

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 20, 1998 Revised: _____

Subject: Capital Investment Tax Credits

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Maclure</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute creates a new tax credit program under which a qualifying business may claim, subject to conditions and limitations, an annual credit against corporate income taxes equal to 5 percent of the eligible capital costs generated by a new or expanding facility in Florida. A qualifying project must create at least 100 new jobs in Florida, be in one of the high-impact business sectors identified by Enterprise Florida, Inc., and result in a cumulative capital investment of at least \$25 million. The credit is granted against only the income arising from the qualifying project.

This committee substitute creates section 220.191 and amends section 220.02, Florida Statutes.

II. Present Situation:

Corporate Income Tax & Tax Credits

Chapter 220, F.S., is Florida's corporate income tax code, the stated intent of which is to levy a tax on all corporations and other artificial entities that derive from the state attributes not inherent in natural persons, such as perpetual life, transferable ownership, and limited liability for all owners (s. 220.02(1), F.S.). The rate for such tax generally is 5.5 percent on the taxpayer's net income for the taxable year (s. 220.11(2), F.S.).

Florida law uses a taxpayer's adjusted federal income as the starting point for calculating that taxpayer's Florida net income. Section 220.12, F.S., defines net income as the taxpayer's adjusted federal income, or the amount of the adjusted federal income that is apportioned to Florida, plus non-business income, less child-care facility start-up costs, and less a statutory exemption. In the case of a taxpayer that does business within and without the state of Florida, a portion of that

taxpayer's adjusted federal income is apportioned to Florida for state tax purposes. Under s. 220.15, F.S., that portion is determined by multiplying such a taxpayer's adjusted federal income by an apportionment fraction composed of three factors: a sales factor, a property factor, and a payroll factor.

A number of credits against the corporate income tax are enumerated in the Florida Statutes. Section 220.02(10), F.S., declares the Legislature's intent that such credits against either the corporate income tax or the franchise tax should be applied in the following order:

- s. 220.68, relating to taxes paid by banks or savings associations;
- s. 631.719(1), relating to insurer assessments paid (repealed effective July 1, 1994);
- s. 631.705, relating to insurer assessments paid (repealed effective July 1, 1994);
- s. 220.18, relating to gasohol development;
- s. 631.828, relating to assessments against member HMOs;
- s. 220.181, relating to new employment in an enterprise zone;
- s. 220.183, relating to contributions to community redevelopment projects;
- s. 220.182, relating to taxes paid on property in an enterprise zone;
- s. 220.1895, relating to employment in certain rural and urban communities;
- s. 221.02, relating to emergency excise taxes paid;
- s. 220.184, relating to hazardous waste facilities;
- s. 220.186, relating to payment of the Florida alternative minimum tax; and
- s. 220.188, relating to investment in export finance corporations.

High-Impact Business Grant Program

As part of an economic development strategy to foster the growth of certain business sectors in the state, the Legislature in 1997 created a high-impact grant program (s. 13, ch. 97-278, L.O.F.). Under the program, which is codified in s. 288.108, F.S., an eligible business may be awarded a grant by the Office of Tourism, Trade, and Economic Development (OTTED), in consultation with Enterprise Florida, Inc. (EFI), based on a cumulative investment in the state of at least \$100 million and the creation of at least 100 new jobs, or a cumulative investment of \$75 million and the creation of at least 75 new jobs in the case of a research and development facility. Grant amounts may range from \$1 million to \$12 million depending upon the size of the investment and the number of jobs created (s. 288.108(3)(b), F.S.). The total amount of active performance grants scheduled for payment by OTTED in any single fiscal year may not exceed the lesser of \$30 million or the amount appropriated by the Legislature for that fiscal year for such grants (s. 288.108(4)(a), F.S.).

