The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/SB 1470

INTRODUCER: Committee on Commerce and Tourism and Senator Altman

SUBJECT: Capital Investment Tax Credit

DATE: March 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Capital Investment Tax Credit (CITC) program was created to attract and grow capital-intensive industries in Florida. It provides an annual credit, available for a maximum of 20 years, against a company's corporate or insurance premium income tax liability. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project, and is calculated as a percentage of the capital investment made. There are 18 active CITC projects.

CS/SB 1470 allows certain CITC-qualified businesses with less corporate or premium tax liability than the amount of tax credits earned during the taxable year to claim the difference between the two against its state sales and use tax liability incurred in the same 12-month period.

To be eligible for this credit transfer, a CITC-qualified business must meet the following criteria:

- Its headquarters is in Florida;
- It committed to make a minimum $100 million capital investment in Florida; and
- It entered into an agreement with the Department of Revenue (DOR) between January 1, 2006, and December 31, 2008, on how to calculate the income arising from its qualifying project for purposes of determining the credit amount.

Under the bill, the maximum annual credit transfer per eligible business is $5 million. Also, eligibility for the transfer program begins with a business' taxable year that began on or after January 1, 2011.

CS/SB 1470 also requires the CITC-qualified business to reinvest in Florida an amount at least equal to what it received in state sales tax credits, within 5 years after applying the sales tax credit to its tax return. If the proper capital reinvestment is not made, the business must repay the DOR all or part of the sales tax claim, plus interest.

Finally, the bill creates a provision establishing the process by which a CITC-qualified company must file and pay state sales and use tax through electronic funds transfer at the point of sale. Any unused state sales and use tax credit amount may be carried forward and applied to subsequent transactions, for up to 12 months.

CS/SB 1470 substantially amends ss. 212.08(5) and 220.191, F.S.

II. Present Situation:

The CITC is used to attract and grow capital-intensive industries that generally pay high wages. The incentive is an annual credit, provided for up to 20 years, against a company's corporate income or insurance premium tax. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project. Eligible capital costs include all expenses incurred in the acquisition, pre-construction and construction activities, installation, and equipping of a project from the beginning of construction through commencement of operations.

To participate in the program, a new or expanding company must apply to Enterprise Florida, Inc., which reviews the company's information and eligibility for the program, and makes a recommendation to the Governor's Office of Tourism, Trade, and Economic Development (OTTED) for approval or denial. Based upon that recommendation, OTTED may certify a company as eligible to receive a certain amount of tax credits under the program, prior to commencement of the company's qualifying project. OTTED transmits this certification to DOR, which enters into a written agreement with the company specifying, at a minimum, the method by which income generated by, or arising out of, the qualifying project will be determined. This is the income against which the tax credit will be claimed.

Prior to receiving the credits, the qualifying business must achieve and maintain the minimum employment thresholds beginning with the commencement of the qualifying project and continuing each subsequent year in which it may claim the tax credits.

There are three categories of CITC projects:

- A high-impact business, which:
  - Operates within a "high-impact" industry sector, currently defined in statute as, but not limited to, aviation, aerospace, automotive, and silicon technology industries,[1] and

[1] EFI's 2010 Incentives Report lists the industries under this CITC category as semiconductor manufacturing, transportation equipment manufacturing, information technology, life sciences, financial services, corporate headquarters, and clean energy. Report available at http://eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf. See page 28.

  - Creates at least 100 new jobs.
- A business defined as a "qualified target industry" (QTI) pursuant to s. 288.106, F.S.,[2] and which is induced by this incentive program to:
  - Create or retain at least 1,000 jobs, of which at least 100 of those jobs are new and which pay an average annual wage of at least 130 percent of the average annual private-sector wage in the state or region, and
  - Make a cumulative capital investment of at least $100 million after July 1, 2005.
- A new or expanded headquarters facility, which:
  - Locates in an enterprise zone or a brownfield area;
  - Is induced by this incentive program to create at least 1,500 jobs that pay an average wage that is at least 200 percent of the average annual private-sector wage in the state or region; and
  - Makes a cumulative capital investment of at least $250 million.

The amount of the annual credit equals up to 5 percent of the eligible capital costs associated with a qualifying project, for up to 20 years, except that the QTI businesses in the second category may take the tax credit for a maximum of 5 years.

The annual credit may not exceed a specified percentage of the annual corporate income tax or premium tax liability generated by the project, based on the amount of the company's capital investment. For example, a company that made a minimum capital investment of $100 million would be able to apply the value of its annual tax credit to erase 100 percent of the corporate or premium tax liability that year.[3] A company that makes a cumulative capital investment of at least $50 million but less than $100 million would able to receive a tax credit equal to 75 percent of its corporate or premium tax liability each year. A company that makes a cumulative capital investment of at least $25 million but less than $50 million would be able to receive a tax credit equal to 50 percent of its corporate or premium tax liability each year.

