administered by the U.S. Small Business Administration Office of Technology

The following criteria must be met to qualify for the Florida Research Commercialization Matching Grant Program:

- At least 20 percent of the total project funding must come from the federal government;
- No more than 25 percent of the funding may come from the Florida Research Commercialization Matching Grant Program;
- At least 25 percent of the project funding must come from sources other than the federal government and the state program; and
- Projects funded by this program must be conducted in the state.

The bill also:

- Creates a statewide advisory committee to establish criteria and approve grant awards;
- Creates a grant-selection committee to review applications, implement consistent selection criteria, and recommend award recipients;
- Requires Enterprise Florida, Inc., to report on program progress and results; and
- Provides that the program shall make 20 to 30 awards ranging from \$100,000 to \$250,000 each, for a total of \$5 million. The bill does not contain an appropriation.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - This bill creates a 15-person statewide advisory committee, a 5-person grant-selection committee, and names Enterprise Florida, Inc. as the program administrator.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

The commercialization of new ideas and technologies brings business startups in emerging industries to the marketplace. According to Enterprise Florida, Inc., once brought to market, these innovations spur economic productivity and growth. A state's ability to foster research and development and commercialization activities greatly determines its long-term economic vitality and its success in providing its citizens with high-wage, high value-added jobs that can prosper in the ever-changing global marketplace.<sup>1</sup>

##### Federal Programs Supporting Technology Commercialization<sup>2</sup>

The U.S. Small Business Administration Office of Technology administers the Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer Program (STTR) to encourage small business to explore their technological potential and provide the incentive to profit from its commercialization.

The SBIR and the STTR target the entrepreneurial sector because that is where most innovation and innovators thrive. However, the risk and expense of conducting serious research and development efforts are often beyond the means of many small businesses. By reserving a specific percentage of federal research and development funds for small business, these businesses are protected and able to compete on the same level as larger businesses. SBIR and STTR fund the critical startup and development stages and it encourages the commercialization of the technology, product, or service, which, in turn, stimulates the U.S. economy. The only substantial difference between the programs is that the SBIR rewards for-profit businesses only, while a nonprofit research institution may qualify for the STTR.

Small businesses must meet certain eligibility criteria to participate in the SBIR and STTR program. The business must be American-owned and independently operated; must have a principal researcher employed by business; and must not have more than 500 employees.

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<sup>1</sup> 2007 Legislative Proposal, Florida Research Commercialization Matching Grant Program, An Initiative of the Enterprise Florida Technology Entrepreneurship and Capital Committee.

<sup>2</sup> U.S. Small Business Administration, available online at: <http://www.sba.gov/sbir/indexsbir-sttr.html#sttr>.

Each year, eleven federal departments<sup>3</sup> and agencies are required by SBIR (five by the STTR<sup>4</sup>) to reserve a portion of their research and development funds for award to small business. These agencies designate research and development topics and accept proposals.

The programs consist of three phases. Following submission of proposals, agencies make SBIR and STTR awards based on small business qualification, degree of innovation, technical merit, and future market potential. Small businesses that receive awards then begin a three-phase program.

- Phase I is the startup phase. Awards, up to \$100,000 for approximately 6 months, are provided to support the exploration of the technical merit or feasibility of an idea or technology;
- Phase II awards, up to \$750,000 for as many as 2 years, expand on Phase I results. During this time, the research and development work is performed, products are created, and the developer evaluates commercialization potential. Only Phase I award winners are considered for Phase II awards; and
- Phase III is the period during which Phase II innovation moves from the laboratory into the marketplace. No SBIR funds support this phase. The small business must find funding in the private sector or other non-SBIR federal agency funding.

In 2004, Florida received a total of:

- 153 Phase I and Phase II SBIR awards totaling \$42,228,732 ranking Florida twelfth among all states; and
- 29 Phase I and Phase II STTR awards totaling \$7,764,217, ranking Florida seventh among all states.

Florida trails most states in participation of the federal programs, ranking 31<sup>st</sup> in the country in ability to move companies from Phase I to Phase II.

### **Effects of Proposed Changes**

This bill creates the Florida Research Commercialization Matching Grant Program to:

- Increase federal research money received by small businesses in the state through the SBIR and SBTT programs;
- Accelerate the entry of new technology-based products into the marketplace;
- Produce additional technology-based jobs for the state;
- Provided leveraged resources to increase the effectiveness of applicant's projects;
- Speed up the commercialization of promising technologies;
- Encourage the establishment and growth of high-quality, advanced technology firms in the state; and
- Accelerate deal flow and enhance Florida's investment infrastructure.

All applicants for the Florida Research Grant Program:

- Must be a small business that is registered with the Department of State (DOS);
- Must be in the process of applying for or have received a federal award under the SBIR or STTR program.

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<sup>3</sup> U.S. Departments of: Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Transportation; and the Environmental Protection Agency, the National Aeronautics and Space Administration, and the National Science Foundation.

<sup>4</sup> U.S. Departments of: Defense, Energy, Health and Human Services; the National Aeronautics and Space Administration, and the National Science Foundation.

For awards under Phase II of the SBIR or STTR, an applicant must have received a Phase I award and an invitation by the U.S. Small Business Administration to apply for the Phase II award.

The bill creates a 15-member statewide advisory committee to ensure inclusion of statewide perspectives in the development and administration of the Florida Research Commercialization Matching Grant Program, establish criteria for grant awards, approve grant awards, review program progress, and communicate with policy makers. Committee membership must reflect the diverse nature of research and development and capital investment industries in the state. The Governor, the President of the Senate, and the Speaker of the House of Representatives will each appoint one member apiece from the following four entities:

- A Florida university technology commercialization organization;
- A state research institute;
- Florida's early stage venture capital community; and
- Entrepreneurs representing a startup company.

In addition, the Governor shall appoint one committee member from a regional technology development organization in the state and one member of the board of the Florida Research Consortium. The chairperson of the Technology Entrepreneurship and Capital Board Committee of Enterprise Florida, Inc., shall serve as a member on the board.

Committee members will serve without compensation but may be reimbursed for travel and per diem expenses. The committee's initial meeting shall be held no later than October 1, 2008 and subsequent meetings will be held upon the call of the chairperson. The committee shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on September 1 of every year starting in 2009.

The bill establishes a grant-selection committee to review applications, implement consistent selection criteria, and recommend award recipients to the statewide advisory committee. The members of the selection committee must be experienced in conducting, reviewing, and evaluating research and development projects, or persons who have been successful in developing commercialization programs and managing investment in early-stage companies. The committee will have no fewer than five members chosen by Enterprise Florida, Inc., the program administrator.

The following criteria must be met to qualify for the Florida Research Commercialization Matching Grant Program:

- At least 20 percent of project funding must come from the federal government.
- No more than 25 percent of project funding may come from the Florida Research Commercialization Matching Program.
- At least 25 percent of the project funding must come from sources other than the federal government and the state program.
- Projects funded by this program must be conducted in the state.

In order to assist companies that are awarded a Florida Research Commercialization Matching Grant transition from Phase II to Phase III under the SBIR or STTR the bill requires the program administrator to establish a database to track grant recipients progress and provide them access to investors and venture capital firms.

The Florida Research Commercialization Matching Grant Program is directed to make 20 to 30 awards ranging from \$100,000 to \$250,000 each, for a total of \$5 million annually.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.9552, F.S., the Florida Research Commercialization Matching Grant Program.

Section 2. Provides the program shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The program created by this bill may attract new businesses and high-wage jobs to Florida. It is possible that a positive impact on state government revenues could result in increased tax revenues.

