

By Senator Thrasher

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1                                   A bill to be entitled  
2           An act relating to tax credits for research and  
3           development; creating s. 220.194, F.S.; providing  
4           definitions; providing a tax credit for certain  
5           research and development expenses; providing  
6           eligibility requirements for research and development  
7           tax credits; providing limitations regarding  
8           eligibility; providing an amount for such credit;  
9           providing a maximum amount of credit that may be taken  
10          during a single tax year; providing that any unused  
11          credit may be carried forward for a specified period;  
12          authorizing the sale or assignment of unused credit to  
13          certain taxpayers under certain conditions; requiring  
14          that a party to a sale or assignment file certain  
15          information and documents with the Department of  
16          Revenue; requiring that parties to a sale or  
17          assignment obtain the department's approval before  
18          completing such sale or assignment; prohibiting the  
19          department from unreasonable withholding of such  
20          approval; providing requirements for the use tax  
21          credits sold or assigned; limiting the total amount of  
22          tax credits that may be assigned in a calendar year;  
23          providing that applications for credits may be filed  
24          on or after a specified date; requiring that the  
25          credits be granted in the order in which applications  
26          are received; authorizing the department to adopt  
27          rules; amending s. 220.02, F.S.; revising legislative  
28          intent to include the research and development tax  
29          credit in the ordered list according to which credits

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30 against corporate income tax or franchise tax are  
31 applied; providing an effective date.

32  
33 WHEREAS, research and development has become the underlying  
34 source of wealth in the 21st century by generating ideas and  
35 technologies that encourage productivity and economic growth,  
36 and

37 WHEREAS, corporations generate the main body of growth-  
38 stimulating innovations, and

39 WHEREAS, research and development tax credits provide  
40 incentives for corporate research and development beyond  
41 expected levels, and

42 WHEREAS, research shows that the federal research and  
43 development tax credit is an effective tool for stimulating  
44 additional research and development, which in turn leads to  
45 faster economic growth, and

46 WHEREAS, state research and development tax credit programs  
47 are nearly as important to corporate research and development as  
48 the federal research and development tax credit program, and

49 WHEREAS, the typical state research and development tax  
50 credit program increases general, corporate-funded research and  
51 development within a state, often enhancing the state's  
52 competitiveness by enabling a state to draw research and  
53 development activity away from other states, and

54 WHEREAS, this state needs a state research and development  
55 tax credit program to ensure economic competitiveness, and

56 WHEREAS, more than half of the states of this nation have a  
57 research and development tax credit program, and

58 WHEREAS, Florida lags behind the rest of the nation in

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59 important corporate research and development activities because  
60 the state does not have a research and development tax credit,  
61 and

62 WHEREAS, the Legislature must create a research and  
63 development tax credit in order to encourage corporate research  
64 and development activity within this state, level the playing  
65 field with the state's regional and national economic  
66 competitors, support the state's vibrant innovation economy, and  
67 attract high-wage, professional research jobs to this state,  
68 NOW, THEREFORE,

69  
70 Be It Enacted by the Legislature of the State of Florida:

71  
72 Section 1. Section 220.194, Florida Statutes, is created to  
73 read:

74 220.194 Research and development tax credit.—

75 (1) DEFINITIONS.—As used in this section, the term:

76 (a) "Base amount" means the average of the business  
77 enterprise's qualified research expenses in this state allowed  
78 under 26 U.S.C. s. 41 for the 4 taxable years preceding the  
79 taxable year for which the credit is being determined. The  
80 qualified research expenses taken into account in computing the  
81 base amount shall be determined on a basis consistent with the  
82 determination of qualified research expenses for the credit  
83 year.

84 (b) "Base period" means the 4 taxable years preceding the  
85 taxable year for which the credit is being determined.

86 (c) "Business enterprise" means any corporation as defined  
87 in s. 220.03(1)(e) which is also a target industry business as

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88 defined in s. 288.106(1)(o).

89 (d) "Qualified research expenses" means research expenses  
90 qualifying for the credit under 26 U.S.C. s. 41 for in-house  
91 research expenses incurred in this state or contract research  
92 expenses incurred in this state. The term does not include  
93 research conducted outside this state, research that is excluded  
94 under 26 U.S.C. s. 41, or research conducted by a business  
95 enterprise that is not within its principal business activity.

96 (2) TAX CREDIT.—Subject to the limitations contained in  
97 paragraph (e), a business enterprise is eligible for a credit  
98 against the tax imposed by this chapter if the business  
99 enterprise has qualified research expenses in this state in the  
100 calendar year exceeding the base amount and, for the same  
101 calendar year, claims and is allowed a research credit for such  
102 qualified research expenses under 26 U.S.C. s. 41.

103 (a) The tax credit shall be 10 percent of the excess  
104 qualified research expenses over the base amount. However, the  
105 maximum tax credit for a business enterprise that has not been  
106 in existence for the entire base period is reduced by 25 percent  
107 for each taxable year for which the business enterprise, or a  
108 predecessor corporation that was a business enterprise, did not  
109 exist during the base period.

110 (b) The credit taken in any single tax year may not exceed  
111 50 percent of the business enterprise's remaining net income tax  
112 liability under this chapter after all other credits have been  
113 applied under s. 220.02(8).

114 (c) Any unused credit authorized pursuant to this section  
115 may be carried forward and claimed by the taxpayer for up to 5  
116 years following the close of the taxable year in which the

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117 qualified research expenses are incurred.

118 (d) Any unused credit authorized pursuant to this section  
119 may be assigned or sold to another business enterprise if a  
120 claim for the allowance has not been filed within 1 calendar  
121 year following the date on which the department approved the  
122 credit. The business enterprise selling the tax credit and the  
123 purchaser or assignee must file an application, waivers of  
124 confidentiality, and affidavits to transfer the credit on a form  
125 provided by the department and obtain the prior approval of the  
126 department for such transfer. The department may not  
127 unreasonably withhold such approval. The purchaser or assignee  
128 must use the tax credit in the taxable year in which the  
129 purchase or assignment of the credit is made. The transfer or  
130 purchase of any amount of the tax credit may not be exchanged  
131 for less than 75 percent of the credit's value.

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

139 (3) RULES.—The department may adopt rules to administer  
140 this section, including, but not limited to, rules prescribing  
141 forms, application procedures and dates, and notification or  
142 other procedures for the sale or assignment of a credit, and may  
143 establish guidelines for making an affirmative showing of  
144 qualification for a credit and any evidence needed to  
145 substantiate a claim for credit under this section.

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

148 220.02 Legislative intent.—

149 (8) It is the intent of the Legislature that credits  
150 against either the corporate income tax or the franchise tax be  
151 applied in the following order: those enumerated in s. 631.828,  
152 those enumerated in s. 220.191, those enumerated in s. 220.181,  
153 those enumerated in s. 220.183, those enumerated in s. 220.182,  
154 those enumerated in s. 220.1895, those enumerated in s. 221.02,  
155 those enumerated in s. 220.184, those enumerated in s. 220.186,  
156 those enumerated in s. 220.1845, those enumerated in s. 220.19,  
157 those enumerated in s. 220.185, those enumerated in s. 220.187,  
158 those enumerated in s. 220.192, those enumerated in s. 220.193,  
159 ~~and~~ those enumerated in s. 288.9916, and those enumerated in s.  
160 220.194.

161 Section 3. This act shall take effect July 1, 2010, and is  
162 effective for tax years beginning on or after January 1, 2011.