

By the Committee on Commerce and Tourism; and Senator Altman

577-02873-11

20111470c1

1                   A bill to be entitled  
2           An act relating to the capital investment tax credit;  
3           amending s. 212.08, F.S.; specifying procedures to  
4           claim a sales and use tax credit; amending s. 220.191,  
5           F.S.; authorizing a qualifying business that has  
6           insufficient corporate income tax liability to fully  
7           claim a capital investment tax credit to apply the  
8           credit against its liability for sales and use taxes  
9           to be collected, reported, and remitted to the  
10          Department of Revenue; requiring a qualifying business  
11          that receives a credit against its sales and use tax  
12          liability to make additional capital investments;  
13          requiring a qualifying business to annually report its  
14          capital investments to the Office of Tourism, Trade,  
15          and Economic Development, the President of the Senate,  
16          and the Speaker of the House of Representatives;  
17          requiring a qualifying business that fails to make the  
18          required capital investments to repay the amount of  
19          the sales and use tax credit claimed with interest;  
20          limiting the availability of the sales and use tax  
21          credit to certain businesses that have their  
22          headquarters in this state, that qualify for the  
23          capital investment tax credit under certain  
24          circumstances, and that entered into an agreement with  
25          the Department of Revenue during a certain period;  
26          limiting the annual amount of tax credits that may be  
27          approved for each eligible qualifying business;  
28          authorizing the Office of Tourism, Trade, and Economic  
29          Development and the Department of Revenue to adopt

577-02873-11

20111470c1

30 rules; providing an effective date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Paragraph (r) is added to subsection (5) of  
35 section 212.08, Florida Statutes, to read:

36 212.08 Sales, rental, use, consumption, distribution, and  
37 storage tax; specified exemptions.—The sale at retail, the  
38 rental, the use, the consumption, the distribution, and the  
39 storage to be used or consumed in this state of the following  
40 are hereby specifically exempt from the tax imposed by this  
41 chapter.

42 (5) EXEMPTIONS; ACCOUNT OF USE.—

43 (r) Capital investment tax credit; authorization;  
44 eligibility for credits.—The credit against the state sales and  
45 use tax granted pursuant to s. 220.191(2)(d) shall be deducted  
46 from any sales and use tax remitted by the dealer to the  
47 department by electronic funds transfer and may be deducted only  
48 on a sales and use tax return initiated through electronic data  
49 interchange. The dealer shall separately state the credit on the  
50 electronic return. The net amount of tax due and payable must be  
51 remitted by electronic funds transfer. If the credit is larger  
52 than the amount owed on the sales and use tax return, the unused  
53 portion may be carried forward to a succeeding reporting period  
54 within the 12-month period immediately following the first  
55 return approved by the department that the dealer may claim. The  
56 credit expires at the end of the 12-month period approved by the  
57 department and may not be claimed on a sales and use tax return  
58 filed with the department after the end of the 12-month period.

577-02873-11

20111470c1

59 Section 2. Section 220.191, Florida Statutes, is amended to  
60 read:

61 220.191 Capital investment tax credit.—

62 (1) DEFINITIONS.—As used in ~~For purposes of~~ this section,  
63 the term:

64 (a) "Commencement of operations" means the beginning of  
65 active operations by a qualifying business of the principal  
66 function for which a qualifying project was constructed.

67 (b) "Cumulative capital investment" means the total capital  
68 investment in land, buildings, and equipment made in connection  
69 with a qualifying project during the period from the beginning  
70 of construction of the project to the commencement of  
71 operations.

72 (c) "Eligible capital costs" means all expenses incurred by  
73 a qualifying business in connection with the acquisition,  
74 construction, installation, and equipping of a qualifying  
75 project during the period from the beginning of construction of  
76 the project to the commencement of operations, including, but  
77 not limited to:

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

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

84 3. The costs of architectural and engineering services,  
85 including test borings, surveys, estimates, plans and  
86 specifications, preliminary investigations, environmental  
87 mitigation, and supervision of construction, as well as the

577-02873-11

20111470c1

88 performance of all duties required by or consequent to the  
89 acquisition, construction, installation, and equipping of a  
90 qualifying project.