2. Expenditures:

There is no appropriation in the bill. The program allows 20 to 30 grants of \$100,000 to \$250,000 to be awarded annually, for a total of \$5 million.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The program created by this bill may attract new businesses and new high-wage jobs to Florida. It is possible that a positive impact on local government revenues could result in increased local tax revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that have received federal funding through the SBIR or STTR would be eligible for additional funding through the Florida Research Commercialization Matching Grant Program.

D. FISCAL COMMENTS:

There is no appropriation in this bill. However, the program will cost \$5 million annually.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not address whether the members of the grant-selection committee serve with or without compensation. The bill does not address the cost, if any, to the program administrator of establishing the database required by this bill.

D. STATEMENT OF THE SPONSOR:

No statement submitted

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**



1                                   A bill to be entitled  
 2           An act relating to the Florida Research Commercialization  
 3           Matching Grant Program; creating s. 288.9552, F.S.;  
 4           providing legislative findings and intent; creating the  
 5           program; providing definitions; creating a statewide  
 6           advisory committee for certain purposes; providing for the  
 7           members of the committee to be reimbursed for per diem and  
 8           travel expenses; requiring reports; designating a  
 9           fiduciary actor; providing for program administrative  
 10          costs and award disbursement; providing that unallocated  
 11          legislative appropriations for the matching grant program  
 12          at the end of the fiscal year shall carry forward to  
 13          succeeding fiscal years as authorized by state law;  
 14          providing for a program administrator; providing  
 15          responsibilities of the program administrator; creating a  
 16          grant-selection committee; providing responsibilities of  
 17          the grant-selection committee; providing applicant  
 18          eligibility guidelines; providing for awards to successful  
 19          applicants; providing an effective date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1. Section 288.9552, Florida Statutes, is created  
 24   to read:

25           288.9552 Florida Research Commercialization Matching Grant  
 26   Program.--

27           (1) PURPOSE; GOALS AND OBJECTIVES; CREATION OF PROGRAM.--

28           (a) The purpose of the Florida Research Commercialization  
 29 Matching Grant Program is to increase the amount of federal  
 30 funding coming to this state which will produce the kind of  
 31 distinctive technologies that drive today's knowledge-based  
 32 economy. By leveraging federal, state, and private-sector  
 33 resources, the program intends to accelerate the innovation  
 34 process and more efficiently transform research results into  
 35 products in the marketplace.

36           (b) The matching grant program is specifically intended to  
 37 be a catalyst for small or startup companies that can take  
 38 advantage of federal and state partnerships in order to  
 39 accelerate their growth and market penetration by helping to  
 40 overcome the funding gap faced by many small companies that are  
 41 based in this state. Specific goals and objectives of the  
 42 program include:

43           1. Increasing the amount of federal research moneys  
 44 received by small businesses in this state through awards from  
 45 the Small Business Innovation Research Program and Small  
 46 Business Technology Transfer Program of the Office of Technology  
 47 of the United States Small Business Administration.

48           2. Accelerating the entry of new technology-based products  
 49 into the marketplace.

50           3. Producing additional technology-based jobs for the  
 51 state.

52           4. Providing leveraged resources to increase the  
 53 effectiveness and success of applicants' projects.

54           5. Speeding commercialization of promising technologies.

55           6. Encouraging the establishment and growth of high-

56 quality, advanced technology firms in the state.

57 7. Accelerating deal flow and enhancing the state's  
 58 investment infrastructure.

59 (c) The Florida Research Commercialization Matching Grant  
 60 Program is created for the purpose of accomplishing the goals  
 61 and objectives specified in this section.

62 (2) STATEWIDE ADVISORY COMMITTEE.--A statewide advisory  
 63 committee is created to develop programmatic policy, ensure  
 64 statewide applicability of the matching grant program, establish  
 65 criteria for grant awards, approve grant awards, review program  
 66 progress and results, and communicate program results to state  
 67 policymakers.

68 (a) The committee shall consist of 15 members representing  
 69 the diverse geography of the state. The Governor, the President  
 70 of the Senate, and the Speaker of the House of Representatives  
 71 shall each appoint one member for a 4-year term from each of the  
 72 following:

73 1. Florida university technology commercialization  
 74 organizations.

75 2. Research institutes in the state.

76 3. The state's early stage venture capital community.

77 4. Entrepreneurs representing a startup company.

78 (b) In addition, the Governor shall appoint one member  
 79 representing a regional technology development organization in  
 80 the state and one member of the board of the Florida Research  
 81 Consortium.

82 (c) The chairperson of the Technology Entrepreneurship and  
 83 Capital Board Committee of Enterprise Florida, Inc., shall serve

84 on the committee. Committee members shall elect from the  
 85 membership the chairperson of the committee. Seats vacated on  
 86 the committee shall be filled in the same manner as the original  
 87 appointment.

88 (d) Members of the committee shall serve without  
 89 compensation, but are entitled to reimbursement for per diem and  
 90 travel expenses in accordance with s. 112.061 while performing  
 91 their duties.

92 (e) Enterprise Florida, Inc., shall provide staff support  
 93 for the committee.

94 (f) The committee shall hold its initial meeting no later  
 95 than October 1, 2008. Subsequent meetings shall be held upon the  
 96 call of the chair.

97 (g) Beginning September 1, 2009, and annually thereafter,  
 98 the committee shall transmit an annual report to the Governor,  
 99 the President of the Senate, and the Speaker of the House of  
 100 Representatives for the previous fiscal year.

101 (3) FIDUCIARY.--Enterprise Florida, Inc., shall accept  
 102 money appropriated by the Legislature for providing grants  
 103 through the matching grant program. Enterprise Florida, Inc.,  
 104 shall award money to an applicant if:

105 (a) The statewide advisory committee approves the award;

106 (b) The applicant demonstrates that it has obtained a  
 107 federal Small Business Innovation Research Program or Small  
 108 Business Technology Transfer Program Phase II award; and

109 (c) The applicant executes a performance contract with  
 110 Enterprise Florida, Inc.

111

112 Unallocated legislative appropriations for the matching grant  
 113 program at the end of the fiscal year shall carry forward to  
 114 succeeding fiscal years as provided under s. 288.904(1)(j).

115 (4) PROGRAM ADMINISTRATOR.--Subject to appropriations,  
 116 Enterprise Florida, Inc., shall serve as program administrator.  
 117 Enterprise Florida, Inc., may contract for the performance of  
 118 all or some of its functions with a third party. Not more than  
 119 10 percent of a legislative appropriation may be used for  
 120 administrative purposes. The responsibilities of the program  
 121 administrator include, but are not limited to:

122 (a) Establishing and coordinating the grant-selection  
 123 committee;

124 (b) Administering the grant-selection process, including,  
 125 but not limited to, issuing open-call requests for grant  
 126 applications and receiving, reviewing, and processing grant  
 127 applications;

128 (c) Serving as grant contract manager for recipients of a  
 129 matching grant;

130 (d) Reporting program progress and results and  
 131 programmatic recommendations for change to the statewide  
 132 advisory committee;

133 (e) Establishing a technical assistance network composed  
 134 of small business development centers, technology incubators,  
 135 and university technology transfer offices within the state.  
 136 Network members shall publicize the program and facilitate  
 137 participation in the matching grant program; and

138 (f) Establishing a mechanism by which information  
 139 regarding grant projects may be made available to facilitate

140 additional angel, seed, or venture capital investment.

