The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 1246

INTRODUCER: Finance and Tax Committee and Senator Rodrigues

SUBJECT: Capital Investment Tax Credit

DATE: April 14, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	**Favorable**
2.	Kim	Babin	FT	**Fav/CS**
3.			AP	

I. Summary:

CS/SB 1246 amends s. 220.191, F.S., to authorize certain qualifying travel agency or passenger car rental businesses to carry over 50 percent of their unused capital investment tax credits in their taxable year beginning in 2020 if the business's gross receipts between April 1 and December 31, 2020, were 50 percent lower than its receipts from the same period in 2019.

A business may transfer its tax credits to another taxpayer, use its tax credits against amounts payable for sales and use tax liability, or apply its unused tax credits against corporate income tax payments in taxable years beginning after January 1, 2021, and ending before December 31, 2025. The bill also authorizes the Department of Revenue (DOR) to adopt emergency rules.

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by $1.7 million and reduce local government receipts by $600,000 in Fiscal Year 2021-2022.

The bill takes effect July 1, 2021, except for the DOR's emergency rulemaking authority, which takes effect upon the act becoming a law.

II. Present Situation:

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC) was established by the Legislature in 1998 to attract and grow capital-intensive industries in the state.[1] The CITC is currently comprised of two tax credits–one that is available for three categories of qualifying projects and that provides a credit

[1] Chapter 98-61, Laws of Fla.

against the state corporate income tax or insurance premium tax[2], and a second that is limited to certain headquarters facilities and that provides a credit against the corporate income tax.[3] Both credits are granted to qualified businesses certified by the Department of Economic Opportunity (DEO).

Credit under s. 220.191(2), F.S.

The first credit under the CITC is available for three categories of qualifying projects:[4]

- A new or expanded Florida facility that is in a designated high-impact sector[5] and that creates at least 100 new jobs in Florida (high-impact sector facilities).
- A new or expanded Florida facility that is in a qualified target industry[6] and that creates or retains at least 1,000 jobs in Florida, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and result in a cumulative capital investment of at least $100 million (QTI facilities).
- A new or expanded Florida headquarters facility that is located in an enterprise zone and brownfield area; that creates at least 1,500 jobs, which on average pay at least 200 percent of the statewide average annual private sector wage; and that makes a cumulative capital investment in this state of at least $250 million (headquarters facilities).

The annual credit amount is 5 percent of the eligible capital costs generated by the qualifying project for up to 20 years,[7] beginning with the commencement of operations of the project.[8] The credit is granted against state corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project. Annual limits for the tax credit apply, depending on the type of qualifying project:

- For a QTI facility, annual credits against the state corporate income tax may not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by, or arising out of, the qualifying project.[9]
- For high-impact sector facilities and headquarters facilities, the annual credit limits depend on the amount of cumulative capital investment resulting from the qualifying project:
  - For a qualifying project resulting in a cumulative capital investment of at least $100 million, the annual credit may not exceed 100 percent of the annual corporate

[2] Section 220.191(2), F.S.
[3] Section 220.191(3), F.S.
[4] Section 220.191(1)(g) and (2)(a), F.S.
[5] The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, semi-conductors, transportation equipment manufacturing, advanced manufacturing, or a corporate headquarters facility. *See* Department of Economic Opportunity, *2020 Annual Incentives Report*, 53-54, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited April 8, 2021).
[6] The current qualified target industries are aviation and aerospace; corporate headquarters; clean technology; defense and homeland security; financial and professional services; global logistics and trade; information technology; life sciences; manufacturing; and research and development. *See* Department of Economic Opportunity, *2020 Annual Incentives Report,* 12, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited April 8, 2021).
[7] For qualified target industry facilities, the tax credit period is limited to 5 years. *See* s. 220.191(1)(g)2., F.S.
[8] Section 220.191(2)(a), F.S. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations. They do not include the cost of any property previously owned or leased by the qualifying business.
[9] Section 220.191(1)(g)2., F.S.

income tax liability or premium tax liability generated by, or arising out of, the qualifying project.
- For a qualifying project resulting in a cumulative capital investment of at least $50 million to under $100 million, the annual credit may not exceed 75 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.
- For a qualifying project resulting in a cumulative capital investment of at least $25 million to under $50 million, the annual credit may not exceed 50 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.

A qualifying project with less than a $25 million cumulative capital investment is not eligible for the credit.

Generally, an unused credit may not be carried backward or forward to apply to tax liabilities in previous or subsequent years, respectively.[10] However, a business with a qualifying project resulting in a cumulative capital investment of at least $100 million may apply unused credits beginning with the 21st year after the commencement of the project's operations and ending the 30th year after the commencement of the project's operations.[11]

The credit may not be assigned or transferred, except by a qualifying business establishing a qualifying project that includes locating a new solar panel manufacturing facility in Florida and that generates a minimum of 400 jobs within 6 months after commencement of operations, with an average salary of at least $50,000. Such business may assign or transfer its annual credit or any portion thereof to any other business, subject to certain limitations and conditions.[12]

Credit under s. 220.191(3), F.S.