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

101  
102 The term does ~~eligible capital costs shall~~ not include the cost  
103 of any property previously owned or leased by the qualifying  
104 business.

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

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

116 (f) "Office" means the Office of Tourism, Trade, and

577-02873-11

20111470c1

117 Economic Development.

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

122 (h) "Qualifying project" means:

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

129 2. A new or expanded facility in this state which is  
130 engaged in a target industry designated pursuant to the  
131 procedure specified in s. 288.106(2)(t) and which is induced by  
132 this credit to create or retain at least 1,000 jobs in this  
133 state, provided that at least 100 of those jobs are new, pay an  
134 annual average wage of at least 130 percent of the average  
135 private sector wage in the area as defined in s. 288.106(2), and  
136 make a cumulative capital investment of at least \$100 million  
137 after July 1, 2005. Jobs may be considered retained only if  
138 there is significant evidence that the loss of jobs is imminent.  
139 Notwithstanding subsection (2), annual credits against the tax  
140 imposed by this chapter may ~~shall~~ not exceed 50 percent of the  
141 increased annual corporate income tax liability or the premium  
142 tax liability generated by or arising out of a project  
143 qualifying under this subparagraph. A facility that qualifies  
144 under this subparagraph for an annual credit against the tax  
145 imposed by this chapter may take the tax credit for a period not

577-02873-11

20111470c1

146 to exceed 5 years; or

147 3. A new or expanded headquarters facility in this state  
148 which locates in an enterprise zone and brownfield area and is  
149 induced by this credit to create at least 1,500 jobs which on  
150 average pay at least 200 percent of the statewide average annual  
151 private sector wage, as published by the Agency for Workforce  
152 Innovation or its successor, and which new or expanded  
153 headquarters facility makes a cumulative capital investment in  
154 this state of at least \$250 million.

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

173 1. One hundred percent for a qualifying project which  
174 results in a cumulative capital investment of at least \$100

577-02873-11

20111470c1

175 million.

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

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

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

191       (c) A qualifying business that establishes a qualifying  
192 project that includes locating a new solar panel manufacturing  
193 facility in this state that generates a minimum of 400 jobs  
194 within 6 months after commencement of operations with an average  
195 salary of at least \$50,000 may assign or transfer the annual  
196 credit, or any portion thereof, granted under this section to  
197 any other business. However, the amount of the tax credit that  
198 may be transferred in any year is ~~shall be~~ the lesser of the  
199 qualifying business's state corporate income tax liability for  
200 that year, as limited by the percentages applicable under  
201 paragraph (a) and as calculated before ~~prior to~~ taking any  
202 credit pursuant to this section, or the credit amount granted  
203 for that year. A business receiving the transferred or assigned

577-02873-11

20111470c1

204 credits may use the credits only in the year received, and the  
205 credits may not be carried forward or backward. To perfect the  
206 transfer, the transferor must ~~shall~~ provide the department with  
207 a written transfer statement notifying the department of the  
208 transferor's intent to transfer the tax credits to the  
209 transferee; the date the transfer is effective; the transferee's  
210 name, address, and federal taxpayer identification number; the  
211 tax period; and the amount of tax credits to be transferred. The  
212 department shall, upon receipt of a transfer statement  
213 conforming to the requirements of this paragraph, provide the  
214 transferee with a certificate reflecting the tax credit amounts  
215 transferred. A copy of the certificate must be attached to each  
216 tax return for which the transferee seeks to apply such tax  
217 credits.