141 (5) GRANT-SELECTION COMMITTEE.--The grant-selection  
 142 committee shall consist of not fewer than five members chosen by  
 143 the program administrator. The members must be experienced in  
 144 conducting, reviewing, and evaluating research and development  
 145 projects for commercialization potential or must have a  
 146 successful track record in developing technology  
 147 commercialization programs or managing investments in early  
 148 stage companies. The grant-selection committee must review grant  
 149 applications using adopted grant criteria, recommend grant  
 150 awards and grant amounts to the statewide advisory committee,  
 151 and perform other duties as required by the program  
 152 administrator. The amount of each grant awarded may not be less  
 153 than \$100,000 and not more than \$250,000.

154 (6) ELIGIBILITY GUIDELINES.--

155 (a) An applicant for a research commercialization matching  
 156 grant must be a corporation that is registered with the  
 157 Secretary of State to operate in this state. If an applicant is  
 158 not based in this state, a grant award is contingent upon the  
 159 applicant successfully registering to do business in this state.

160 (b) An applicant must be a small company for which a state  
 161 matching grant is necessary for project development and  
 162 implementation.

163 (c) An applicant must have received a federal Small  
 164 Business Innovation Research Program or Small Business  
 165 Technology Transfer Program Phase I award and have received an  
 166 invitation to submit an application for a Phase II award. If a  
 167 Phase II award has already been issued, the end date of the

168 federal award must be identified and justification must be  
 169 provided as to how these additional funds will enhance, not  
 170 supplant, the existing award.

171 (d) An applicant must identify all sources of project  
 172 funding. Reported project funding must demonstrate that:

173 1. At least 20 percent of the project's total funding must  
 174 come from the Federal Government.

175 2. No more than 25 percent of the project's total funding  
 176 may be provided by the state grant. Funds from the state  
 177 matching grant program may not supplant or lessen the amount of  
 178 funds committed by other project partners.

179 3. At least 25 percent of the project's total funding must  
 180 be provided by sources other than the state grant and the  
 181 Federal Government. Funding from the applicant or a partner may  
 182 be used to satisfy this requirement. External funds may consist  
 183 of cash or in-kind contributions.

184 (e) Projects funded by the matching grant program must be  
 185 conducted in this state.

186 (7) AWARDS.--The program shall make 20 to 30 awards,  
 187 ranging from \$100,000 to \$250,000 each, for a total of \$5  
 188 million.

189 Section 2. This act shall take effect upon becoming a law.





HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No: 593

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee on Economic Development

2 Representative Precourt offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6  
7 Section 1. Section 288.9552, Florida Statutes, is created to  
8 read:

9 288.9552 Florida Research Commercialization Matching Grant  
10 Program.--

11 (1) PURPOSE; GOALS AND OBJECTIVES; CREATION OF PROGRAM.--

12 (a) The purpose of the Florida Research Commercialization  
13 Matching Grant Program is to increase the amount of federal  
14 funding coming to this state which will produce the kind of  
15 distinctive technologies that drive today's knowledge-based  
16 economy. By leveraging federal, state, and private-sector  
17 resources, the program intends to accelerate the innovation  
18 process and more efficiently transform research results into  
19 products in the marketplace.

20 (b) The matching grant program is specifically intended to  
21 be a catalyst for small or startup companies that can take  
22 advantage of federal and state partnerships in order to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 accelerate their growth and market penetration by helping to  
24 overcome the funding gap faced by many small companies that are  
25 based in this state. Specific goals and objectives of the  
26 program include:

27 1. Increasing the amount of federal research moneys  
28 received by small businesses in this state through awards from  
29 the Small Business Innovation Research Program and Small  
30 Business Technology Transfer Program of the Office of Technology  
31 of the United States Small Business Administration.

32 2. Accelerating the entry of new technology-based products  
33 into the marketplace.

34 3. Producing additional technology-based jobs for the  
35 state.

36 4. Providing leveraged resources to increase the  
37 effectiveness and success of applicants' projects.

38 5. Speeding commercialization of promising technologies.

39 6. Encouraging the establishment and growth of high-  
40 quality, advanced technology firms in the state.

41 7. Accelerating deal flow and enhancing the state's  
42 investment infrastructure.

43 (c) The Florida Research Commercialization Matching Grant  
44 Program is created for the purpose of accomplishing the goals  
45 and objectives specified in this section.

46 (2) ADMINISTRATION.-- Enterprise Florida's Technology,  
47 Entrepreneurship and Capital Committee, or a subcommittee  
48 thereof with no less than seven members, shall develop  
49 programmatic policy, ensure statewide applicability of the  
50 matching grant program, establish criteria for grant awards,  
51 approve grant awards, and review program progress and results.

52 (a) Members of the committee shall serve without  
53 compensation.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 (b) Enterprise Florida, Inc., shall provide staff support  
55 for the committee.

56 (c) Applications for matching grant awards must be  
57 reviewed and approved or denied within 45 days of receipt of  
58 application.

59 (d) Beginning December 1, 2009, and annually thereafter,  
60 the committee shall transmit an annual report to the Governor,  
61 the President of the Senate, and the Speaker of the House of  
62 Representatives for the previous fiscal year.

63 (3) ELIGIBILITY GUIDELINES.-- A qualified applicant shall:

64 (a) Be a corporation that is registered with the Secretary  
65 of State to operate in this state. The qualified applicant must  
66 also have its primary office and a majority of its employees  
67 domiciled in Florida, and the principal research activities must  
68 be conducted in the state.

69 (b) Be a small company for which a state matching grant is  
70 necessary for project development and implementation.

71 (c) Have received a federal Small Business Innovation  
72 Research Program or Small Business Technology Transfer Program  
73 Phase I award and have received an invitation to submit an  
74 application for a Phase II award. If a Phase II award has  
75 already been issued, the end date of the federal award must be  
76 identified and justification must be provided as to how these  
77 additional funds will enhance, not supplant, the existing award.

78 (d) Utilize federal, local, and private resources to the  
79 maximum extent possible. Total project funding shall  
80 demonstrate:

81 1. Private sector investments to offset the total cost of  
82 the project; and

83 2. No more than 25 percent of the project's total funding  
84 is provided by the state grant.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

85  
86 (e) Projects funded by the matching grant program shall be  
87 conducted in this state.

88 (4) PROGRAM ADMINISTRATOR.-- Subject to appropriations,  
89 Enterprise Florida, Inc., shall serve as program administrator.  
90 Enterprise Florida, Inc., may contract for the performance of  
91 technology review and related functions with a third party. Not  
92 more than 10 percent of a legislative appropriation may be used  
93 for administrative purposes. The responsibilities of the program  
94 administrator include, but are not limited to:

95 (a) Coordinating and supporting the grant review,  
96 approval, and contracting activities;

97 (b) Administering the grant-selection process, including,  
98 but not limited to, issuing open-call requests for grant  
99 applications and receiving, reviewing, and processing grant  
100 applications;

101 (c) Serving as grant contract manager for recipients of a  
102 matching grant;

103 (d) Reporting program progress and results; and

104 (e) Establishing a mechanism by which information  
105 regarding grant projects may be made available to facilitate  
106 additional angel, seed, or venture capital investment.

107 (5) FIDUCIARY.-- Enterprise Florida, Inc., shall award  
108 money to a qualified applicant if:

109 (a) The committee approves the award;

110 (b) The qualified applicant demonstrates that it has  
111 obtained a federal Small Business Innovation Research Program or  
112 Small Business Technology Transfer Program Phase II award; and

113 (c) The qualified applicant executes a performance  
114 contract with Enterprise Florida, Inc.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

146 awards to qualified applicants; providing an  
147 appropriation; providing an effective date.







HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Tax Credit for Research and Development Expenses

SPONSOR(S): Grant and others

TIED BILLS: IDEN./SIM. BILLS: SB 1398

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	_____	West <i>SPW</i>	Croom <i>(SPW)</i>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

This bill creates s. 220.194, F.S., the research and development tax credit that may be used to offset the state corporate income tax liability of a business engaged in research and development activities. Businesses will receive a tax credit for 10 percent of excess costs over a base amount. The base amount is determined by a mathematical equation.

