A bill to be entitled

An act relating to capital investment tax credits; amending s. 220.191, F.S.; providing an exception to the prohibition against carrying capital investment tax credits forward or backward for a certain capital investment tax credit; providing a capital investment tax credit to a qualifying business relating to the amount of investment tax credit that is unusable against the corporate income tax or premium tax to apply against liability for the sales and use tax; requiring that a qualifying business applying the tax credit against the sales and use tax make an additional capital investment of a specified amount within a certain period; requiring annual reports to the Legislature and the Office of Tourism, Trade, and Economic Development related to investments made by a qualifying business applying credits against the sales and use tax; requiring a qualifying business that fails to make the required capital investments to repay the amount of the sales and use tax credit claimed with interest; authorizing the Office of Tourism, Trade, and Economic Development and the Department of Revenue to adopt rules; providing an effective date.

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

Section 1. Section 220.191, Florida Statutes, is amended to read:

220.191 Capital investment tax credit.—

(1) DEFINITIONS.—As used in ~~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 qualifying project during the period from the beginning of construction of the project to the commencement of operations, including, but not limited to:

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

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

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

qualifying project.

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

The term does ~~Eligible capital costs shall~~ not include the cost of any property previously owned or leased by the qualifying business.

(d) "Income generated by or arising out of the qualifying project" means the qualifying project's annual taxable income as determined by generally accepted accounting principles and under s. 220.13.

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

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

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

(h) "Qualifying project" means:

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

2. A new or expanded facility in this state which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2)(t) and which is induced by this credit to create or retain at least 1,000 jobs in this state, 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 as defined in s. 288.106(2), and make a cumulative capital investment of at least $100 million after July 1, 2005. Jobs may be considered retained only if there is significant evidence that the loss of jobs is imminent. Notwithstanding subsection (2), annual credits against the tax imposed by this chapter may ~~shall~~ not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by or arising out of a project qualifying under this subparagraph. A facility that qualifies under this subparagraph for an annual credit against the tax imposed by this chapter may take the tax credit for a period not

to exceed 5 years; or

3. A new or expanded headquarters facility in this state 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, as published by the Agency for Workforce Innovation or its successor, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least $250 million.

(2)(a) An annual credit against the tax imposed by this chapter shall be granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. Unless assigned as described in this subsection, the tax credit shall be granted against only the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section may ~~shall~~ not exceed 100 percent of the eligible capital costs of the project. Except as provided in paragraph (d), a ~~In no event may any~~ credit granted under this section may not be carried forward or backward by any qualifying business with respect to a subsequent or prior year. The annual tax credit granted under this section may ~~shall~~ 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:

1. One hundred percent for a qualifying project which

results in a cumulative capital investment of at least $100 million.

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

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

(b) A qualifying project that ~~which~~ results in a cumulative capital investment of less than $25 million is not eligible for the capital investment tax credit. An insurance company claiming a credit against premium tax liability under this program is ~~shall~~ not ~~be~~ required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to an insurance company, s. 624.5091 does not limit such credit in any manner.

(c) A qualifying business that establishes a qualifying project that includes locating a new solar panel manufacturing facility in this state that generates a minimum of 400 jobs within 6 months after commencement of operations with an average salary of at least $50,000 may assign or transfer the annual credit, or any portion thereof, granted under this section to any other business. However, the amount of the tax credit that may be transferred in any year is ~~shall be~~ the lesser of the qualifying business's state corporate income tax liability for that year, as limited by the percentages applicable under paragraph (a) and as calculated before ~~prior to~~ taking any credit pursuant to this section, or the credit amount granted for that year. A business receiving the transferred or assigned credits may use the credits only in the year received, and the credits may not be carried forward or backward. To perfect the transfer, the transferor must ~~shall~~ provide the department with a written transfer statement notifying the department of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The department shall, upon receipt of a transfer statement conforming to the requirements of this paragraph, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

(d) Beginning in the year 2011, if the credit granted under this subsection is not fully used in fiscal year 2011 and all years thereafter because of insufficient tax liability on the part of the qualifying business, the qualifying business is entitled to a sales tax credit against its sales tax liability in an amount equal to the difference between the annual tax credit granted under this subsection, as computed pursuant to paragraph (a), and the amount of credit that is actually usable against the corporate income tax liability or premium tax. The sales tax credit shall be granted against the state sales and use taxes collected, reported, and remitted under chapter 212 during the 12-month period beginning on the date the qualifying business files its corporate income tax return for the year in which the credit granted under this subsection is not fully usable. The sales tax credit granted under this paragraph may not exceed $5 million in any one year and is subject to the following:

1. 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.

2. 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.

3. If the qualifying business fails to make the capital investments pursuant to subparagraph 1. or if the business fails to report its capital investments pursuant to subparagraph 2., the qualifying business shall 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.

4. This paragraph applies only to businesses headquartered in Florida qualifying for this credit pursuant to subparagraph

(2)(a)1. and only to businesses that received signed letters of approval and entry into the Capital Investment Tax Credit Program from the years 2006-2008.

The office and the Department of Revenue may adopt rules to administer this paragraph.

(3)(a) Notwithstanding subsection (2), an annual credit against the tax imposed by this chapter shall be granted to a qualifying business which establishes a qualifying project pursuant to subparagraph (1)(h)3., in an amount equal to the lesser of $15 million or 5 percent of the eligible capital costs made in connection with a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. The tax credit shall be granted against the corporate income tax liability of the qualifying business and as further provided in paragraph (c). The total tax credit provided pursuant to this subsection shall be equal to no more than 100 percent of the eligible capital costs of the qualifying project.

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

(c) The credit granted under this subsection may be used in whole or in part by the qualifying business or any corporation that is either a member of that qualifying business's affiliated group of corporations, is a related entity taxable as a cooperative under subchapter T of the Internal Revenue Code, or, if the qualifying business is an entity taxable as a cooperative under subchapter T of the Internal Revenue Code, is related to the qualifying business. Any entity related to the qualifying business may continue to file as a member of a Florida-nexus consolidated group pursuant to a prior election made under s. 220.131(1), Florida Statutes (1985), even if the parent of the group changes due to a direct or indirect acquisition of the former common parent of the group. Any credit can be used by any of the affiliated companies or related entities referenced in this paragraph to the same extent as it could have been used by the qualifying business. However, any such use shall not operate to increase the amount of the credit or extend the period within which the credit must be used.

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

(5) Applications shall be reviewed and certified pursuant to s. 288.061. The office, upon a recommendation by Enterprise Florida, Inc., shall first certify a business as eligible to receive tax credits pursuant to this section prior to the

commencement of operations of a qualifying project, and such certification shall be transmitted to the Department of Revenue. Upon receipt of the certification, the Department of Revenue shall enter into a written agreement with the qualifying business specifying, at a minimum, the method by which income generated by or arising out of the qualifying project will be determined.

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

(7) ~~It shall be the responsibility of~~ The qualifying business has the responsibility to affirmatively demonstrate to the satisfaction of the Department of Revenue that such business meets the job creation and capital investment requirements of this section.

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

Section 2. This act shall take effect July 1, 2011.