218 (d) For taxable years beginning on or after January 1,  
219 2011, if a credit granted under this subsection is not fully  
220 used in a taxable year going forward because of insufficient tax  
221 liability on the part of the qualifying business, the qualifying  
222 business is entitled to a sales and use tax credit against its  
223 state sales and use tax liability in an amount equal to the  
224 corporate income or insurance premium tax credit that could not  
225 be used in that tax year because of insufficient tax liability  
226 arising out of the project. The sales and use tax credit shall  
227 be granted against state sales and use taxes collected,  
228 reported, and remitted pursuant to chapter 212 during the 12-  
229 month period beginning on the date that the qualifying business  
230 files its corporate income tax return for the year in which the  
231 credit granted under this subsection is not fully used.

232 1. The sales and use tax credit granted under this



577-02873-11

20111470c1

233 paragraph is subject to the following:

234 a. A qualifying business that applies its sales and use tax  
235 credit against its sales and use tax liability must make capital  
236 investments in Florida, in addition to its cumulative capital  
237 investment, in an amount equal to or greater than the applied  
238 credit within 5 years after the date that the qualifying  
239 business first applied the sales and use tax credit to its sales  
240 and use tax return.

241 b. A qualifying business must annually provide to the  
242 office, the President of the Senate, and the Speaker of the  
243 House of Representatives a report listing the capital  
244 investments made in each tax year of the business in which the  
245 business claims a sales and use tax credit pursuant to this  
246 paragraph and must provide a final summary report of all capital  
247 investments made pursuant to requirements of this paragraph.

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

255 d. To be eligible for the sales and use tax credit, a  
256 qualifying business must have its headquarters in this state;  
257 qualify for the capital investment tax credit pursuant to  
258 subparagraph (a)1.; and between January 1, 2006, and December  
259 31, 2008, signed an agreement with the department for the  
260 determination of income generated by or arising out of the  
261 qualifying project.

577-02873-11

20111470c1

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

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

273 3. The office and the department may adopt rules to  
274 administer this paragraph.

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

287 (b) If the credit granted under this subsection is not  
288 fully used in any one year because of insufficient tax liability  
289 on the part of the qualifying business, the unused amount may be  
290 carried forward for a period not to exceed 20 years after the

577-02873-11

20111470c1

291 commencement of operations of the project. The carryover credit  
292 may be used in a subsequent year when the tax imposed by this  
293 chapter for that year exceeds the credit for which the  
294 qualifying business is eligible in that year under this  
295 subsection after applying the other credits and unused  
296 carryovers in the order provided by s. 220.02(8).

297 (c) The credit granted under this subsection may be used in  
298 whole or in part by the qualifying business or any corporation  
299 that is either a member of that qualifying business's affiliated  
300 group of corporations, is a related entity taxable as a  
301 cooperative under subchapter T of the Internal Revenue Code, or,  
302 if the qualifying business is an entity taxable as a cooperative  
303 under subchapter T of the Internal Revenue Code, is related to  
304 the qualifying business. Any entity related to the qualifying  
305 business may continue to file as a member of a Florida-nexus  
306 consolidated group pursuant to a prior election made under s.  
307 220.131(1), Florida Statutes (1985), even if the parent of the  
308 group changes due to a direct or indirect acquisition of the  
309 former common parent of the group. Any credit can be used by any  
310 of the affiliated companies or related entities referenced in  
311 this paragraph to the same extent as it could have been used by  
312 the qualifying business. However, any such use shall not operate  
313 to increase the amount of the credit or extend the period within  
314 which the credit must be used.

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

577-02873-11

20111470c1

320 this section.

321 (5) Applications shall be reviewed and certified pursuant  
322 to s. 288.061. The office, upon a recommendation by Enterprise  
323 Florida, Inc., shall first certify a business as eligible to  
324 receive tax credits pursuant to this section prior to the  
325 commencement of operations of a qualifying project, and such  
326 certification shall be transmitted to the Department ~~of Revenue~~.  
327 Upon receipt of the certification, the Department ~~of Revenue~~  
328 shall enter into a written agreement with the qualifying  
329 business specifying, at a minimum, the method by which income  
330 generated by or arising out of the qualifying project will be  
331 determined.

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

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

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

344 Section 3. This act shall take effect July 1, 2011.