Any Florida business that is engaged in the manufacturing, warehousing and distribution, processing, telecommunications, tourism, or research and development industries with qualified research expenses in Florida is eligible for the credit so long as the business is eligible to receive a federal research credit under s. 41 of the Internal Revenue Code.

The program created by this bill provides up to \$15 million in state corporate income tax credits annually, however, unused credits may be carried forward 10 years.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes - The program created by this bill provides a tax credit that may be used to offset Florida corporate income tax liability.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Currently, Florida does not have a corporate income tax credit for general research and development, however, a federal tax credit for research and development does exist. Section 41 of the Internal Revenue Code provides such a credit to businesses engaged in qualified research and development activities. The federal tax credit is designed to stimulate additional research and development performed by businesses over time by reducing costs.

Under the federal program, businesses that qualify receive a credit equal to 20 percent of the qualified research expenses above a base amount against corporate income tax liabilities. The base amount is calculated by multiplying a fixed based percentage by the average annual gross receipts of the taxpayer for the four previous years for which the credit is being determined.<sup>1</sup>

Many of Florida's competitor states provide a state-sponsored research and development tax credit. Only 64 percent of research and development conducted in Florida is performed by private-sector entities as compared to the national average of 71 percent.<sup>2</sup> Enterprise Florida, Inc. reports that: 1) the lack of a state research and development tax credit puts Florida at a competitive disadvantage in terms of attracting out-of-state businesses that engage in research and development; and 2) a state research and development tax credit would also provide an incentive to current Florida-based businesses to engage in additional research and development.

States with a research and development tax credit include:

Arkansas	Kansas	Pennsylvania
California	Maine	Rhode Island
Colorado	Maryland	South Carolina
Connecticut	Massachusetts	Texas
Delaware	Minnesota	Utah
Georgia	Missouri	Vermont
Hawaii	Montana	West Virginia
Idaho	New Jersey	Wisconsin <sup>3</sup>
Illinois	North Carolina	
Indiana	Ohio	

<sup>1</sup> Section 41 (c)(1)(a,b), Internal Revenue Code.

<sup>2</sup> Enterprise Florida, Inc. Memo on R&D Tax Credits.

<sup>3</sup> Id.

## Effect of Proposed Changes

This bill creates a Florida research and development tax credit to encourage businesses to engage in research and development activities. Any business engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism, or research and development with qualified research expenses in Florida is eligible for tax credits created in this bill. Any business that utilizes the tax credits created by this bill must also be eligible to claim a federal research and development tax credit pursuant to section 41 of the Internal Revenue Code.

The base amount is determined by dividing eligible research and development expenditures by a company's gross receipts over a predetermined base period. That number is then multiplied by the average of the research and development costs for the previous four years. If the amount of eligible research and development costs exceeds the base amount, the business is eligible to receive an award equal to 10 percent of the research and development costs above the base amount. Businesses that qualify for both federal and Florida research and development tax credits will receive awards equal to 30 of research and development costs above the base amount for that tax year.

The amount of tax credit that may be taken by a business in any single tax year may not exceed 50 percent of the remaining net income tax liability after all other tax credits have been applied. Unused credits may be carried forward by a business for 10 years and used to offset future corporate income tax liability. If a business is unable to use a tax credit after it has been approved, they may be assigned or sold to another Florida taxpayer and must be used in the tax year in which they were assigned or sold. Tax credits may be assigned or sold no more than one time. A transferee may use the credit assigned or sold to offset no more than 75 percent of its Florida corporate income tax liability.

Credits awarded shall be limited to no more than \$15 million annually.

The bill provides the Department of Revenue the ability to adopt rules to administer the program.

### C. SECTION DIRECTORY:

Section 1. Creates s. 220.194, F.S., Research and Development Tax Credit.

Section 2. Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The program created by this bill provides up to \$15 million in state corporate income tax credits annually. (see Fiscal Comments)

#### 2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The program created by this bill may attract new businesses and high-wage jobs to Florida. It is possible that a positive impact on local government revenues could result in increased local tax revenues.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Businesses that qualify for the program created by this bill may receive corporate income tax credits.

**D. FISCAL COMMENTS:**

Despite an annual award cap of \$15 million in state tax credits, a carry forward provision allows unused tax credits to be claimed for up to 10 years after award to offset future tax liabilities. In some years, the entire \$15 million allotment may not be claimed. If multiple businesses carry forward unused tax credits and claim those credits in a single year, there is no guarantee that the amount of tax credits claimed in one year will be limited to \$15 million.

The revenue estimating conference adopted a \$15 million recurring impact to Florida's General Revenue.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The Department of Revenue shall adopt rules for the administration of the program created by this bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue (DOR) performed an analysis of this bill and raised concerns over implementation of this program. The formula used to calculate base amount of the tax credit is difficult to administer and may be subject to interpretation. The formula may not accomplish the sponsor's goal of basing the credit on the amount of increase in Florida research expenditures.

The bill requires a business to have qualified research expenses in Florida but does not clearly require those expenses to qualify under s. 41 of the Internal Revenue Code or that all research occur in Florida.

The bill provides that businesses engaged in the "manufacturing, warehousing and distribution, processing, telecommunications, tourism, or research and development" industries are eligible for credits but those terms are not defined and could be susceptible to interpretation.

The bill provides a definition of the business activities that would qualify for the research and development tax credit but adds language, "The term does not include retail businesses." It is unclear whether a retailer may qualify for the credit or whether the retailer must engage in qualifying activities. The language may be unnecessary because nothing excludes businesses with a retail component.

The bill provides a definition for "business enterprises" that could include nontaxable entities such as sole proprietorships and partnerships that are not subject to Florida corporate income tax liability. DOR has no audit authority over non-taxpayers and no access to their federal return information. DOR would not be able to verify whether a non-taxpayer is entitled to a tax credit.

The bill becomes effective on July 1, 2008. It does not specify whether \$15 million in tax credits should be issued for the 2008 calendar year and does not specify the tax years to which the first credit applies. The effective date provides insufficient time for the DOR to develop an application and adopt rules.

The \$15 million annual limit on tax credits is not specific. The bill does not specify whether the limit should be applied to individual taxpayers or to all taxpayers receiving a credit. A credit allocation method is not provided (i.e. first-come-first-serve, pro-rata).

Credits may be assigned or sold but there is no requirement that DOR be notified or approve the sale or assignment of tax credits.

The bill provides that the credit is applied after the application of all other credits. The order in which corporate income tax credits are claimed is contained in s. 220.02(8), F.S. The credit created by this bill should be incorporated into the ordering provisions of s. 220.02(8), F.S.

Unused credits may be carried forward for 10 years. Most credits contained in Chapter 220 provide for a five year carryover. Many taxpayers and DOR dispose of tax records after six years.

Section 220.192, F.S. provides a tax credit for research and development of hydrogen energy, while s. 220.191, F.S., provides a tax credit based upon a taxpayer's total expenditures. The bill does not prevent a taxpayer from claiming two or more research and development tax credits for the same activity or claiming the credit for government sponsored research.

The Revenue Estimating Conference performed an analysis of this bill and raised concerns over several issues. The terms "research and development expenditures," "research and development expenses," and "qualified research expenses" are not defined. It is assumed that these terms have definitions that match those terms defined in Section 41 of the Internal Revenue Code.

