

Bill No. CS for CS for SB 2728, 1st Eng.

Barcode 104670

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Fasano moved the following amendment:

Senate Amendment (with title amendment)

On page 2, line 18,

insert:

Section 1. Section 220.101, Florida Statutes is amended to read:

220.191 Capital investment tax credit.--

(1) DEFINITIONS.--For purposes of this section:

(a) "Commencement of operations" means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) "Cumulative capital investment" means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

(c) "Eligible capital costs" means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a

Bill No. CS for CS for SB 2728, 1st Eng.

Barcode 104670

1 qualifying project during the period from the beginning of
2 construction of the project to the commencement of operations,
3 including, but not limited to:

4 1. The costs of acquiring, constructing, installing,
5 equipping, and financing a qualifying project, including all
6 obligations incurred for labor and obligations to contractors,
7 subcontractors, builders, and materialmen.

8 2. The costs of acquiring land or rights to land and
9 any cost incidental thereto, including recording fees.

10 3. The costs of architectural and engineering
11 services, including test borings, surveys, estimates, plans
12 and specifications, preliminary investigations, environmental
13 mitigation, and supervision of construction, as well as the
14 performance of all duties required by or consequent to the
15 acquisition, construction, installation, and equipping of a
16 qualifying project.

17 4. The costs associated with the installation of
18 fixtures and equipment; surveys, including archaeological and
19 environmental surveys; site tests and inspections; subsurface
20 site work and excavation; removal of structures, roadways, and
21 other surface obstructions; filling, grading, paving, and
22 provisions for drainage, storm water retention, and
23 installation of utilities, including water, sewer, sewage
24 treatment, gas, electricity, communications, and similar
25 facilities; and offsite construction of utility extensions to
26 the boundaries of the property.

27
28 Eligible capital costs shall not include the cost of any
29 property previously owned or leased by the qualifying
30 business.

31 (d) "Income generated by or arising out of the

Bill No. CS for CS for SB 2728, 1st Eng.

Barcode 104670

1 qualifying project" means the qualifying project's annual
2 taxable income as determined by generally accepted accounting
3 principles and under s. 220.13.

4 (e) "Jobs" means full-time equivalent positions, as
5 that term is consistent with terms used by the Agency for
6 Workforce Innovation and the United States Department of Labor
7 for purposes of unemployment tax administration and employment
8 estimation, resulting directly from a project in this state.
9 The term does not include temporary construction jobs involved
10 in the construction of the project facility.

11 (f) "Office" means the Office of Tourism, Trade, and
12 Economic Development.

13 (g) "Qualifying business" means a business which
14 establishes a qualifying project in this state and which is
15 certified by the office to receive tax credits pursuant to
16 this section.

17 (h) "Qualifying project" means:

18 1. A new or expanding facility in this state which
19 creates at least 100 new jobs in this state and is in one of
20 the high-impact sectors identified by Enterprise Florida,
21 Inc., and certified by the office pursuant to s. 288.108(6),
22 including, but not limited to, aviation, aerospace,
23 automotive, and silicon technology industries; or

24 2. A new or expanded facility in this state which is
25 engaged in a target industry designated pursuant to the
26 procedure specified in s. 288.106(1)(o) and which is induced
27 by this credit to create or retain at least 1,000 jobs in this
28 state, provided that at least 100 of those jobs are new, pay
29 an annual average wage of at least 130 percent of the average
30 private sector wage in the area as defined in s. 288.106(1),
31 and make a cumulative capital investment of at least \$100

Bill No. CS for CS for SB 2728, 1st Eng.

Barcode 104670

1 million after July 1, 2005. Jobs may be considered retained
2 only if there is significant evidence that the loss of jobs is
3 imminent. Notwithstanding subsection (2), annual credits
4 against the tax imposed by this chapter shall not exceed 50
5 percent of the increased annual corporate income tax liability
6 or the premium tax liability generated by or arising out of a
7 project qualifying under this subparagraph. A facility that
8 qualifies under this subparagraph for an annual credit against
9 the tax imposed by this chapter may take the tax credit for a
10 period not to exceed 5 years.

11 3. A new or expanded headquarters facility in this
12 state which locates in an enterprise zone and brownfield area
13 and is induced by this credit to create at least 1,500 jobs
14 which on average pay at least 200 percent of the statewide
15 average annual wage and makes a cumulative capital investment
16 in Florida of at least \$250 million.

17 (2) An annual credit against the tax imposed by this
18 chapter shall be granted to any qualifying business in an
19 amount equal to 5 percent of the eligible capital costs
20 generated by a qualifying project, for a period not to exceed
21 20 years beginning with the commencement of operations of the
22 project. The tax credit shall be granted against only the
23 corporate income tax liability or the premium tax liability
24 generated by or arising out of the qualifying project, and the
25 sum of all tax credits provided pursuant to this section shall
26 not exceed 100 percent of the eligible capital costs of the
27 project. In no event may any credit granted under this section
28 be carried forward or backward by any qualifying business with
29 respect to a subsequent or prior year. The annual tax credit
30 granted under this section shall not exceed the following
31 percentages of the annual corporate income tax liability or

Bill No. CS for CS for SB 2728, 1st Eng.