The second credit under the CITC is limited to qualifying businesses that establish a headquarters facility qualifying project. The annual credit amount is the lesser of $15 million or 5 percent of the eligible capital costs made in connection with a qualifying project for up to 20 years, beginning with the commencement of the project.[13] The credit is granted against the state corporate income tax liability of the qualifying business. The total tax credit is limited to 100 percent of the qualifying project's eligible capital costs.

Unused credits may be carried forward for up to 20 years after the commencement of the project's operations.[14] The credit may be used by certain related entities of the qualifying business.[15]

[10] Section 220.191(2)(a), F.S.
[11] Section 220.191(2)(d), F.S.
[12] Section 220.191(2)(c), F.S.
[13] Section 220.191(3)(a), F.S.
[14] Section 220.191(3)(b), F.S.
[15] Section 220.191(3)(c), F.S.

Certification of Qualifying Businesses and Issuance of Tax Credits

The DEO must certify a business as eligible to receive either of the CITC tax credits before the commencement of operations of a qualifying project. If a business is certified, the DEO will enter into an agreement with the business that specifies the planned commencement date of operations and the total amount of credit the business can expect if the project proceeds as planned. Agreements are drafted so that a qualified business's annual credit amount begins on the date of commencement of operations, beginning the 20-year credit period. If for some reason operations do not commence on time, the 20-year window is not adjusted.[16] Before receiving a tax credit each year, a qualifying business must achieve and maintain its minimum employment goals beginning with the commencement of operations of a qualifying project.[17] Qualifying businesses must also affirmatively demonstrate to the DOR that they meet job creation and capital investment requirements.[18]

Economic Impact

According to the DEO, there were 61 active CITC awardees with 32 reporting performance as of Fiscal Year 2019-2020; the DEO confirmed 2,887 jobs created and over $308 million in capital investment in said fiscal year.[19] Over $67 million in tax credits were approved to be claimed by qualified business in calendar year 2019.[20]

Select State Taxes

The following describes select Florida taxes, which the CITC or the bill provides credits against.

Corporate Income Tax

Florida imposes a tax on the taxable income of certain corporations and financial institutions doing business in Florida.[21] The current rate is 4.458 percent[22] of a taxpayer's net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).[23]

The calculation of Florida corporate income tax starts with a corporation's federal taxable income.[24] Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll, and 50 percent on sales.[25] Income that is apportioned to Florida using this formula is

---

16 Florida Senate Committee on Finance and Tax, *Issue Brief 2012-2014: Review of the Capital Investment Tax Credit* (September 2011), *available at* https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-204ft.pdf (last visited April 8, 2021). *See* also s. 220.191(5), F.S.
17 Section 220.191(4), F.S.
18 Section 220.191(7), F.S.
19 Department of Economic Opportunity, *2020 Annual Incentives Report*, 8, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited April 8, 2021).
20 *Id* at 49.
21 Chapter 220, F.S.
22 The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate is scheduled to return to 5.5 percent for taxable years beginning on or after January 1, 2022.
23 Sections 220.11(2) and 220.63(2), F.S.
24 Section 220.12, F.S.
25 Section 220.15, F.S.

then subject to the Florida income tax. The first $50,000 of net income is exempt, effective with taxable years beginning January 1, 2013.[26]

Corporate income tax net collections in Fiscal Year 2019-2020 were $1.7 billion.[27]

Insurance Premium Tax

Florida imposes on insurers a tax on insurance premiums. For the tax imposed by s. 624.509(1), F.S., tax is due on:

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

The general tax rate is 1.75 percent of gross receipts on account of life and health insurance policies covering Florida residents and on account of all other types of policies and contracts covering property, subjects, or risks located, resident, or to be performed in Florida, minus reinsurance and return premiums.[28] Annuity policies or contracts held in Florida are taxed at 1 percent of gross receipts, and direct written premiums for bail bonds are taxed at 1.75 percent, excluding any amounts retained by licensed bail bond agents or appointed managing general agents.[29] The insurance premium tax is collected by the DOR and distributed to the General Revenue Fund.[30] Total insurance premium tax collections in Fiscal Year 2019-2020 were $893.7 million.[31]

Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,[32] transient rentals,[33] and a limited number of services, and a 5.5 percent sales and use tax on commercial real estate rentals.[34] Chapter 212, F.S., authorizes the levy and collection of the state sales tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances.[35] Florida requires a dealer to add the tax to the sales price