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Amendment No. (for drafter's use only)

Bill No. 733

COUNCIL/COMMITTEE ACTION

ADOPTED                                    \_\_\_ (Y/N)  
ADOPTED AS AMENDED                    \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION                \_\_\_ (Y/N)  
FAILED TO ADOPT                        \_\_\_ (Y/N)  
WITHDRAWN                               \_\_\_ (Y/N)  
OTHER                                     \_\_\_\_\_

1 Committee on Economic Development

2 Representative Grant offered the following:

3  
4       **Amendment**

5       Remove everything after the enacting clause and insert:

6  
7       Section 1. Section 220.194, Florida Statutes, is created  
8 to read:

9       220.194 Research and development tax credit. --

10       (1) (a) The Legislature finds that research and development  
11 has become the underlying source of wealth in the 21st century  
12 by generating ideas and technologies that encourage productivity  
13 and economic growth. Furthermore, companies generate the main  
14 body of growth-stimulating innovations, making current ideas and  
15 technologies more market-sensitive than other sources of  
16 research and development.

17       (b) The Legislature further finds that research and  
18 development tax credits are proven to provide incentives for  
19 corporate research and development beyond expected levels.  
20 Research shows that, not only is the federal research and  
21 development tax credit an effective tool for stimulating  
22 additional research and development, which in turn leads to

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23 faster economic growth, but that state research and development  
24 tax credit programs are nearly as important to corporate  
25 research and development as the federal research and development  
26 tax credit program, and that the typical state research and  
27 development tax credit program has been shown to increase  
28 general, company-funded research and development within a state,  
29 often enhancing the state's competitiveness by enabling it to  
30 draw research and development activity away from other states.

31 (c) Additionally, the Legislature finds that this state  
32 needs a state research and development tax credit program to  
33 ensure economic competition. Unlike Florida, more than half of  
34 the states have a research and development tax credit program.  
35 Without a state research and development tax credit program,  
36 Florida lags behind the nation in important corporate research  
37 and development.

38 (d) The Legislature therefore creates the research and  
39 development tax credit program to encourage corporate research  
40 and development activity within the state, sharpen the state's  
41 competitive edge by leveling the playing field with the state's  
42 regional and national economic competitors, support the state's  
43 vibrant innovation economy, and attract high-wage, professional  
44 research jobs to the state.

45 (2) DEFINITIONS. As used in this section, the term:

46 (a) "Base amount" means the amount resulting from the  
47 following calculation:

48 1. The average of the business enterprise's qualified  
49 research expenses in Florida allowed under s. 41 of the Internal  
50 Revenue Code for the 4 taxable years preceding the taxable year  
51 for which the credit is being determined.

52 2. The qualified research expenses taken into account in  
53 computing the base amount shall be determined on a basis

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54 consistent with the determination of qualified research expenses  
55 for the credit year.

56 (b) "Business enterprise" means any corporation that is  
57 engaged in the manufacturing, transportation and warehousing,  
58 telecommunications, tourism, or research and development  
59 industries in this state. The term does not exclude retail  
60 businesses.

61 (c) "Qualified research expenses" means research expenses  
62 that qualify for the credit under s. 41 of the Internal Revenue  
63 Code and that are for in-house research expenses incurred in  
64 this state and contract research expenses incurred in this  
65 state. "Qualified research expenses" does not include research  
66 conducted outside Florida, research that is excluded under s. 41  
67 of the Internal Revenue Code, or research conducted by a  
68 business enterprise that is not within its principal business  
69 activity.

70 (d) "Manufacturing" industry means a corporation clearly  
71 engaged in manufacture and that during all years of the base  
72 period reports on its federal income tax returns using the  
73 principal business activity codes for Manufacturing.

74 (e) "Transportation and warehousing" industry means a  
75 corporation clearly engaged in transportation or warehousing  
76 business and that during all years of the base period reports on  
77 its federal income tax returns using the principal business  
78 activity codes for Transportation and Warehousing.

79 (f) "Telecommunications" industry means a corporation  
80 clearly engaged in the telecommunications business and that  
81 during all years of the base period reports on its federal  
82 income tax returns using the principal business activity code  
83 for Telecommunications.



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84 (g) "Tourism" industry means a corporation clearly engaged  
85 in the tourism business and that during all years of the base  
86 period reports on its federal income tax returns using the  
87 principal business activity codes for Arts, Entertainment, and  
88 Recreation or Accommodations.

89 (h) "Retail" industry means a corporation clearly engaged  
90 in the retail business and that during all years of the base  
91 period reports on its federal income tax returns using the  
92 principal business activity codes for Retail Trade.

93 (i) "Research and development" industry means a corporation  
94 clearly engaged in the research and development business and  
95 that during all years of the base period reports on its federal  
96 income tax returns using the principal business activity code  
97 for Scientific Research and Development Services.

98 (j) "Base period" means the 4 taxable years preceding the  
99 taxable year for which the credit is being determined. If a  
100 corporation has not been in existence for the entire base  
101 period, then the credit shall be reduced by 25 percent for each  
102 of those years unless the corporation establishes that its  
103 predecessor was a corporation that met the requirements  
104 contained in paragraph 2(b) during that part of the base period.

105 (3) TAX CREDIT. -- Subject to the limitations contained in  
106 subsection (e), a credit against the tax imposed by this chapter  
107 is allowed to the extent that a business enterprise has  
108 qualified research expenses in this state in the calendar year  
109 exceeding the base amount and the business enterprise for the  
110 same calendar year claims and is allowed a research credit for  
111 these qualified research expenses under s. 41 of the Internal  
112 Revenue Code.

113 (a) The tax credit is 10 percent of the excess qualified  
114 research expenses over the base amount.

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115 (b) The credit taken in any one tax year may not exceed 50  
116 percent of the business enterprise's remaining net income tax  
117 liability under this chapter after all other credits have been  
118 applied under s. 220.02(8).

119 (c) Any unused credit allowed under this section may be  
120 carried forward and claimed by the taxpayer for up to 5 years  
121 following the close of the taxable year in which the qualified  
122 research expenses are incurred.

123 (d) Any unused credit allowed under this section may be  
124 assigned or sold to another taxpayer as defined in s. 220, F.S.,  
125 in this state if a claim for the allowance has not been filed  
126 within 1 calendar year following the date that the department  
127 approved the credit. The business enterprise and the purchaser  
128 or assignee must file an application, waivers of  
129 confidentiality, and affidavits to transfer the credit on a form  
130 promulgated by the department and obtain the prior approval of  
131 the department for such transfer, which prior approval shall not  
132 be unreasonably withheld. The purchaser or assignee must use  
133 the tax credit in the taxable year in which the purchase or  
134 assignment of the credit is made. The transfer or purchase of  
135 any amount of the tax credit shall not be exchanged for less  
136 than 75 percent of the credit's value.

137 (e) The combined total amount of tax credits that may be  
138 granted and approved to all business enterprises under this  
139 section during any calendar year is \$15 million. Applications  
140 shall be filed with the department on or after March 20 for  
141 qualified research expenses incurred within the preceding  
142 calendar year, and credits shall be granted in the order in  
143 which completed applications are received.

144 (4) RULES. -- The department may adopt rules to implement  
145 and administer this section, including but not limited to rules

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146 prescribing forms, application procedures and dates, and  
147 notification and other procedures for a sale or assignment and  
148 may establish guidelines for making an affirmative showing of  
149 qualification for the credit and evidence needed to substantiate  
150 a claim for credit under this section.

