

By Senator Bogdanoff

25-00613-11

2011942

1 A bill to be entitled
2 An act relating to tax credits for research and
3 development; creating s. 220.194, F.S.; providing
4 definitions; providing a tax credit for certain
5 research and development expenses; providing
6 eligibility requirements for research and development
7 tax credits; providing limitations regarding
8 eligibility; providing an amount for such credit;
9 providing a maximum amount of credit that may be taken
10 during a single tax year by a business enterprise;
11 providing that any unused credit may be carried
12 forward for a specified period; authorizing the sale
13 or assignment of unused credits to certain taxpayers
14 under certain conditions; requiring prior approval
15 from the Department of Revenue before an unused tax
16 credit amount may be sold; prohibiting the Department
17 of Revenue from unreasonably withholding approval to
18 sell or transfer an unused tax credit amount;
19 requiring that a party to a sale or assignment file
20 certain information and documents with the department;
21 providing requirements for the use of tax credits sold
22 or assigned; limiting the total amount of tax credits
23 which may be approved by the department in a calendar
24 year; providing that applications for credits may be
25 filed on or after a specified date; requiring that the
26 credits be granted in the order in which applications
27 are received; authorizing the department to adopt
28 rules; amending s. 220.02, F.S.; revising legislative
29 intent to include the research and development tax

25-00613-11

2011942

30 credit in the ordered list according to which credits
31 against corporate income tax or franchise tax are
32 applied; providing for application; providing an
33 effective date.

34
35 WHEREAS, research and development has become the underlying
36 source of wealth in the 21st century by generating ideas and
37 technologies that encourage productivity and economic growth,
38 and

39 WHEREAS, corporations generate the main body of growth-
40 stimulating innovations, and

41 WHEREAS, research and development tax credits provide
42 incentives for corporate research and development beyond
43 expected levels, and

44 WHEREAS, research shows that the federal research and
45 development tax credit is an effective tool for stimulating
46 additional research and development, which, in turn, leads to
47 faster economic growth, and

48 WHEREAS, state research and development tax credit programs
49 are nearly as important to corporate research and development as
50 the federal research and development tax credit program, and

51 WHEREAS, the typical state research and development tax
52 credit program increases general, corporate-funded research and
53 development within a state, often enhancing the state's
54 competitiveness by enabling a state to draw research and
55 development activity away from other states, and

56 WHEREAS, this state needs a state research and development
57 tax credit program to ensure economic competitiveness, and

58 WHEREAS, more than one-half of the states in this nation

25-00613-11

2011942__

59 have a research and development tax credit program, and

60 WHEREAS, Florida lags behind the rest of the nation in
61 important corporate research and development activities because
62 the state does not have a research and development tax credit,
63 and

64 WHEREAS, the Legislature must create a research and
65 development tax credit in order to encourage corporate research
66 and development activity within this state, level the playing
67 field with the state's regional and national economic
68 competitors, support the state's vibrant innovation economy, and
69 attract high-wage, professional research jobs to this state,
70 NOW, THEREFORE,

71
72 Be It Enacted by the Legislature of the State of Florida:

73
74 Section 1. Section 220.194, Florida Statutes, is created to
75 read:

76 220.194 Research and development tax credit.—

77 (1) DEFINITIONS.—As used in this section, the term:

78 (a) "Base amount" means the business enterprise's qualified
79 research expenses in this state allowed under 26 U.S.C. s. 41
80 divided by the number of complete taxable years in the base
81 period immediately preceding the taxable year for which the
82 credit is being determined. The qualified research expenses
83 taken into account in computing the base amount shall be
84 determined on a basis consistent with the determination of
85 qualified research expenses for the credit year.

86 (b) "Base period" means the 4 taxable years preceding the
87 taxable year for which the credit is being determined, or the

25-00613-11

2011942

88 number of complete taxable years the business enterprise has
89 been in existence, whichever is shorter.

90 (c) "Business enterprise" means any corporation as defined
91 in s. 220.03 which is also a target industry business as defined
92 in or pursuant to s. 288.106(1) (o).

