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) Finance & Tax Committee		Flieger	Langston

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. For taxable years beginning on or after January 1, 2011, if a qualifying business is not able to fully use their corporate income or premium tax liability credit 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 to make up the difference. 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. In the years following the taking of the sales tax credit, the business is required to make further capital investments, in addition to the capital investments the business made to initially qualify for the corporate income tax credit, in an amount equal to or greater than the amount of sales and use tax credits received.

The Revenue Estimating Conference (REC) adopted an estimate of a negative $4.5 million recurring impact on state General Revenue beginning in 2011-12. The REC also adopted an estimate of a negative $0.5 million recurring impact on local government revenue.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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 20 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:

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

Proposed Changes

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 exhausted because the qualifying business has insufficient corporate income or premium tax liability, the qualifying business is entitled to an additional tax credit against its state sales and use tax liability to make up the difference. The sales and use tax credit shall be equal to the amount of corporate income or premium tax liability that could not be used. To qualify for the sales and use tax credit, a business must be headquartered in Florida and must have entered into an agreement with the Department of Revenue between January 1,

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

2006, and December 31, 2008 regarding determination of income arising from the qualifying capital investment project.

Sales Tax Credit Administration.
The bill provides that the sales tax credit may not exceed $5 million per business for any one year and is subject to the following additional requirements:

- A qualifying business that applies a credit against its sales and use tax liability must make additional capital investments in Florida 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.
- The qualifying business must annually provide a report to the Office of Tourism, Trade, and Economic Development, the President of the Senate, and the Speaker of the House of Representatives. The report must list the capital investments made in each tax year in which the business claims a credit against sales and use tax liability and must provide a final summary report of all capital investments made.

Penalties
If the qualifying business fails to make the capital investments or if the business fails to provide the required report, 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 negative $4.5 million recurring impact on state General Revenue beginning in 2011-12.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   On March 25, 2011, the Revenue Estimating Conference adopted an estimate of negative $0.5 million recurring impact on local government revenue beginning in 2011-12.

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 require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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.