151 Section 2. Section 220.02(8) is amended to read:

152 220.02 Legislative Intent.--

153 (8) It is the intent of the Legislature that credits  
154 against either the corporate income tax or the franchise tax be  
155 applied in the following order: those enumerated in s. 631.828,  
156 those enumerated in s. 220.191, those enumerated in s. 220.181,  
157 those enumerated in s. 220.183, those enumerated in s. 220.182,  
158 those enumerated in s. 220.1895, those enumerated in s. 221.02,  
159 those enumerated in s. 220.184, those enumerated in s. 220.186,  
160 those enumerated in s. 220.1845, those enumerated in s. 220.19,  
161 those enumerated in s. 220.185, those enumerated in s. 220.187,  
162 those enumerated in s. 220.192, ~~and~~ those enumerated in s.  
163 220.193, and those enumerated in s. 220.194.

164 Section 3. This act shall take effect July 1, 2008, and is  
165 effective for tax years beginning on or after January 1, 2009.

The scale (Florida, U.S., or worldwide, subsidiary or corporate) is not stated. Both "research and development expenditures" and "gross receipts" are assumed to be defined at the worldwide level.

The "predetermined base amount" is not defined.

The term "engaged in" is not defined and the types of businesses listed are not defined. It is assumed that the method for determining a company's business sector can be made in rule, and this process will not retard the process of awarding credits.

It is not clear if the term "credit taken" means that the credit is used against tax liability or if it means the credit is acquired so as to be used, carried forward, or sold.

As written, an assigned or sold research and development tax credit could be used to offset 75 percent of any tax liability. Unlike the earning of the credit, it appears that credits may be purchased by any taxpayer, regardless of business sector. The 75 percent limitation maybe prior to, not necessarily after, all other credits have been applied.

It is unclear if the limit (cap) is based on individual companies or statewide collections. It is also unclear if the limitation is based on the incurrence of the credit or the redemption of the credit.

#### D. STATEMENT OF THE SPONSOR:

Thirty-one states have created research and development tax credit programs to piggy-back onto the federal program as an incentive for company-funded research and development within their state as an economic stimulus and generator of more high-wage professional research jobs.

Florida ranks 37<sup>th</sup> nationally in terms of corporate participation in research and development. We have made great strides in improving the climate for innovation in Florida by eliminating the sales tax on research and development equipment, but more needs to be done.

Creating a state research and development tax credit will help to make Florida more nationally and globally competitive, spur our innovation economy, attract high-wage professional research jobs to Florida, help level the playing field with the Florida's regional and national competitors, and incentivize corporate R&D activity statewide.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to a tax credit for research and  
 3           development expenses; creating s. 220.194, F.S.; providing  
 4           legislative intent regarding a state research and  
 5           development tax credit; defining the terms "base amount,"  
 6           "business enterprise," and "qualified research expenses";  
 7           providing a tax credit for businesses having qualified  
 8           research expenses; providing that the tax credit is 10  
 9           percent of the excess over the base amount; providing that  
 10          the credit taken in any one taxable year may not exceed a  
 11          certain amount; providing that any unused credit may be  
 12          carried forward for up to 10 years following the close of  
 13          the tax year in which the qualified expenses were  
 14          incurred; providing that any unused credit may be assigned  
 15          or sold to another taxpayer under certain conditions;  
 16          providing for a maximum credit amount; requiring the  
 17          Department of Revenue to adopt rules and guidelines;  
 18          providing an effective date.

19  
 20   Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1. Section 220.194, Florida Statutes, is created  
 23   to read:

24           220.194 Research and development tax credit.--  
 25           (1) (a) The Legislature finds that research and development  
 26           has become the underlying source of wealth in the 21st century  
 27           by generating ideas and technologies that encourage productivity  
 28           and economic growth. Furthermore, companies generate the main

29 body of growth-stimulating innovations, making current ideas and  
 30 technologies more market-sensitive than other sources of  
 31 research and development.

32 (b) The Legislature further finds that research and  
 33 development tax credits are proven to provide incentives for  
 34 corporate research and development beyond expected levels.  
 35 Research shows that, not only is the federal research and  
 36 development tax credit an effective tool for stimulating  
 37 additional research and development, which in turn leads to  
 38 faster economic growth, but that state research and development  
 39 tax credit programs are nearly as important to corporate  
 40 research and development as the federal research and development  
 41 tax credit program, and that the typical state research and  
 42 development tax credit program has been shown to increase  
 43 general, company-funded research and development within a state,  
 44 often enhancing the state's competitiveness by enabling it to  
 45 draw research and development activity away from other states.

46 (c) Additionally, the Legislature finds that this state  
 47 needs a state research and development tax credit program to  
 48 ensure economic competition. Unlike Florida, more than half of  
 49 the states have a research and development tax credit program.  
 50 Without a state research and development tax credit program,  
 51 Florida lags behind the nation in important corporate research  
 52 and development.

53 (d) The Legislature therefore creates the research and  
 54 development tax credit program to encourage corporate research  
 55 and development activity within the state, sharpen the state's  
 56 competitive edge by leveling the playing field with the state's

57 regional and national economic competitors, support the state's  
 58 vibrant innovation economy, and attract high-wage, professional  
 59 research jobs to the state.

60 (2) As used in this section, the term:

61 (a) "Base amount" means the amount resulting from the  
 62 following calculations:

63 1. The division of a business enterprise's research and  
 64 development expenditures by its gross receipts for a  
 65 predetermined base period.

66 2. The multiplication of the ratio resulting from the  
 67 calculation in subparagraph 1. by the average of the business  
 68 enterprise's research and development expenses over the 4-year  
 69 period before the current tax year.

70 (b) "Business enterprise" means any business or the  
 71 headquarters of any business that is engaged in the  
 72 manufacturing, warehousing and distribution, processing,  
 73 telecommunications, tourism, or research and development  
 74 industries. The term does not exclude retail businesses.

75 (3) A tax credit is allowed for a business enterprise that  
 76 has qualified research expenses in this state in a taxable year  
 77 exceeding the base amount, if the business enterprise for the  
 78 same taxable year claims and is allowed a research credit under  
 79 s. 41 of the Internal Revenue Code of 1986, as amended.

80 (4) The tax credit provided in subsection (3) shall be 10  
 81 percent of the excess over the base amount.

82 (5) The credit taken in any one tax year may not exceed 50  
 83 percent of the business enterprise's remaining net income tax  
 84 liability under this chapter after all other credits have been

85 applied.

86 (6) Any unused credit claimed under this section may be  
 87 carried forward for up to 10 years following the close of the  
 88 taxable year in which the qualified research expenses were  
 89 incurred.

90 (7) Any unused credit claimed under this section may be  
 91 assigned or sold to another taxpayer in the state if there has  
 92 been no claim for allowance filed within 1 year following the  
 93 date that the Department of Revenue approved the credit. The  
 94 purchaser or assignee must use the newly obtained research and  
 95 development tax credit in the taxable year in which the purchase  
 96 or assignment of the credit is made. The purchased or assigned  
 97 research and development credit may not be used to offset more  
 98 than 75 percent of a tax liability for a taxable year. The  
 99 purchased or assigned credit may not be carried over, carried  
 100 back, resold, or refunded.

101 (8) The maximum credit amount that may be approved during  
 102 any calendar year is \$15 million.

103 (9) The Department of Revenue shall adopt rules governing  
 104 the manner and form of applications for credit and may establish  
 105 guidelines concerning the requisites for an affirmative showing  
 106 of qualification for the credit under this section.