93 (d) "Qualified research expenses" mean research expenses
94 qualifying for the credit under 26 U.S.C. s. 41 for in-house
95 research expenses incurred in this state or contract research
96 expenses incurred in this state. The term does not include
97 research conducted outside this state or expenses for research
98 that does not qualify for a credit under 26 U.S.C. s. 41.

99 (2) TAX CREDIT.—Subject to the limitations contained in
100 paragraph (e), a business enterprise is eligible for a credit
101 against the tax imposed by this chapter if the business
102 enterprise incurred qualified research expenses in this state in
103 the taxable year which exceed the base amount and, for the same
104 taxable year, claims and is allowed a research credit for such
105 qualified research expenses under 26 U.S.C. s. 41.

106 (a) The tax credit shall be 10 percent of the excess
107 qualified research expenses over the base amount. However, the
108 maximum tax credit for a business enterprise that has not been
109 in existence for at least 4 taxable years is reduced by 25
110 percent for each complete taxable year for which the business
111 enterprise, or a predecessor corporation that was a business
112 enterprise, did not exist during the base period.

113 (b) The credit taken in any single tax year may not exceed
114 50 percent of the business enterprise's remaining net income tax
115 liability under this chapter after all other credits have been
116 applied in the order specified in s. 220.02(8).

25-00613-11

2011942

117 (c) Any unused credit authorized under this section may be
118 carried forward and claimed by the taxpayer for up to 5 years
119 following the close of the taxable year in which the qualified
120 research expenses are incurred.

121 (d) Upon prior approval by the department, any unused
122 credit authorized pursuant to this section may be assigned or
123 sold to another business enterprise if a claim for the credit
124 has not been filed within 1 calendar year following the date on
125 which the department approved the credit. The business
126 enterprise selling the tax credit and the purchaser or assignee
127 must file an application, waivers of confidentiality, and
128 affidavits to transfer the credit on a form provided by the
129 department. The department may not unreasonably withhold such
130 approval. The purchaser or assignee must use the tax credit in
131 the taxable year in which the purchase or assignment of the
132 credit is made. The transfer or purchase of any amount of the
133 tax credit must be exchanged for at least 75 percent of the
134 value of the credit.

135 (e) The combined total amount of tax credits which may be
136 granted to and approved for all business enterprises under this
137 section during any calendar year is \$15 million. Applications
138 may be filed with the department on or after March 20 for
139 qualified research expenses incurred within the preceding
140 calendar year, and credits shall be granted in the order in
141 which completed applications are received.

142 (3) RULES.—The department may adopt rules to administer
143 this section, including, but not limited to, rules prescribing
144 forms, application procedures and dates, and notification or
145 other procedures for the sale or assignment of a credit, and may

25-00613-11

2011942

146 establish guidelines for making an affirmative showing of
147 qualification for a credit and any evidence needed to
148 substantiate a claim for credit under this section.

149 Section 2. Subsection (8) of section 220.02, Florida
150 Statutes, is amended to read:

151 220.02 Legislative intent.—

152 (8) It is the intent of the Legislature that credits
153 against either the corporate income tax or the franchise tax be
154 applied in the following order: those enumerated in s. 631.828,
155 those enumerated in s. 220.191, those enumerated in s. 220.181,
156 those enumerated in s. 220.183, those enumerated in s. 220.182,
157 those enumerated in s. 220.1895, those enumerated in s. 221.02,
158 those enumerated in s. 220.184, those enumerated in s. 220.186,
159 those enumerated in s. 220.1845, those enumerated in s. 220.19,
160 those enumerated in s. 220.185, those enumerated in s. 220.1875,
161 those enumerated in s. 220.192, those enumerated in s. 220.193,
162 those enumerated in s. 288.9916, those enumerated in s.
163 220.1899, ~~and~~ those enumerated in s. 220.1896, and those
164 enumerated in s. 220.194.

165 Section 3. This act shall take effect July 1, 2011, and is
166 effective for tax years beginning on or after January 1, 2012.