Barcode 104670

1 the premium tax liability generated by or arising out of a
2 qualifying project:

3 (a) One hundred percent for a qualifying project which
4 results in a cumulative capital investment of at least \$100
5 million.

6 (b) Seventy-five percent for a qualifying project
7 which results in a cumulative capital investment of at least
8 \$50 million but less than \$100 million.

9 (c) Fifty percent for a qualifying project which
10 results in a cumulative capital investment of at least \$25
11 million but less than \$50 million.

12
13 A qualifying project which results in a cumulative capital
14 investment of less than \$25 million is not eligible for the
15 capital investment tax credit. An insurance company claiming a
16 credit against premium tax liability under this program shall
17 not be required to pay any additional retaliatory tax levied
18 pursuant to s. 624.5091 as a result of claiming such credit.
19 Because credits under this section are available to an
20 insurance company, s. 624.5091 does not limit such credit in
21 any manner.

22 (3)(a) Notwithstanding subsection (2), an annual
23 credit against the tax imposed by this chapter shall be
24 granted to a qualifying business which establishes a
25 qualifying project pursuant to sub-paragraph (1)(h)3., in an
26 amount equal to the lesser of \$15 million or 5 percent of the
27 eligible capital costs made in connection with a qualifying
28 project, for a period not to exceed 20 years beginning with
29 the commencement of operations of the project. The tax credit
30 shall be granted against the corporate income tax liability of
31 the qualifying business and as further provided in paragraph

Barcode 104670

1 (3)(c). The total tax credit provided pursuant to this
2 subsection shall be equal to no more than 100 percent of the
3 eligible capital costs of the qualifying project.

4 (b) If the credit granted under this subsection is not
5 fully used in any one year because of insufficient tax
6 liability on the part of the qualifying business, the unused
7 amount may be carried forward for a period not to exceed 20
8 years from the commencement of operations of the project. The
9 carryover credit may be used in a subsequent year when the tax
10 imposed by this chapter for that year exceeds the credit for
11 which the qualifying business is eligible in that year under
12 this subsection after applying the other credits and unused
13 carryovers in the order provided by s. 220.02(8).

14 (c) The credit granted under this subsection may be
15 utilized in whole or part by the qualifying business or any
16 corporation that is either a member of that qualifying
17 business' affiliated group of corporations, is a related
18 entity taxable as a cooperative under Subchapter T of the
19 Internal Revenue Code or, if the qualifying business is an
20 entity taxable as a cooperative under Subchapter T of the
21 Internal Revenue Code, is related to the qualifying business.
22 Any entity related to the qualifying business may continue to
23 file as a member of a Florida-nexus consolidated group
24 pursuant to a prior election made under s. 220.131(1), F.S.
25 (1985) even if the parent of the group changes due to a direct
26 or indirect acquisition of the former common parent of the
27 group. Any credit can be used by any of the aforementioned
28 affiliated companies or related entities to the same extent as
29 it could have been used by the qualifying business. However,
30 any such utilization shall not operate to increase the amount
31 of the credit or extend the period within which the credit

Bill No. CS for CS for SB 2728, 1st Eng.

Barcode 104670

1 must be utilized.

2 ~~(4)(3)~~ Prior to receiving tax credits pursuant to this
3 section, a qualifying business must achieve and maintain the
4 minimum employment goals beginning with the commencement of
5 operations at a qualifying project and continuing each year
6 thereafter during which tax credits are available pursuant to
7 this section.

8 ~~(5)(4)~~ The office, upon a recommendation by Enterprise
9 Florida, Inc., shall first certify a business as eligible to
10 receive tax credits pursuant to this section prior to the
11 commencement of operations of a qualifying project, and such
12 certification shall be transmitted to the Department of
13 Revenue. Upon receipt of the certification, the Department of
14 Revenue shall enter into a written agreement with the
15 qualifying business specifying, at a minimum, the method by
16 which income generated by or arising out of the qualifying
17 project will be determined.

18 ~~(6)(5)~~ The office, in consultation with Enterprise
19 Florida, Inc., is authorized to develop the necessary
20 guidelines and application materials for the certification
21 process described in subsection (4).

22 ~~(7)(6)~~ It shall be the responsibility of the
23 qualifying business to affirmatively demonstrate to the
24 satisfaction of the Department of Revenue that such business
25 meets the job creation and capital investment requirements of
26 this section.

27 ~~(8)(7)~~ The Department of Revenue may specify by rule
28 the methods by which a project's pro forma annual taxable
29 income is determined.

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Bill No. CS for CS for SB 2728, 1st Eng.

Barcode 104670

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, line 3, after the first semicolon

4

5 insert:

6 amending s. 220.191, F.S.; expanding the
7 definition of qualified project for the Capital
8 Investment Tax Credit; providing alternative
9 credit eligibility criteria;

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