

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 Committee on Commerce and Tourism

BILL: SB 576

INTRODUCER: Senator Gruters

SUBJECT: Research and Development Tax Credit

DATE: November 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Pre-meeting
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 576 increases the annual limit for research and development (R&D) tax credits on corporate income taxes to \$50 million from \$9 million, and provides that the first \$10 million must be allocated to qualified businesses in the cleantech industry. The increased annual limit of \$50 million will apply to the taxable year beginning January 1, 2020, and to all taxable years thereafter. The bill also expands the types of businesses eligible to receive the tax credit.

The bill takes effect upon becoming a law.

II. Present Situation:

Federal Tax Credit

The U.S. Research and Experimentation Tax Credit¹ was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.² In 2015, the Protecting Americans from Tax Hikes (PATH) Act permanently extended the R&D Tax credit.³ For the 2013 federal tax year, 16,624 companies claimed approximately \$11.3 million in R&D tax credits.⁴ At approximately \$6.8 million, manufacturing companies claimed the largest portion of research tax credits.⁵ Under federal law,

¹ The U.S. Research and Experimentation Tax Credit is also known as the Research and Development Tax Credit.

² Francisco Moris, *The U.S. Research and Experimentation Tax Credit in the 1990s* (July 2005), National Science Foundation Report, available at <https://wayback.archive-it.org/5902/20150627200929/http://www.nsf.gov/statistics/infbrief/nsf05316/> (last visited on Nov. 8, 2019).

³ Yair Holtzman, *U.S. Research and Development Tax Credit* (October 2017), The CPA Journal, available at <https://www.cpapjournal.com> (last visited on Nov. 8, 2019).

⁴ Internal Revenue Service, Statistics of Income Division, <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit>, (last visited Nov. 8, 2019).

⁵ *Id.*

qualified research expenditures include in-house research expenses and contract research expenses paid by the taxpayer in carrying on any trade or business of the taxpayer.⁶

Florida Tax Credit

Section 220.196, F.S., authorizes a R&D tax credit against state corporate income taxes for certain businesses with qualified research expenses.⁷ A business is eligible for the tax credit if it:

- Has qualified research expenses in Florida in the taxable year exceeding the base amount;⁸
- Claims, and is allowed, a research credit for such qualified expenses under federal law for the same taxable year; and
- Is in a qualified target industry,⁹ specifically manufacturing, life sciences, information technology, aviation and aerospace, homeland security and defense, cloud information technology, marine sciences, materials sciences, or nanotechnology.¹⁰

The tax credit is 10 percent of the difference between the current tax year's R&D expenditures in Florida and the average of R&D expenditures over the previous four tax years. However, if the business has existed fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.¹¹ The state tax credit taken in any taxable year may not exceed 50 percent of the company's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied. Any unused credits may be carried forward by the business for up to five years following the year in which the qualified research expenses were incurred.¹²

The maximum amount of R&D credits that may be approved by the Department of Revenue (DOR) during any calendar year is \$9 million. Applications for the credit may be filed with the DOR on or after March 20 and before March 27 for qualified research expenses incurred within the preceding calendar year. If the total amount of credits applied for exceeds the annual cap, credits are allocated on a prorated basis.¹³

The statutory cap of \$9 million for expenses incurred in the 2018 calendar year was allocated in 2019 as follows:¹⁴

- The DOR received 199 applications, requesting a total of \$107,904,637 in credit;
- One hundred eighty eight (188) applications were approved with the applicant receiving an allocation of the available \$9 million in credit. Each applicant received approximately

⁶ 26 U.S.C. s. 41(b)(1)

⁷ Section 220.196(1)(c), F.S., defines "qualified research expenses" as research expenses qualifying for the credit under federal law for in house research expenses incurred in Florida or contract research expenses incurred in Florida.

⁸ "Base amount" means the average of the business' qualified research expenses in Florida allowed under 26 U.S.C. s. 41 for the preceding 4 taxable years. Chapter 220.196(1)(a), F.S.

⁹ The Department of Economic Opportunity (DEO) certifies whether a business is a qualified target industry business, pursuant to s. 220.196(2)(a)3., F.S.

¹⁰ See s. 220.196(2)(a), F.S.

¹¹ See s. 220.196(2)(b), F.S.

¹² See s. 220.196(2)(d), F.S.

¹³ See s. 220.196(2)(e), F.S.

