A bill to be entitled

An act relating to the capital investment tax credit; amending s. 212.08, F.S.; specifying procedures to claim a sales and use tax credit; amending s. 220.191, F.S.; authorizing a qualifying business that has insufficient corporate income tax liability to fully claim a capital investment tax credit to apply the credit against its liability for sales and use taxes to be collected, reported, and remitted to the Department of Revenue; requiring a qualifying business that receives a credit against its sales and use tax liability to make additional capital investments; requiring a qualifying business to annually report its capital investments to the Office of Tourism, Trade, and Economic Development, the President of the Senate, and the Speaker of the House of Representatives; 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; limiting the availability of the sales and use tax credit to certain businesses that have their headquarters in this state, that qualify for the capital investment tax credit under certain circumstances, and that entered into an agreement with the Department of Revenue during a certain period; limiting the annual amount of tax credits that may be approved for each eligible qualifying business; 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. Paragraph (r) is added to subsection (5) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

<u>(r) Capital investment tax credit; authorization; eligibility for credits.—The credit against the state sales and use tax granted pursuant to s. 220.191(2)(d) shall be deducted from any sales and use tax remitted by the dealer to the department by electronic funds transfer and may be deducted only on a sales and use tax return initiated through electronic data interchange. The dealer shall separately state the credit on the electronic return. The net amount of tax due and payable must be remitted by electronic funds transfer. If the credit is larger than the amount owed on the sales and use tax return, the unused portion may be carried forward to a succeeding reporting period within the 12-month period immediately following the first return approved by the department that the dealer may claim. The credit expires at the end of the 12-month period approved by the department and may not be claimed on a sales and use tax return</u>

filed with the department after the end of the 12-month period.

Section 2. 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, the term:

(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) For taxable years beginning on or after January 1, 2011, if a credit granted under this subsection is not fully used in a taxable year going forward because of insufficient tax liability on the part of the qualifying business, the qualifying business is entitled to a sales and use tax credit against its state sales and use tax liability in an amount equal to the corporate income or insurance premium tax credit that could not be used in that tax year because of insufficient tax liability arising out of the project. The sales and use tax credit shall be granted against state sales and use taxes collected, reported, and remitted pursuant to chapter 212 during the 12-month period beginning on the date that the qualifying business files its corporate income tax return for the year in which the credit granted under this subsection is not fully used.

1. The sales and use tax credit granted under this paragraph is subject to the following:

a. A qualifying business that applies its sales and use 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 and use tax credit to its sales and use tax return.

b. A 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 of the business 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 requirements of this paragraph.

c. If the qualifying business fails to make the capital investments pursuant to subparagraph (a)1. or if the business fails to report its capital investments pursuant to subparagraph (a)2., the qualifying business shall repay to the department the difference between the sales and use tax credits received and the amount of capital investments accounted for, plus interest as provided for delinquent taxes under chapter 212.

d. To be eligible for the sales and use tax credit, a qualifying business must have its headquarters in this state; qualify for the capital investment tax credit pursuant to subparagraph (a)1.; and between January 1, 2006, and December 31, 2008, signed an agreement with the department for the determination of income generated by or arising out of the qualifying project.

e. The qualifying business must notify the department of its intent to apply the credit against its state sales and use taxes and the amount it is entitled to claim prior to claiming the credit as provided in s. 212.08(5)(r). The department shall send written instructions to the taxpayer on how to claim the credit on a sales and use tax return initiated through an electronic data exchange.

2. The maximum amount of tax credits that any one qualifying business may claim as a state sales and use tax credit under this section on sales and use tax returns due during any state fiscal year is $5 million.

3. The office and the department 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 3. This act shall take effect July 1, 2011.