The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 1470

INTRODUCER: Senator Altman

SUBJECT: Capital Investment Tax Credit

DATE: March 20, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The Capital Investment Tax Credit (CITC) program was created to attract and grow capital-intensive industries in Florida. It provides an annual credit, available for a maximum of 20 years, against a company's corporate or premium income tax liability. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project, and is calculated as a percentage of the capital investments made. Eighteen active CITC projects are certified by the state as eligible for the tax credits.

SB 1470 allows certain CITC-qualified businesses with less corporate or premium tax liability than the amount of tax credits earned during the same tax year to claim the difference between the two against its sales tax liability that also incurred in the same 12-month period.

To be eligible for this credit transfer, a CITC-qualified business would have to meet the following criteria: its headquarters is located in Florida; it committed to making a minimum $100 million capital investment in Florida, and thus is eligible to claim a 100-percent tax credit against its corporate or premium tax liability; and received a signed letter from the state between 2006 and 2008 approving its participation in the CITC program.

The maximum annual credit transfer per business is $5 million.

SB 1470 also requires the CITC-qualified business to reinvest in Florida an amount at least equal to what it received in sales tax credits, within 5 years after applying the sales tax credit to its tax return. If the proper capital reinvestment is not made, the business must repay the Department of Revenue (DOR) all or part of the sales tax claim, plus interest.

SB 1470 substantially amends s. 220.191, F.S.

II. Present Situation:

The CITC is used to attract and grow capital-intensive industries that generally pay high wages. The incentive is an annual credit, provided for up to 20 years, against a company's corporate income tax. The amount of the annual credit is based on the eligible capital costs associated with a qualifying project. Eligible capital costs include all expenses incurred in the acquisition, pre-construction and construction activities, installation, and equipping of a project from the beginning of construction through commencement of operations.

To participate in the program, a new or expanding company must apply to Enterprise Florida, Inc., which reviews the company's information and eligibility for the program, and makes a recommendation to the Governor's Office of Tourism, Trade, and Economic Development (OTTED) for approval or denial. Based upon that recommendation, OTTED may certify a company as eligible to receive a certain amount of tax credits under the program, prior to commencement of the company's qualifying project. OTTED transmits this certification to DOR, which enters into a written agreement with the company specifying, at a minimum, the method by which income generated by, or arising out of, the qualifying project will be determined.

Prior to receiving the credits, the business must achieve and maintain the minimum employment thresholds beginning with the commencement of the qualifying project and continuing each subsequent year in which it may claim the tax credits.

There are three categories of CITC projects:

- A high-impact business, which:
  - Operates within a "high-impact" industry sector, currently defined in statute as, but not limited to, aviation, aerospace, automotive, and silicon technology industries,[1] and
  - Creates at least 100 new jobs.
- A business defined as a "qualified target industry" (QTI) pursuant to s. 288.106, F.S.,[2] and which is induced by this incentive program to:
  - Create or retain at least 1,000 jobs, of which at least 100 of those jobs are new and which pay an average annual wage of at least 130 percent of the average annual private-sector wage in the state or region, and
  - Make a cumulative capital investment of at least $100 million after July 1, 2005.
- A new or expanded headquarters facility, which:
  - Locates in an enterprise zone or a brownfield area;
  - Is induced by this incentive program to create at least 1,500 jobs that pay an average wage that is at least 200 percent of the average annual private-sector wage in the state or region; and
  - Makes a cumulative capital investment of at least $250 million.

[1] EFI's 2010 Incentives Report lists the industries under this CITC category as semiconductor manufacturing, transportation equipment manufacturing, information technology, life sciences, financial services, corporate headquarters, and clean energy. Report available at http://eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf. See page 28.
[2] FN 1, supra. Page 53.

The amount of the annual credit is up to 5 percent of the eligible capital costs[3] associated with a qualifying project, for up to 20 years, except that the QTI businesses in the second category may take the tax credit for a maximum of 5 years.

The annual credit may not exceed a specified percentage of the annual corporate income tax or premium tax liability generated by the project, based on the amount of the company's capital investment. For example, a company that made a minimum capital investment of $100 million would be able to apply the value of its annual tax credit to erase 100 percent of its corporate or premium tax liability that year.[4] A company that makes a cumulative capital investment of at least $50 million but less than $100 million would able to receive a tax credit equal to 75 percent of its corporate or premium tax liability each year. A company that makes a cumulative capital investment of at least $25 million but less than $50 million would be able to receive a tax credit equal to 50 percent of its corporate or premium tax liability each year.