---

[26] Section 220.14, F.S.
[27] Revenue Estimating Conference, *General Revenue Consensus Estimating Conference Comparison Report* (December 21, 2020), 27, *available at* http://www.edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf (last visited April 8, 2021).
[28] Section 624.509(1), F.S.
[29] *Id.*
[30] Section 624.509(3), F.S.
[31] *Supra* note 27, at 34.
[32] Section 212.04, F.S.
[33] Section 212.03, F.S.
[34] Section 212.031, F.S.
[35] Section 212.02(14)(a), F.S.

of the taxable good or service and collect it from the purchaser at the time of sale.[36] Total sales tax collections in Fiscal Year 2019-2020 were estimated at $29.3 billion.[37]

In addition to the state sales tax, county and municipal governments and school districts are authorized to levy certain local discretionary sales surtaxes (also referred to as local option sales taxes), subject to certain requirements and limitations.[38]

III. Effect of Proposed Changes:

The bill authorizes a qualifying business to carry over unused credits under the CITC which were generated in its 2020 taxable year, if:
- The qualifying business operated a company within the standard classification codes of 4724 (travel agencies) or 7514 (passenger car rentals); and
- The qualifying business' total gross receipts between April 1, 2020, and December 31, 2020, were 50 percent less when compared to the same period in 2019.

Such qualifying business may use up to 50 percent of such unused tax credits in the tax year beginning January 1, 2021, by:
- Transferring its unused tax credits to another taxpayer subject to the state corporate income tax, as long as the business receiving the transferred credits uses the credits only in the year received;
- Using its unused tax credits against amounts payable to the DOR, either as consumer or dealer, for sales and use tax liability; or
- Applying its unused tax credits against corporate income tax payments for tax years beginning January 1, 2021, and ending December 31, 2025.

The bill authorizes the DOR to adopt emergency rules to administer the act. The authorization expires July 1, 2023.

The bill takes effect July 1, 2021, except for the DOR's emergency rulemaking authority, which takes effect upon the act becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the State Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the State Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the

---

[36] *See* ss. 212.07(2) and 212.06(3)(a), F.S.

[37] Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 159 (2020), *available at* http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited April 8, 2021).

[38] *See* ss. 212.054 and 212.055, F.S.

legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,[39] which is $2.2 million or less for Fiscal Year 2021-2022.[40]

The Revenue Estimating Conference determined that the bill will reduce local government receipts by $600,000 in Fiscal Year 2021-2022 only.[41] Therefore, the mandate provisions of Art. VII, s. 18 of the State Constitution may not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by $1.7 million and reduce local government receipts by $600,000 in Fiscal Year 2021-2022 only.[42] The estimate assumes that the credit will be taken against sales tax liability.

---

[39] FLA. CONST. art. VII, s. 18(d).

[40] Neither the State Constitution nor the Florida Statutes define "insignificant fiscal impact" for purposes of s. 18(d), Art. VII of the State Constitution. Joint Senate and House guidelines define "insignificant" as an amount not greater than the average statewide population for the applicable fiscal year times $0.10. *Senate President Margolis and Speaker of the House Wetherell, County and Municipality Mandates Analysis* (1991), *cited at* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited April 8, 2021). The $2.2 million figure is based on the Florida Demographic Estimating Conference's Nov. 13, 2020, population forecast for 2021 of 21,893,919. The conference packet is available at: http://www.edr.state.fl.us/Content/conferences/population/archives/201113demographic.pdf (last visited April 8, 2021).

[41] Office of Economic and Demographic Research, The Florida Legislature, *Analysis of SB 1246/HB 863*, March 19, 2021, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page203-204.pdf (last visited April 8, 2021).

[42] *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOR estimates that it will require a $93,990 appropriation in Fiscal Year 2020-2021 to implement the bill.[43]

VI. Technical Deficiencies:

On lines 25-26, "in the tax year beginning January 1, 2021" should read "in its taxable year beginning in 2021".

VII. Related Issues:

On lines 36-37, "beginning after January 1, 2021, and ending before December 31, 2025" may exclude a taxpayer whose taxable year begins on January 1 from using the credit in its taxable years beginning in 2021 and 2025. If the intent is to include such years, the following change may be considered: "beginning on or after January 1, 2021, and ending on or before December 31, 2025."

VIII. Statutes Affected:

This bill substantially amends section 220.191 of the Florida Statutes.

IX. Additional Information:

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

CS by Finance and Tax on April 14, 2021:
The CS:
- Specifies that a business that is transferred unused tax credits by a qualifying business must use the credits only in the year received.
- Authorizes the DOR to adopt emergency rules.
- Makes technical and clarifying changes.

B. Amendments:

None.

[43] Florida Dep't of Revenue, *Agency Analysis of Senate Bill 1246*, 6, March 3, 2021, (on file with the Senate Committee on Finance and Tax).