

By Senator Gruters

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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 terms; defining
4 the term "intellectual property"; providing a credit
5 against the corporate income tax, the sales and use
6 tax, or a stated combination of the two taxes to a
7 qualifying business that establishes a qualifying
8 project for the creation of intellectual property
9 which meets certain capital investment criteria;
10 specifying the calculation of the credit; authorizing
11 the carryover or transfer of credits, subject to
12 certain conditions; conforming provisions to changes
13 made by the act; amending s. 288.1089, F.S.; revising
14 the definition of the term "cumulative investment" to
15 conform to changes made by the act; providing an
16 effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 220.191, Florida Statutes, is amended to
21 read:

22 220.191 Capital investment tax credit.—

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

25 (a) "Commencement of operations" means the beginning of
26 active operations by a qualifying business of the principal
27 function for which a qualifying project was constructed.

28 (b) "Cumulative capital investment" means the total capital
29 investment in land, buildings, ~~and~~ equipment, and intellectual

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30 property made in connection with a qualifying project during the
31 period from the beginning of construction or the start date of
32 the project to the commencement of operations or the completion
33 of the project, as applicable.

34 (c) "Eligible capital costs" means all expenses incurred by
35 a qualifying business in connection with the acquisition,
36 construction, installation, ~~and~~ equipping, and development of a
37 qualifying project during the period from the beginning of
38 construction or the start date of the project to the
39 commencement of operations or the completion of the project, as
40 applicable, including, but not limited to:

41 1. The costs of acquiring, constructing, installing,
42 equipping, and financing a qualifying project, including all
43 obligations incurred for labor and obligations to contractors,
44 subcontractors, builders, and materialmen.

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

47 3. The costs of architectural and engineering services,
48 including test borings, surveys, estimates, plans and
49 specifications, preliminary investigations, environmental
50 mitigation, and supervision of construction, as well as the
51 performance of all duties required by or consequent to the
52 acquisition, construction, installation, and equipping of a
53 qualifying project.

54 4. The costs associated with the installation of fixtures
55 and equipment; surveys, including archaeological and
56 environmental surveys; site tests and inspections; subsurface
57 site work and excavation; removal of structures, roadways, and
58 other surface obstructions; filling, grading, paving, and

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59 provisions for drainage, storm water retention, and installation
60 of utilities, including water, sewer, sewage treatment, gas,
61 electricity, communications, and similar facilities; and offsite
62 construction of utility extensions to the boundaries of the
63 property.

64 5. For the development of intellectual property, the wages,
65 salaries, or other compensation paid to legal residents of this
66 state and the costs of newly purchased computer software and
67 hardware unique to the project, including servers, data
68 processing, and visualization technologies, which are located
69 and used exclusively in this state for the project.

70
71 Eligible capital costs shall not include the cost of any
72 property previously owned or leased by the qualifying business.

73 (d) "Income generated by or arising out of the qualifying
74 project" means the qualifying project's annual taxable income as
75 determined by generally accepted accounting principles and under
76 s. 220.13.

77 (e) "Intellectual property" means a copyrightable project
78 for which the eligible capital costs are principally paid
79 directly or indirectly for the creation of the project. As used
80 in this paragraph, the term "copyrightable project" includes,
81 but is not limited to, a copyrightable software or multimedia
82 application and its expansion content made available to an end
83 user, internal development platforms that support the production
84 of multiple applications, cloud-based services that support the
85 functionality of multiple applications, and copyrighted projects
86 registered with the United States Copyright Office which include
87 digital visualization and sound synchronization technologies.

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88 The project may not be intended for distribution solely inside
89 this state, and at least 75 percent of forecasted revenues for
90 the project must be from outside this state.

91 (f) "Jobs" means full-time equivalent positions, as that
92 term is consistent with terms used by the Department of Economic
93 Opportunity and the United States Department of Labor for
94 purposes of reemployment assistance tax administration and
95 employment estimation, resulting directly from a project in this
96 state. The term does not include temporary construction jobs
97 involved in the construction of the project facility.

98 (g)~~(f)~~ "Qualifying business" means a business which
99 establishes a qualifying project in this state and which is
100 certified by the Department of Economic Opportunity to receive
101 tax credits pursuant to this section.