Under no circumstance can the total tax credits awarded exceed the cumulative investment; nor can credits be taken in excess of the tax liability in a given tax year. Also, unused credits may be carried forward for up to 20 years.

According to information provided by DOR,[5] in tax years 2005, 2006, and 2007, about $3.7 million in tax credits issued through the CITC program were claimed each year on tax returns; a little more than $4 million in tax credits were claimed in 2008; and $11.75 million in tax credits were claimed in 2009.

As of December 2010, there are 18 active CITC projects, which have committed to make total cumulative capital investments of $2.45 billion in Florida.[6] Information published by Enterprise Florida, Inc., in its 2010 annual incentives report indicated that the 17 CITC-qualified businesses at the time of its data collection had committed to create 6,520 jobs paying an average annual wage of $55,076.[7]

The CITC incentive is intended to be "revenue-neutral" in that but for the incentive, the capital investment would not have been made, and no corporate income tax would have been collected.

III. Effect of Proposed Changes:

Section 1 amends s. 220.191, F.S., to allow, beginning in the FY 2011-2012 state tax year, a qualifying business with accrued corporate income tax or premium tax credits to use the amount that is the difference between what it has accrued that year and what it has "foregone" because of

[3] "Capital costs" is defined in s. 220.191(1)(c), F.S. Such costs include the acquisition of land for the project; construction, acquisition, installing, equipping, and financing a facility for the project; surveys, architectural designs, engineering services, and site-preparation work; equipment; and other types of expenses. It is likely that some capital costs are part of the qualifying company's required capital investment.
[4] Section 220.191(2)(c), F.S., allows the transfer of tax credits earned under this program by a solar panel manufacturing facility that meets specific job creation and salary requirements. This option has not been utilized.
[5] Email from DOR staff to Senate Commerce and Tourism Committee staff, dated December 30, 2010.
[6] Information provided by OTTED staff to Senate Finance and Tax Committee staff in January 2011.
[7] Supra FN 1.

lack of corporate or premium tax liability against its Sale & Use Tax (SUT) liability instead. *(Please see **Section VI. Technical Deficiencies** below.)*

To be eligible for this credit transfer, a CITC-qualified business would have to meet the following criteria:

- Its headquarters is located in Florida;
- It has committed to making a minimum $100 million capital investment in Florida, and thus is eligible to claim a 100-percent tax credit against its corporate or premium tax liability; and
- Received a signed letter from the state between 2006 and 2008 approving its participation in the CITC program.

To be able to use the transfer option, the qualifying business must commit, over the following 5 years, to make capital investments equal to the amount of the sales and use tax credits claimed in a given year. If this doesn't occur, the business must repay to DOR the difference between the sales and use tax credits received and the amount of capital investment accounted for, plus interest as provided for delinquent taxes under ch. 212, F.S.

The annual amount of CITC that any one business can claim in a fiscal year against its sales and use tax liability is $5 million. There is no maximum cumulative annual cap. Also, applications to use the transfer credit program will be processed on a first-come, first-served basis.

OTTED and DOR are authorized to adopt rules to implement the transfer program.

<u>Section 2:</u> SB 1470 has an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate. One qualifying business has indicated it would be eligible to transfer as much as $5 million annually in unused corporate income tax credits to sales tax credits.

At least 5 qualifying businesses received OTTED approvals between 2006 and 2008, but committee staff cannot determine, because of the confidentiality of taxpayer records, whether these companies have unused corporate or premium tax credits that could be transferred to sales and use tax credits, or whether they meet the other eligibility criteria.

The Revenue Estimating Conference is scheduled to evaluate the fiscal impact of SB 1470 at its March 25, 2011, meeting.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

SB 1470 does not appear to clearly specify that the transfer of accrued, unused corporate or premium tax credits for sales and use tax credits is prospective. The FY 2011-2012 state fiscal year, generally, is not the same as a corporate tax year, which could start January 1, 2011, January 1, 2012, or dates in between, because of corporations' flexibility in filing their state income tax documents.

Also, the bill refers to a "signed letter of approval to participate in the program," but it is unclear whether this means the certification letter from OTTED, the DOR technical assistance advisement letter, or the written agreement between DOR and the qualifying business establishing the method by which the qualifying business' income arising from the project is established.

Finally, the relevance of lines 236-237 is unclear. If there is no maximum aggregate cap on the number of corporate or premium tax credits that can transferred to sales and use tax credits, under the modified CITC program, then requiring the transfer applications to be considered by DOR in a first-come, first-served order does not matter.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.