107 Section 2. This act shall take effect July 1, 2008.







## **CRITERIA FOR ECONOMIC DEVELOPMENT POLICY**

Established and new programs should:

- Provide Limited Government
- Provide a long-term economic benefit to the state
- Provide a minimum return-on-investment to the state of \$\_\_ to \$1 .
- Have a statewide interest and effect
- Include timely processes for applications, awards, and permitting
- Focus on industries the state wants to attract, targeted industries and key sectors
- Create high-wage jobs -- understanding that 1 size does not fit all
- Require partnerships and investments from federal, local, and private resources
- Help local governments that want to help themselves and are willing to commit resources to demonstrate commitment
- Require accountability and track results



IDEAS / RECOMMENDATIONS TO DATE	COST/SOURCE
Implement stricter wage requirements in current incentive programs	\$ -
Retain and grow businesses in the state	
Create passive incentives, such as wet labs, that several businesses could use	
<b>Regulatory - Provide Immediate Relief</b>	
Shorten approval and award processes for incentive programs	
* Create a uniform economic development timetable - 1) Presentation, 2) Binding Comprehensive Response, 3) Resolution, and 4) Dispute Resolution	\$ -
Expedite permitting processes for economic development	\$ -
<b>Rural Proposals</b>	
Expand workforce and incentive programs in rural areas	
Provide greater rural infrastructure funds (currently funded at \$2.7m GR)	
<b>Infrastructure</b>	
Provide assistance to local governments and the construction industry	
Work with local governments that are willing to help fund their own infrastructure needs	
<b>Space Industry</b>	
Invest in capital and infrastructure needs	
Retrain space workforce as needed	
<b>Other Issues - Work with Other Committees</b>	
Have the SBA invest in venture capital and other economic opportunities	\$ -
Have fewer state agencies (1 or 2) involved in approval processes - eliminate duplication and repetition	\$ -
Help local governments (that are stepping up on their own) streamline permitting	

## Incentive Application Deadlines

Program	EFI	OTTED	OTTED Director	Total Time
Qualified Targeted Industry Program		45	30	75
Qualified Defense Contractor Program		60	30	90 (1)
High Impact Performance Incentive	10		5	15
Brownfield Redevelopment		45	30	75
Quick Action Closing Fund	EFI recommends approval to OTTED and OTTED recommends to Governor - no deadlines. There is a 14 day legislative approval process with LBC approval (LBC must meet at least quarterly)			0
Innovation Incentive Fund	EFI recommends approval to OTTED and OTTED recommends to Governor - no deadlines. There is a 14 day legislative approval process.			0

(1) the 60 day period begins when the office determines the application is complete. There is no time requirement for this process



## Minimum Wage Criteria

Program	EFI	Waiver
Qualified Targeted Industry Program	Annual average wage equaling at least <u>115 percent</u> of the average private sector wage in the <u>area</u> where the business is to be located <u>or the statewide private sector average wage</u>	Yes
Qualified Defense Contractor Program	An estimated annual average wage equaling at least <u>115 percent</u> of the average wage in the <u>area</u> where the project is to be located	No
High Impact Performance Incentive	No requirement	
Brownfield Redevelopment	No requirement	
Quick Action Closing Fund	Pay an average annual wage of at least <u>125 percent</u> of the <u>areawide or statewide private sector average wage</u> .	Yes
Innovation Incentive Fund	Annual average wage equaling at least <u>130 percent</u> of the average private sector wage in the <u>area or statewide</u>	Yes



# Highlights of Incentive Programs

Program	Total Awards (millions)	Jobs Created	Average Wage (\$2006)	Industry Difference	County Difference	Capital Investment (millions)	10YR Return on Investment
Brownfields - Standalone	\$6.5	2,668	\$22,752	-15%	-40%	\$406	\$21
Brownfields with QTI	\$11.3	4,526	\$42,929	-27%	19%	\$500	\$15
Quick Action Closing Fund	\$53.6	9,028	\$58,813	-11%	58%	\$1,459	\$23
Road Fund	\$73.3	17,664	\$39,385	*	21%	\$1,795	-
HIFI	\$32.9	2,230	\$65,123	*	65%	\$1,826	\$11
QDC	\$12.2	2,209	\$53,976	5%	42%	\$46	\$14
QTI	\$349.8	87,589	\$45,665	-21%	20%	\$6,448	\$16
<b>TOTALS</b>	<b>\$539.6</b>	<b>108,875</b>	<b>\$44,890</b>	<b>-26%</b>	<b>25%</b>	<b>\$11,077</b>	<b>\$14</b>

FIGURE 10 QUALIFYING CONDITIONS FOR FLORIDA BUSINESS INCENTIVES

Program	# of New Jobs	Wage Criteria	Benefits	Capital Investment	Local Match/Support	Rural Waiver for Local Support	Return On Investment / Economic Impact	Specified Industry/Sector	Ongoing Progress Reports/Claims	Penalty
Economic Development Transportation Fund (Road Fund)	*	*		*	*		*		✓	
Qualified Target Industry Tax Refund Program (QTI)	✓	✓		*	✓	✓	*	✓	✓	✓
Qualified Defense Contractor Tax Refund Program (QDC)	✓	✓		*	✓	✓	*	✓	*	✓
Brownfield Redevelopment Bonus Refund Program	✓		*	✓					✓	✓
High Impact Performance Incentive Grant (HIPI)	✓	*		✓			*	✓	✓	
Quick Action Closing Fund	*	✓		*	*	✓	✓	✓	*	*
Innovation Incentive Program	✓	✓		✓	✓	✓	✓	✓	✓	*
Quick Response Training Program (QRT)	*	✓			*					
Incumbent Worker Training Program					✓			*	✓	✓
Rural Infrastructure Fund	*	*		*	✓	✓	*			

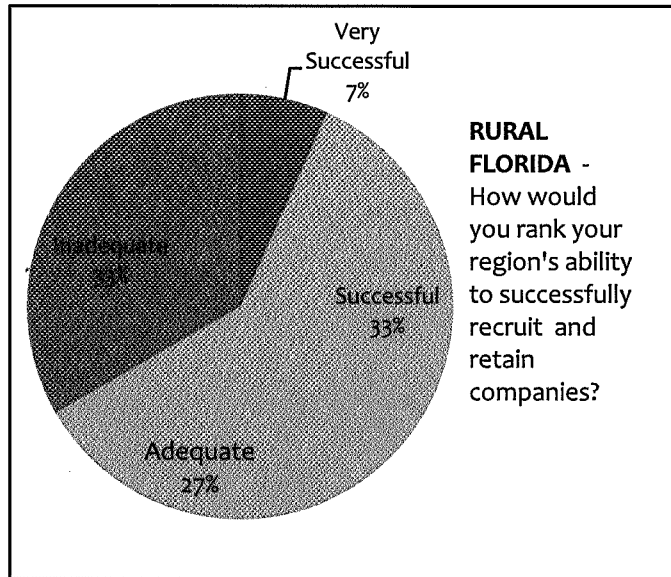
\* Florida statute mentions the condition, but does not specify a standard.

✓ Required in Florida Statute with a specific standard.

## RURAL ISSUES

The demographic composition and economic climate of a rural county have significant impact on future opportunities for economic growth and development. Thirty-two Florida counties are presently categorized as "rural" -- twenty-eight of these rural counties have been categorized into one of three Rural Areas of Critical Economic Concern (North Central, Northwest, and South Central).

Rural counties that lack proper infrastructure are at a disadvantage as it relates to attraction of high-wage jobs. Highway access, proper roadways, and a major airport are factors companies place great emphasis on when deciding where to relocate or expand. Rural counties need adequate infrastructure to compete with other counties in the state. Access to high-speed internet access is another disadvantage for rural counties. Some counties are still struggling to attain internet access and this makes further economic development difficult.



**Rural counties expressed infrastructure needs as their number one impediment to locating and attracting new business.** Rural counties expressed significant reliance on the Road Fund which they categorized as crucial to implementing necessary infrastructure upgrades which they are unable to independently finance. Rural counties were unified in their desire to see an expansion in incentive programs geared toward improvement in infrastructure.