102 (h)~~(g)~~ "Qualifying project" means a facility or project in
103 this state meeting one or more of the following criteria:

104 1. A new or expanding facility in this state which creates
105 at least 100 new jobs in this state and is in one of the high-
106 impact sectors identified by Enterprise Florida, Inc., and
107 certified by the Department of Economic Opportunity pursuant to
108 s. 288.108(6), including, but not limited to, aviation,
109 aerospace, automotive, and silicon technology industries.
110 However, between July 1, 2011, and June 30, 2014, the
111 requirement that a facility be in a high-impact sector is waived
112 for any otherwise eligible business from another state which
113 locates all or a portion of its business to a Disproportionally
114 Affected County. For purposes of this section, the term
115 "Disproportionally Affected County" means Bay County, Escambia
116 County, Franklin County, Gulf County, Okaloosa County, Santa

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117 Rosa County, Walton County, or Wakulla County.

118 2. A new or expanded facility in this state which is
119 engaged in a target industry designated pursuant to the
120 procedure specified in s. 288.106(2) and which is induced by
121 this credit to create or retain at least 1,000 jobs in this
122 state, provided that at least 100 of those jobs are new, pay an
123 annual average wage of at least 130 percent of the average
124 private sector wage in the area as defined in s. 288.106(2), and
125 make a cumulative capital investment of at least \$100 million.
126 Jobs may be considered retained only if there is significant
127 evidence that the loss of jobs is imminent. Notwithstanding
128 subsection (2), annual credits against the tax imposed by this
129 chapter may not exceed 50 percent of the increased annual
130 corporate income tax liability or the premium tax liability
131 generated by or arising out of a project qualifying under this
132 subparagraph. A facility that qualifies under this subparagraph
133 for an annual credit against the tax imposed by this chapter may
134 take the tax credit for a period not to exceed 5 years.

135 3. A new or expanded headquarters facility in this state
136 which locates in an enterprise zone and brownfield area and is
137 induced by this credit to create at least 1,500 jobs which on
138 average pay at least 200 percent of the statewide average annual
139 private sector wage, as published by the Department of Economic
140 Opportunity, and which new or expanded headquarters facility
141 makes a cumulative capital investment in this state of at least
142 \$250 million.

143 4. For the creation of intellectual property, a qualifying
144 project may be made up of one or more projects with different
145 start and completion dates. The annual average wage of the

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146 project jobs in this state must be at least 150 percent of the
147 average private sector wage in the area as defined in s.
148 288.106(2) (c).

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

166 1. One hundred percent for a qualifying project which
167 results in a cumulative capital investment of at least \$100
168 million.

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

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

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175 (b) A qualifying project which results in a cumulative
176 capital investment of less than \$25 million is not eligible for
177 the capital investment tax credit. An insurance company claiming
178 a credit against premium tax liability under this program shall
179 not be required to pay any additional retaliatory tax levied
180 pursuant to s. 624.5091 as a result of claiming such credit.
181 Because credits under this section are available to an insurance
182 company, s. 624.5091 does not limit such credit in any manner.

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

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

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

216 (3) (a) Notwithstanding subsection (2), a credit against the
217 tax imposed by this chapter, against state taxes collected or
218 accrued under chapter 212, or against a stated combination of
219 the two taxes shall be granted to a qualifying business that
220 establishes a qualifying project pursuant to subparagraph
221 (1) (h)4. for which the cumulative capital investment of one or
222 more projects is an aggregate of at least \$50 million per year
223 for 3 years, and the capital investment of each individual
224 project is at least \$3.75 million. The tax credit shall be
225 granted in an amount equal to 20 percent of the eligible capital
226 costs generated by the qualifying project. The tax credit shall
227 be granted against the tax liability of the qualifying business.

228 (b) If the credit granted under this subsection is not
229 fully used in 1 year because of insufficient tax liability on
230 the part of the qualifying business, the unused amounts may be
231 transferred or used in any one year or years beginning with the
232 year of the completion date of the project and ending the 9th

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233 year after the completion date of the project. A business
234 receiving the transferred credits may use the credits only in
235 the year received, and the credits may not be carried forward or
236 backward. A transfer must be perfected in accordance with the
237 requirements of paragraph (2)(c).