An eligible business must be in one of the high-impact sectors identified by EFI. The statute specifies that the silicon technology sector qualifies as a high-impact sector, and the statute provides a process and guidelines for the designation of additional sectors (s. 288.108(6), F.S.). In addition to silicon technology, to date the automotive industry and the aviation and aerospace industry have also been designated formally as high-impact sectors. Other industries, such as health technology, information technology, and simulation technology, are being considered as

well. To date no grants have been awarded under this program; however, EFI reports that it has issued opinions on the program's availability and on potential award amounts during the course of negotiations related to several economic development projects.

III. Effect of Proposed Changes:

This committee substitute creates a capital investment tax credit program, under which a qualified business may claim an annual credit against corporate income taxes equal to 5 percent of the eligible capital costs associated with a new or expanding facility in Florida that creates 100 new jobs in the state and is in one of the high-impact sectors identified by Enterprise Florida, Inc. (EFI). The committee substitute prescribes the following additional conditions and requirements:

- The credit may be claimed for no more than 20 years, beginning with the commencement of operations of the qualifying project.
- The credit is granted only against the tax liability generated by or arising from the project itself.
- The sum of all credits may not exceed 100 percent of the eligible capital costs of the project.
- The annual credit may not exceed a specified percentage of the annual corporate income tax liability generated by the project. Those percentages are:
 - 100 percent, for a project with a cumulative capital investment of \$100 million or more;
 - 75 percent, for a project with a cumulative capital investment of at least \$50 million but less than \$100 million; and
 - 50 percent, for a project with a cumulative capital investment of at least \$25 million but less than \$50 million.

A project that results in a cumulative capital investment of less than \$25 million is not eligible for the program.

- The high-impact sectors to which a facility must belong are those identified by EFI as part of the high-impact grant program under s. 288.108(6), F.S., and include, but are not limited to: aviation, aerospace, automotive, and silicon technology industries.
- Prior to receiving the credits, a business must achieve and maintain the minimum employment goals beginning with commencement of operations at the qualifying project and continuing each year thereafter during which the credits are available.
- The credit may not be carried forward or backward.

The committee substitute codifies the program in s. 220.191, F.S., and provides definitions for applicable terms, including but not limited to: "commencement of operations," "cumulative capital investment," "eligible capital costs," "jobs," "qualifying business," and "qualifying project."

The measure provides that the Office of Tourism, Trade, and Economic Development (OTTED), based upon a recommendation from EFI, shall certify a business as eligible to receive the credits, prior to the commencement of project operations, and shall forward the certification to the

Department of Revenue. The department is required to enter into a written agreement with the business that, at a minimum, sets out the method by which income generated by or arising out of the qualifying project will be determined. OTTED is authorized to develop certain program guidelines and application materials in consultation with EFI.

The committee substitute also amends s. 220.02(10), F.S., to specify the legislative intent on the order in which the capital investment tax credits should be applied relative to other credits against the corporate income tax or the franchise tax.

The committee substitute provides an effective date of July 1 of the year in which enacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

As of March 20, 1998, the Revenue Impact Conference had initiated, but not yet completed, its review of this measure. The credit against corporate income tax authorized by the measure will represent a reduction in general revenue. This revenue reduction may be lessened by revenues generated from increased economic activity associated with economic development projects that may be facilitated by this incentive program.

B. Private Sector Impact:

A qualifying business will be able to claim an annual credit against corporate income tax liability equal to 5 percent of the eligible capital costs associated with an eligible new or expanding facility for a period not exceeding 20 years.

C. Government Sector Impact:

The Office of Tourism, Trade, and Economic Development and Enterprise Florida, Inc., do not anticipate the need for additional resources as a result of this committee substitute. The Department of Revenue anticipates the need for \$60,000 in non-recurring resources for fiscal year 1998-99 in connection with this measure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Administrative difficulties may arise because the committee substitute:

- Does not provide a definition for, or other guidance on, what constitutes income generated by or arising out of the qualifying project for the purposes of the tax credit.
- Does not provide the Department of Revenue with specific authority to implement rules that may be necessary to administer the new tax credit, such as rules related to a methodology for assessing what portion of a taxpayer's income tax liability arises out of a qualifying project.

VIII. Amendments:

None.