

By Senator Stargel

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1                   A bill to be entitled  
2       An act relating to the capital investment tax credit;  
3       amending s. 220.191, F.S.; redefining and defining  
4       terms; revising the annual tax credit that may be  
5       granted for a qualifying project that has a date of  
6       certification on or after a specified date; decreasing  
7       the minimum amount of a cumulative capital investment  
8       that results in a qualifying project being ineligible  
9       for the tax credit; conforming cross-references;  
10      requiring the certification of a business as eligible  
11      to receive the tax credit, which is executed by the  
12      Department of Economic Opportunity, to be in writing  
13      and to include specified information; limiting the  
14      total amount of tax credits which may be granted  
15      annually to a specified amount; specifying procedures,  
16      requirements, and limitations for the tracking by the  
17      department of the total amount of tax credits granted  
18      annually; authorizing the Department of Revenue to  
19      adopt certain rules with respect to a qualifying  
20      project with a date of certification before a  
21      specified date; reenacting s. 288.1089(2)(d), F.S.,  
22      relating to the Innovation Incentive Program, to  
23      incorporate the amendment made to s. 220.191, F.S., in  
24      a reference thereto; providing an effective date.

25  
26   Be It Enacted by the Legislature of the State of Florida:  
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28       Section 1. Paragraph (b) of subsection (1) of section  
29   220.191, Florida Statutes, is amended, paragraphs (c) and (e)

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30 are added to that subsection, present paragraph (c) of that  
31 subsection is redesignated as paragraph (d), present paragraphs  
32 (d), (e), and (f) of that subsection are redesignated as  
33 paragraphs (f), (g), and (h), respectively, present paragraph  
34 (g) of that subsection is amended, and subsection (2), paragraph  
35 (a) of subsection (3), and subsections (5) and (8) of that  
36 section are amended, to read:

37 220.191 Capital investment tax credit.-

38 (1) DEFINITIONS.—For purposes of this section:

39 (b) "Cumulative capital investment" for:

40 1. New or expanding businesses means the total capital  
41 investment in land, buildings, and equipment made in connection  
42 with a qualifying project during the period from the beginning  
43 of construction of the project to the commencement of  
44 operations.

45 2. Existing businesses means the total capital investment  
46 in land, buildings, and equipment made in connection with a  
47 qualifying project during a period of up to 5 years as  
48 determined by the Department of Economic Opportunity as part of  
49 the certification process.

50 (c) "Date of certification" means the date that the  
51 Department of Economic Opportunity initially certifies in  
52 writing that a qualifying project is eligible for the capital  
53 investment tax credit. A revision of the terms of the  
54 certification, including a change to the cumulative capital  
55 investment, does not change the date of certification.

56 (e) "Existing facility" means a facility that has been  
57 located in this state for at least 1 year before submitting an  
58 application to the Department of Economic Opportunity for

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59 certification pursuant to subsection (5).

60 (i)~~(g)~~ "Qualifying project" means a facility in this state  
61 meeting one or more of the following criteria:

62 1. A new or expanding facility in this state which creates  
63 at least 100 new jobs in this state and is in one of the high-  
64 impact sectors identified by Enterprise Florida, Inc., and  
65 certified by the Department of Economic Opportunity pursuant to  
66 s. 288.108(6), including, but not limited to, aviation,  
67 aerospace, automotive, and silicon technology industries.  
68 However, between July 1, 2011, and June 30, 2014, the  
69 requirement that a facility be in a high-impact sector is waived  
70 for any otherwise eligible business from another state which  
71 locates all or a portion of its business to a Disproportionally  
72 Affected County. For purposes of this section, the term  
73 "Disproportionally Affected County" means Bay County, Escambia  
74 County, Franklin County, Gulf County, Okaloosa County, Santa  
75 Rosa County, Walton County, or Wakulla County.

76 2. A new or expanded facility in this state which is  
77 engaged in a target industry designated pursuant to the  
78 procedure specified in s. 288.106(2) and which is induced by  
79 this credit to create ~~or retain at least 1,000 jobs in this~~  
80 ~~state, provided that at least 100 of those jobs that are new,~~  
81 pay an annual average wage of at least 115 ~~130~~ percent of the  
82 average private sector wage in the area as defined in s.  
83 288.106(2), and make a cumulative capital investment of at least  
84 \$100 million. ~~Jobs may be considered retained only if there is~~  
85 ~~significant evidence that the loss of jobs is imminent.~~  
86 ~~Notwithstanding subsection (2), annual credits against the tax~~  
87 ~~imposed by this chapter may not exceed 50 percent of the~~

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88 ~~increased annual corporate income tax liability or the premium~~  
89 ~~tax liability generated by or arising out of a project~~  
90 ~~qualifying under this subparagraph. A facility that qualifies~~  
91 ~~under this subparagraph for an annual credit against the tax~~  
92 ~~imposed by this chapter may take the tax credit for a period not~~  
93 ~~to exceed 5 years.~~

94 3. A new or expanded facility in this state which is  
95 engaged in a target industry designated pursuant to the  
96 procedure specified in s. 288.106(2), and which is induced by  
97 this credit to create at least 1,000 jobs paying an annual wage  
98 of at least 100 percent of the average private sector wage in  
99 the area as defined in s. 288.106(2), and makes a cumulative  
100 capital investment of at least \$100 million.