Under no circumstance can the total tax credits awarded exceed the cumulative investment; nor can credits be taken in excess of the tax liability in a given taxable year. The tax credits cannot be "carried back" and applied to prior years' tax liability, nor carried forward and claimed against future liability, <u>except</u> by CITC-qualified businesses in the third category *(described above)*, which are headquarters located in an enterprise zone or a brownfield area and which meet other criteria.

According to information provided by DOR,[4] in tax years 2005, 2006, and 2007, about $3.7 million in tax credits issued through the CITC program were claimed each year on tax returns; a little more than $4 million in tax credits were claimed in 2008; and $11.75 million in tax credits were claimed in 2009.

As of December 2010, there are 18 active CITC projects, which have committed to make total cumulative capital investments of $2.45 billion in Florida.[5] Information published by Enterprise

[2] FN 1, supra. Page 53.
[3] Section 220.191(2)(c), F.S., allows the transfer of tax credits earned under this program by a solar panel manufacturing facility that meets specific job creation and salary requirements. This option has not been utilized.
[4] Email from DOR staff to Senate Commerce and Tourism Committee staff, dated December 30, 2010.
[5] Information provided by OTTED staff to Senate Finance and Tax Committee staff in January 2011.

Florida, Inc., in its 2010 annual incentives report indicated that the 17 CITC-qualified businesses at the time of its data collection had committed to create 6,520 jobs paying an average annual wage of $55,076.[6]

The CITC incentive is intended to be "revenue-neutral" in that but for the incentive, the capital investment would not have been made, and no corporate income tax would have been collected.

III. Effect of Proposed Changes:

Section 1 creates paragraph (r) in s. 212.08(5), F.S., to specify that the state sales and use tax credit available for eligible CITC-qualified companies must be taken electronically. Unused credits may be carried forward for up to 12 months.

Section 2 amends s. 220.191, F.S., to prospectively allow, for taxable years beginning on or after January 1, 2011, a qualifying business to claim against its state sales and use tax liability the difference between the corporate or premium tax credits earned that year and what it has not claimed because of insufficient corporate or premium tax liability. To be eligible for this credit transfer, a CITC-qualified business would have to meet the following criteria:

- Its headquarters is located in Florida;
- It has committed to making a minimum $100 million capital investment in Florida, and thus is eligible to claim up to a 100-percent tax credit against its corporate or premium tax liability; and
- It entered into an agreement with DOR between January 1, 2006, and December 31, 2008, specifying how the income generated from its qualifying project will be calculated for purposes of establishing the annual credit amount.

To be able to use the transfer option, the qualifying business must commit, over the following 5 years, to making capital investments equal to the amount of the state sales and use tax credits claimed in a given year. If this doesn't occur, the business must repay to DOR the difference between the state sales and use tax credits received and the amount of capital investment accounted for, plus interest as provided for delinquent taxes under ch. 212, F.S.

The annual amount of CITC that any one business can claim in a fiscal year against its state sales and use tax liability is $5 million. There is no maximum cumulative annual cap for the program.

OTTED and DOR are authorized to adopt rules to implement the transfer program.

Section 3 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[6] Supra FN 1.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate. One qualifying business has indicated it would be eligible to transfer as much as $5 million annually in unused corporate income tax credits to state sales and use tax credits.

According to information provided by OTTED, at least 5 qualifying businesses received OTTED approvals between 2006 and 2008, and at least 2 are headquarters that have invested at least $100 million in their facilities.

However, committee staff cannot determine, because of the confidentiality of taxpayer records, when the companies entered into their agreements with DOR, whether they have unused corporate or premium tax credits that could be transferred to state sales and use tax credits, and the potential annual amount of transferred credits.

The Revenue Estimating Conference is scheduled to evaluate the fiscal impact of CS/SB 1470 at its March 25, 2011, meeting.

B. Private Sector Impact:

Indeterminate, but likely positive.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Commerce and Tourism Committee on March 22, 2011:
The committee adopted a strike-everything amendment that incorporated several technical and clarifying changes recommended by DOR and committee staff. The amendment:

- Creates paragraph (r) in s. 212.08(5), F.S., to specify that the state sales and use tax credit available for eligible CITC-qualified companies must be taken electronically. Also, any unused credits may be carried forward for up to 12 months.
- Clarifies that the bill's provisions are prospective. An eligible CITC-qualified company can transfer its unused corporate and premium tax credits to state sales and use tax credits starting with its taxable year beginning on or after January 1, 2011.
- Clarifies that one of the transfer eligibility requirements is that the qualifying business must have entered into an agreement with DOR, between January 1, 2006, and December 31, 2008, to determine how to calculate the income generated from its qualifying project.
- Properly identifies the state sales and use tax credit throughout the bill.

B. Amendments:

None.