HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1069 Capital Investment Tax Credits
SPONSOR(S): Dorworth and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	14 Y, 0 N, As CS	Kruse	Kruse
2) Rules & Calendar Committee			
3) Finance & Tax Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The Capital Investment Tax Credit is an incentive used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to twenty years, against corporate income or premium tax liabilities generated by or arising out of a qualifying project.

The bill provides an additional means for a business to take advantage of the Capital Investment Tax Credit, which may have the effect of stimulating private sector economic activity. For taxable years beginning on or after January 1, 2011, if a qualifying business' corporate income or premium tax liability credit granted through this incentive is not fully used because the qualifying business has insufficient tax liability, the qualifying business is entitled to a state sales and use tax credit against its sales tax liability. The bill provides that the credit is an amount equal to the corporate income or insurance premium tax credit that could not be fully used in that tax year because of insufficient tax liability arising out of the project. The bill requires the business to make additional capital investments, over and above the capital investments the business made to qualify for the corporate income tax credit, in the years following the business taking the sales tax credit.

The bill has a fiscal impact. The Revenue Estimating Conference adopted an estimate of a negative $5 million recurring impact on state revenue beginning in 2011-12.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

Capital Investment Tax Credit
The Capital Investment Tax Credit is an incentive used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to twenty years, against corporate income or premium tax liabilities generated by or arising out of the qualifying project.

Eligible projects

- A new or expanded facility in a designated high-impact portion of the following sectors: clean energy, biomedical technology, financial services, information technology, silicon technology, transportation equipment manufacturing, or a corporate headquarters facility;
- A new or expanded facility which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2)(t), F.S., and which is induced by this credit to create or retain at least 1,000 jobs, 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 make a cumulative capital investment of at least $100 million; or
- A new or expanded headquarters facility which locates in an enterprise zone and brownfield area and is induced by this credit to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least $250 million.

Tax Credit
The sum of all tax credits provided may not exceed 100 percent of the eligible capital costs of the project. Projects must also create a minimum of 100 jobs and invest at least $25 million in eligible capital costs. 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. The level of investment and the project's Florida corporate income tax liability for the 20 years following commencement of operations determines the amount of the annual credit.[1]

The annual tax credit may not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

- One hundred percent for a qualifying project which results in a cumulative capital investment of at least $100 million.
- Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least $50 million but less than $100 million.
- Fifty percent for a qualifying project which results in a cumulative capital investment of at least $25 million but less than $50 million.

Changes made by the bill

State Sales and Use Tax Credit and Business Qualifications
The bill provides an additional means for a business to take advantage of the capital investment tax credit. For taxable years beginning on or after January 1, 2011, if a qualifying business' corporate income or premium tax liability credit granted through this incentive is not fully used because the qualifying business has insufficient tax liability, the qualifying business is entitled to a state sales and use tax credit against its sales tax liability. The bill provides that the credit is an amount equal to the corporate income or insurance premium tax credit that could not be fully used in that tax year because of insufficient tax liability arising out of the project. The bill states that only businesses headquartered in

[1] Section 220.191, F.S. See also Enterprise Florida, Inc., http://eflorida.com/ContentSubpage.aspx?id=472 (visited 3/17/11)

the state that qualify for the capital investment tax credit and were previously in the capital investment tax program from January 1, 2006, to December 31,-2008, qualify for the sales tax credit.

Amount of Sales Tax Credit

The bill provides that the sales tax credit may not exceed $5 million in any one year and is subject to the following:

- A qualifying business that applies its sales tax credit against its sales and use tax liability must make capital investments in Florida, in addition to its cumulative capital investment, in an amount equal to or greater than the applied credit within 5 years after the date that the qualifying business first applied the sales tax credit to its sales and use tax return.
- The qualifying business must annually provide to the office, the President of the Senate, and the Speaker of the House of Representatives a report listing the capital investments made in each tax year in which the business claims a sales and use tax credit pursuant to this paragraph and must provide a final summary report of all capital investments made pursuant to the requirements of this paragraph.

Penalties

If the qualifying business fails to make the capital investments or if the business fails to report its capital investments, the qualifying business must repay to the Department of Revenue the difference between the sales tax credits received and the amount of capital investments accounted for plus interest as provided for delinquent taxes under chapter 212.

Rulemaking

The bill authorizes the Governor's Office of Tourism, Trade, and Economic Development and the Department of Revenue to adopt rules to administer the new sales tax incentive.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.08, F.S., to require a business to use electronic returns when filing for the state sales and use tax credit with the Department of Revenue

Section 2. Amends s. 220.191, F.S., to provide a sales tax credit to qualifying businesses.

Section 3. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On March 25, 2011, the Revenue Estimating Conference adopted an estimate of a negative $5 million recurring impact on state revenue beginning in 2011-12.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have the effect of stimulating private sector economic activity if a business is able to use the cash it receives from the additional sales tax credit to retain or hire employees or make additional capital investments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Governor's Office of Tourism, Trade, and Economic Development and the Department of Revenue to adopt rules to administer the additional sales tax incentive within the capital investment tax credit program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Economic Development and Tourism Subcommittee adopted a strike-all amendment which included Department of Revenue recommendations addressing the following:

- Specifying that the beginning date of the program is based on taxable years beginning on or after January 1, 2011;
- Specifying the computation of the conversion of the credit into a state sales and use tax credit; and
- Requiring a business that takes the state sales and use tax credit provided by the bill to use an electronic return when filing with the Department of Revenue, and that the credit expires after 12 months.

The bill was reported favorably as a committee substitute and the analysis has been updated to reflect the adopted amendment.