101 ~~4.3.~~ A new or expanded headquarters facility in this state  
102 which locates in an enterprise zone and brownfield area and is  
103 induced by this credit to create at least 1,500 jobs which on  
104 average pay at least 200 percent of the statewide average annual  
105 private sector wage, as published by the Department of Economic  
106 Opportunity, and which new or expanded headquarters facility  
107 makes a cumulative capital investment in this state of at least  
108 \$250 million.

109 5. An existing facility that is engaged in a target  
110 industry designated pursuant to the procedure specified in s.  
111 288.106(2), and that makes a cumulative capital investment in  
112 this state of at least \$25 million.

113 6. A new facility that is engaged in a target industry  
114 designated pursuant s. 288.106(2) that makes a cumulative  
115 capital investment of at least \$10 million but less than \$25  
116 million, and that is located in a rural area of opportunity as

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117 defined in s. 288.0656.

118 (2)~~(a)~~ An annual credit against the tax imposed by this  
119 chapter shall be granted to a ~~any~~ qualifying business in an  
120 amount equal to 5 percent of the eligible capital costs  
121 generated by a qualifying project, for a period not to exceed 20  
122 years beginning with the commencement of operations of the  
123 project.

124 (a) For a qualifying project with a date of certification  
125 before July 1, 2015, unless assigned as described in this  
126 subsection:

127 1. The tax credit shall be granted against only the  
128 corporate income tax liability or the premium tax liability  
129 generated by or arising out of the qualifying project, and the  
130 sum of all tax credits granted ~~provided~~ pursuant to this section  
131 may ~~shall~~ not exceed 100 percent of the eligible capital costs  
132 of the project. A ~~In no event may any~~ credit granted under this  
133 section may not be carried forward or backward by a ~~any~~  
134 qualifying business with respect to a subsequent or prior year.

135 2. The annual tax credit granted under this section shall  
136 not exceed the following percentages of the annual corporate  
137 income tax liability or the premium tax liability generated by  
138 or arising out of a qualifying project:

139 a.1. One hundred percent for a qualifying project that  
140 ~~which~~ results in a cumulative capital investment of at least  
141 \$100 million.

142 b.2. Seventy-five percent for a qualifying project that  
143 ~~which~~ results in a cumulative capital investment of at least \$50  
144 million but less than \$100 million.

145 c.3. Fifty percent for a qualifying project that ~~which~~

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146 results in a cumulative capital investment of at least \$25  
147 million but less than \$50 million.

148 (b) For a qualifying project with a date of certification  
149 on or after July 1, 2015:

150 1. The tax credit shall be granted against the annual  
151 corporate income tax liability or the premium tax liability, and  
152 the sum of all tax credits granted pursuant to this section may  
153 not exceed 100 percent of the eligible capital costs of the  
154 project. A credit granted under this section may not be carried  
155 forward or backward by a qualifying business with respect to a  
156 subsequent or prior year.

157 2. The annual tax credit granted under this section may not  
158 exceed the following percentages of the annual corporate income  
159 tax liability or the premium tax liability:

160 a. One hundred percent for a qualifying project that  
161 results in a cumulative capital investment of at least \$100  
162 million.

163 b. Seventy-five percent for a qualifying project that  
164 results in a cumulative capital investment of at least \$50  
165 million but less than \$100 million.

166 c. Fifty percent for a qualifying project that results in a  
167 cumulative capital investment of at least \$25 million but less  
168 than \$50 million.

169 d. One hundred percent for a qualifying project that  
170 results in a cumulative capital investment of at least \$10  
171 million but less than \$25 million and occurs in a rural area of  
172 opportunity as defined in s. 288.0656.

173 (c)-(b) A qualifying project ~~that~~ ~~which~~ results in a  
174 cumulative capital investment of less than ~~\$10~~ ~~\$25~~ million is

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175 not eligible for the capital investment tax credit. An insurance  
176 company claiming a credit against premium tax liability under  
177 this program may ~~shall~~ not be required to pay any additional  
178 retaliatory tax levied pursuant to s. 624.5091 as a result of  
179 claiming such credit. Because credits under this section are  
180 available to an insurance company, s. 624.5091 does not limit  
181 such credit in any manner.