238 (4)(a) Notwithstanding subsection (2), an annual credit
239 against the tax imposed by this chapter shall be granted to a
240 qualifying business which establishes a qualifying project
241 pursuant to subparagraph (1)(h)3. ~~(1)(g)3.~~, in an amount equal
242 to the lesser of \$15 million or 5 percent of the eligible
243 capital costs made in connection with a qualifying project, for
244 a period not to exceed 20 years beginning with the commencement
245 of operations of the project. The tax credit shall be granted
246 against the corporate income tax liability of the qualifying
247 business and as further provided in paragraph (c). The total tax
248 credit provided pursuant to this subsection shall be equal to no
249 more than 100 percent of the eligible capital costs of the
250 qualifying project.

251 (b) If the credit granted under this subsection is not
252 fully used in any one year because of insufficient tax liability
253 on the part of the qualifying business, the unused amount may be
254 carried forward for a period not to exceed 20 years after the
255 commencement of operations of the project. The carryover credit
256 may be used in a subsequent year when the tax imposed by this
257 chapter for that year exceeds the credit for which the
258 qualifying business is eligible in that year under this
259 subsection after applying the other credits and unused
260 carryovers in the order provided by s. 220.02(8).

261 (c) The credit granted under this subsection may be used in

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262 whole or in part by the qualifying business or any corporation
263 that is either a member of that qualifying business's affiliated
264 group of corporations, is a related entity taxable as a
265 cooperative under subchapter T of the Internal Revenue Code, or,
266 if the qualifying business is an entity taxable as a cooperative
267 under subchapter T of the Internal Revenue Code, is related to
268 the qualifying business. Any entity related to the qualifying
269 business may continue to file as a member of a Florida-nexus
270 consolidated group pursuant to a prior election made under s.
271 220.131(1), Florida Statutes (1985), even if the parent of the
272 group changes due to a direct or indirect acquisition of the
273 former common parent of the group. Any credit can be used by any
274 of the affiliated companies or related entities referenced in
275 this paragraph to the same extent as it could have been used by
276 the qualifying business. However, any such use shall not operate
277 to increase the amount of the credit or extend the period within
278 which the credit must be used.

279 (5)~~(4)~~ Prior to receiving tax credits pursuant to this
280 section, a qualifying business must achieve and maintain the
281 minimum employment goals beginning with the commencement of
282 operations or the completion date of ~~a~~ a qualifying project and
283 continuing each year thereafter during which tax credits are
284 available pursuant to this section.

285 (6)~~(5)~~ Applications shall be reviewed and certified
286 pursuant to s. 288.061. The Department of Economic Opportunity,
287 upon a recommendation by Enterprise Florida, Inc., shall first
288 certify a business as eligible to receive tax credits pursuant
289 to this section prior to the commencement of operations or the
290 completion date of a qualifying project, and such certification

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291 shall be transmitted to the Department of Revenue. Upon receipt
292 of the certification, the Department of Revenue shall enter into
293 a written agreement with the qualifying business specifying, at
294 a minimum, the method by which income generated by or arising
295 out of the qualifying project will be determined.

296 (7)~~(6)~~ The Department of Economic Opportunity, in
297 consultation with Enterprise Florida, Inc., is authorized to
298 develop the necessary guidelines and application materials for
299 the certification process described in subsection (6) ~~(5)~~.

300 (8)~~(7)~~ It shall be the responsibility of the qualifying
301 business to affirmatively demonstrate to the satisfaction of the
302 Department of Revenue that such business meets the job creation
303 and capital investment requirements of this section.

304 (9)~~(8)~~ The Department of Revenue may specify by rule the
305 methods by which a project's pro forma annual taxable income is
306 determined.

307 Section 2. Paragraph (d) of subsection (2) of section
308 288.1089, Florida Statutes, is amended to read:

309 288.1089 Innovation Incentive Program.—

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

311 (d) "Cumulative investment" means cumulative capital
312 investment and all eligible capital costs, as defined in former
313 s. 220.191, Florida Statutes 2019.

314 Section 3. This act shall take effect upon becoming a law.