The committed survey asked three specific rural questions: (1) what is needed to get industrial parks ready for business; (2) if greater flexibility is needed for the provision of waivers with current state programs and whether any state requirements are prohibiting progress in attracting business; and (3) what impediments exist in accessing infrastructure improvements.

Counties reported a wide variety of issues preventing them from completing the industrial parks located in each district. Difficulty financing and securing infrastructure was the chief complaint among respondents. **Common infrastructure issues included difficulty accessing sewer and water,**

WHAT TYPE OF RETURN ARE COUNTIES LOOKING FOR THROUGH BUSINESS RECRUITMENT? – Rural	
1	Attraction of high-wages
2	Job creation
3	Healthcare coverage/benefits
4	Increased tax revenue
5	Attraction of high-tech industry
6	Capital Investment (Private)
7	Possibility of spin-off industries
8	Overall return on investment
9	Partnerships with colleges/universities

**transportation, and limited access to broadband internet service.** Several respondents have yet to secure appropriate parcels of land for their industrial park. Among those who responded to the survey, only Hardee County reported that their industrial park was “shovel ready.”

**Respondents expressed a need for continuing flexibility and access to waivers for state sponsored programs.** Rural counties reported reliance on waivers exempting local matching funds as a requirement for qualifying for state funds. Respondents broadly expressed frustration with requirements that precede funding of a particular project, but are difficult to meet without existing funding (e.g., funds needed to attract businesses, but only available when businesses or jobs relocate).

**Lack of adequate funding was the chief impediment to completing infrastructure improvements.** Respondents additionally complained of difficulties understanding and satisfying permitting process requirements. Some respondents expressed their impression the state often acts as an adverse party in process and requested the state work in partnership with the counties in securing permits.

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#### RURAL COUNTIES AND INCENTIVES

When rural counties were asked which state incentive benefited them the most, the most common answer was the Qualified Target Industry (QTI) Tax Refund coupled with additional rural specific incentives. A respondent expressed that “dollar-per-job-created” incentives have become standard practice in the world of economic development incentives. **Respondents from rural counties also expressed significant reliance on the Road Fund and Rural Infrastructure Fund,** which they characterized as crucial to implementing necessary infrastructure upgrades which rural counties cannot independently finance.

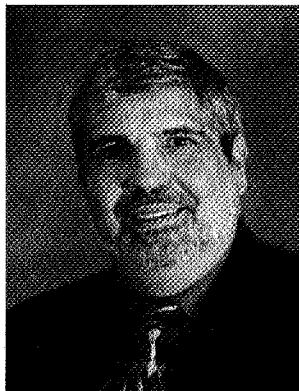
Rural counties did not report receiving any local incentives that are currently not available statewide. Respondents from rural counties were not generally aware of incentives offered by other states which are not similarly offered by Florida. Respondents from counties located in the northern area of Florida, and thus likely to compete with localities in Georgia and Alabama, did report a lack of cash-based incentives that are offered by the neighboring states. Such programs include incentives for job training and rural-targeted infrastructure cash based closing funds.

Most rural respondents expressed satisfaction with the rural incentives offered in Florida. Respondents expressed a need to maintain incentives already in place and broaden funding to the extent possible. **Respondents expressed that broadening and diversifying incentives in economically depressed rural areas is a critical concern.**





## **BIOGRAPHY**



### **ADRIAN A. LAFFITTE**

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Joined Corporation in 1981  
Appointed to present position in July 2005

Adrian Laffitte is the Director of Florida Government Relations. He is responsible for establishing and maintaining effective relationships with state and local government officials in support of LMSSC programs and activities that will increase Lockheed Martin employment in Florida

Adrian has worked for Lockheed Martin for 26 years. He started his career at VAFB in 1981, working on the Space Shuttle Program. In 1986 he transferred to Denver where he worked on the Titan IV program. In 1994, he transferred to Florida as part of the new Launch Operations organization as the Director of the Engineering & Support Service department. In 1999 he was named Director of Atlas Launch Operations. He was responsible for the processing and launching of the Atlas II, Atlas III & Atlas V vehicles at Cape Canaveral Air Station (CCAS). As a Launch Director he conducted 30 successful consecutive launches.

Adrian has a Bachelor degree in Civil engineering from the University of Puerto Rico and a Master degree in Structural Engineering from The University of Texas at Austin.

His awards include the Commitment to Excellence Award in 1985, Technical Achievement Awards in 1988 & 1994, and Mentor Award in 1996, and the 2001 "J. Tal Webb" Award from the American Society of Mechanical Engineers, the 2002 Aviation Week & Space Technology Laurel Award, the 2003 National Space Club Debus Award, and the 2007 Lockheed Martin NOVA award.

He serves in Board of Directors of United Way of Brevard and Campaign Cabinet, Brevard Community College Foundation Board of Governor and Vice Chair of Executive Committee, Florida National Space Club (Past Chairman), The Astronaut Memorial Foundation, Brevard Library Foundation (Past Chairman), Economic Development Commission Board and Executive Committee, Webster University Space Coast Advisory Board, Junior Achievement of East Central Florida, the National Aerospace Technology Council, and the Aerospace Resource Center Advisory Committee. He served as the 2005 Chair for Florida Space Day in Tallahassee.

Adrian is married to Susan and they have three children, Samantha, Allie, & Michael. They live in Merritt Island, Florida.

# FLORIDA

## *Space Day*

### 2008

#### **IMPROVE AND STRENGTHEN FLORIDA'S SPACE PROGRAM**

Florida is the premier launch site for the aerospace industry. With our current infrastructure, competitive edge, and talented workforce, Florida is the natural state to establish an international aerospace spaceport. As home to one of only five commercially licensed spaceports in the United States, Florida has the ability to host commercial, civil and military space operations.

Florida's aerospace industry is comprised of some 1000 companies and thousands of workers across the state. Increasing interest in capturing the aerospace business has some states stepping up their recruiting efforts and incentive plans. These states include California, Virginia, Colorado, Texas and New Mexico. We must aggressively retain and grow our state's aerospace industry to compete in this race.

In order to preserve the vibrant commercial aerospace industry and Florida's workforce, we must firmly position operations in Florida to capture the market of commercial launch business, and more importantly, service the International Space Station for NASA. The United States portion of ISS has been designated a National Lab and offers Florida not only space related support opportunities but also research opportunities in the unique space environment for Florida universities and companies.

#### **WORKFORCE**

Provide an Aerospace Workforce Transition program including employment assistance and training for workers who may become displaced or need new skills to transition to new aerospace occupations. Several thousand highly-skilled, well paid workers will need to find new jobs as the space industry transitions to operating a new spacecraft and launch vehicle. Equally important, several thousand will need upgraded skills to transition to the new spacecraft and launch vehicle operations.

#### **INFRASTRUCTURE**

Develop new or improve existing spaceport infrastructure. Enhance launch capabilities both vertically and horizontally to attract commercial business opportunities. Perform maintenance and modifications to Florida's existing launch pads at Cape Canaveral to support launch operations by potential commercial aerospace customers.

#### **ECONOMIC DEVELOPMENT AND INCENTIVES**

Maintain our Competitive Edge by recruiting new space and aerospace businesses to Florida, retaining those businesses being lured by other states, and assisting existing businesses with incentives and other support to expand their presence in Florida. Limit the liability of commercial launch firms and their subcontractors who provide human spaceflight services from Florida launch sites.

#### **RESEARCH AND DEVELOPMENT**

Establish an Educational Center of Excellence, a university-based aerospace research and applied technology program. Fund key education initiatives that will ensure the State of Florida is able to produce a qualified workforce to meet the needs of the aerospace industry within the state and worldwide, now and in the future.