182 (d) ~~(e)~~ A qualifying business that establishes a qualifying  
183 project that includes locating a new solar panel manufacturing  
184 facility in this state that generates a minimum of 400 jobs  
185 within 6 months after commencement of operations with an average  
186 salary of at least \$50,000 may assign or transfer the annual  
187 credit, or any portion thereof, granted under this section to  
188 any other business. However, the amount of the tax credit that  
189 may be transferred in any year shall be the lesser of the  
190 qualifying business's state corporate income tax liability for  
191 that year, as limited by the percentages applicable under  
192 paragraph (a) or paragraph (b) and as calculated prior to taking  
193 any credit pursuant to this section, or the credit amount  
194 granted for that year. A business receiving the transferred or  
195 assigned credits may use the credits only in the year received,  
196 and the credits may not be carried forward or backward. To  
197 perfect the transfer, the transferor shall provide the  
198 department with a written transfer statement notifying the  
199 department of the transferor's intent to transfer the tax  
200 credits to the transferee; the date the transfer is effective;  
201 the transferee's name, address, and federal taxpayer  
202 identification number; the tax period; and the amount of tax  
203 credits to be transferred. The department shall, upon receipt of

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204 a transfer statement conforming to the requirements of this  
205 paragraph, provide the transferee with a certificate reflecting  
206 the tax credit amounts transferred. A copy of the certificate  
207 must be attached to each tax return for which the transferee  
208 seeks to apply such tax credits.

209 (e)~~(d)~~ If the credit granted under sub-subparagraph (a)2.a.  
210 or sub-subparagraph (b)2.a. ~~subparagraph (a)1.~~ is not fully used  
211 in any one year because of insufficient tax liability on the  
212 part of the qualifying business, the unused amounts may be used  
213 in any one year or years beginning with the 21st year after the  
214 commencement of operations of the project and ending the 30th  
215 year after the commencement of operations of the project.

216 (3) (a) Notwithstanding subsection (2), an annual credit  
217 against the tax imposed by this chapter shall be granted to a  
218 qualifying business which establishes a qualifying project  
219 pursuant to subparagraph (1)(i)4. ~~subparagraph (1)(g)3.~~, in an  
220 amount equal to the lesser of \$15 million or 5 percent of the  
221 eligible capital costs made in connection with a qualifying  
222 project, for a period not to exceed 20 years beginning with the  
223 commencement of operations of the project. The tax credit shall  
224 be granted against the corporate income tax liability of the  
225 qualifying business and as further provided in paragraph (c).  
226 The total tax credit provided pursuant to this subsection shall  
227 be equal to no more than 100 percent of the eligible capital  
228 costs of the qualifying project.

229 (5) (a) Applications shall be reviewed and certified  
230 pursuant to s. 288.061. The Department of Economic Opportunity,  
231 upon a recommendation by Enterprise Florida, Inc., shall first  
232 certify in writing a business as eligible to receive tax credits



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233 pursuant to this section prior to the commencement of operations  
234 of a qualifying project, and such certification shall be  
235 transmitted to the Department of Revenue. The certification must  
236 state the anticipated cumulative capital investment and the date  
237 of the commencement of operations if applicable. Upon receipt of  
238 the certification, the Department of Revenue shall enter into a  
239 written agreement with the qualifying business specifying, at a  
240 minimum, the method by which income generated by or arising out  
241 of the qualifying project will be determined.

242 (b) Beginning July 1, 2015, the total amount of tax credits  
243 granted under this section may not exceed \$50 million annually.  
244 The Department of Economic Opportunity shall track the value of  
245 all credits certified on or after July 1, 2015. If the  
246 certification of an applicant would make the cumulative value of  
247 all credits exceed \$50 million annually, the project must be  
248 denied certification for the credit. To determine whether the  
249 \$50 million cap will be met, the Department of Economic  
250 Opportunity must assume that each project will use the full  
251 value of 5 percent of the cumulative capital investment. If the  
252 amount of a project's cumulative capital investment decreases  
253 between the date of certification and the commencement of  
254 operations, the Department of Economic Opportunity shall  
255 correspondingly revise its assessment of the available  
256 allocation for this credit. The Department of Economic  
257 Opportunity may not increase the value of a tax credit in excess  
258 of the amount specified in the letter of certification. A  
259 revision of the amount of cumulative capital investment does not  
260 change the date of certification for the project.

261 (8) For a qualifying project with a date of certification

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262 before July 1, 2015, the Department of Revenue may specify by  
263 rule the methods by which a project's pro forma annual taxable  
264 income is determined.

265 Section 2. For the purpose of incorporating the amendment  
266 made by this act to section 220.191, Florida Statutes, in a  
267 reference thereto, paragraph (d) of subsection (2) of section  
268 288.1089, Florida Statutes, is reenacted to read:

269 288.1089 Innovation Incentive Program.—

270 (2) As used in this section, the term:

271 (d) "Cumulative investment" means cumulative capital  
272 investment and all eligible capital costs, as defined in s.  
273 220.191.

274 Section 3. This act shall take effect July 1, 2015.