¹⁴ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax*, May 22, 2019, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited Nov. 8, 2019).

- eight percent (0.08) of the amount of credit determined in their application. These 188 applications requested \$107,369,288 in credit; and
- Eleven (11) applications were denied for various reasons, including applicant not being a corporation, applicant not having current certification letter from the DEO, and application figures resulting in zero credit requested. These 11 applications requested \$535,349 in credit.¹⁵

The statutory cap was raised to \$16.5 million for expenses incurred during the 2017 calendar year.¹⁶ The credits were allocated in 2018 as follows:¹⁷

- The DOR received 169 applications, requesting a total of \$68,067,382 in credit;
- 145 applications were approved with each applicant receiving an allocation of the available \$16.5 million in credit. Each applicant received approximately 25.17 percent (0.2517) of the amount of credit determined in their application. These 145 applications requested a total of \$65,560,879 in credit; and
- Twenty-three (23) applications were denied for various reasons, including duplicate applications and applications resulting in zero credit requested. These 23 applications requested a total of \$2,506,503 in credit.¹⁸

The statutory cap of \$9 million for expenses incurred in the 2016 calendar year was allocated in 2017 as follows:

- The DOR received 146 applications, requesting a total of \$54,915,138 in credit;
- One hundred thirty-seven (137) applications were approved with each applicant receiving an allocation of the available \$9 million in credit. Each applicant received approximately 16.67 percent (0.1667) of the amount of credit determined in their application. These 137 applications requested a total of \$53,986,728 in credit; and
- Nine (9) applications were denied for various reasons, including duplicate applications and application figures resulting in zero credit requested. These nine applications requested a total of \$928,410 in credit.¹⁹

The statutory cap was raised to \$23 million for expenses incurred in the 2015 calendar year.²⁰ The credits were allocated in 2016 as follows:

- The DOR received 131 applications, requesting a total of \$52,481,052 in credit;
- One hundred eighteen (118) applications were approved with each applicant receiving an allocation of the available \$23 million in credit. Each applicant received approximately 46 percent (0.46) of the amount of credit determined in their application. These 118 applications requested a total of \$50,447,562 in credit; and
- Thirteen (13) applications were denied for various reasons, including withdrawal by the taxpayer, duplicate applications, application figures resulting in a zero credit requested,

¹⁵ *Id.*

¹⁶ Ch. 2017-36, s. 33, Laws of Fla.

¹⁷ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax*, May 22, 2019, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited Nov. 8, 2019).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Ch. 2015-221, s. 21, Laws of Fla.

and failure to include a certification letter from the DEO. These 13 applications requested a total of \$2,003,490 in credit.²¹

Qualified Target Industry Businesses

The qualified target industry program is used to identify businesses that are eligible for tax refunds.²² These businesses create jobs with higher than average wages in industries that are expected to have a positive economic impact.²³ Target industry businesses are defined in s. 288.106, Florida Statutes as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to criteria developed by DEO in consultation with Enterprise Florida, Inc. (EFI).²⁴ The criteria includes future growth, stability, high wage, market and resource independence, industrial base diversification and strengthening, and positive economic impact.²⁵ EFI lists the recognized qualified target industries as manufacturing, corporate headquarters, research and development, global logistics, cleantech, life sciences, financial and professional services, aviation and aerospace, homeland security and defense, infotech, emerging technologies, and other manufacturing.²⁶

The cleantech industry includes, biomass and biofuels processing, energy equipment manufacturing, energy storage technologies, photovoltaic, environmental consulting, and sustainable building products.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 220.196(2)(e), F.S., to increase the combined amount of R&D tax credits that may be issued during any calendar year from \$9 million to \$50 million, and provides that the first \$10 million must be allocated to qualified businesses in the cleantech industry as certified by the DEO. However, if the first \$10 million is not fully allocated to qualified cleantech businesses, the DEO may allocate the remainder. The bill also removes the provision that increased the annual limit to \$16.5 million for the 2018 calendar year.

The bill also deletes a limitation on qualified target industries, which expands the types of businesses eligible to receive the tax credit.

Section 2 stipulates that the amendment of s. 220.196(2)(e), F.S., will apply to the taxable year beginning January 1, 2020, and thereafter.

Section 3 provides that this bill takes effect upon becoming a law.

²¹ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax*, May 22, 2019, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited Nov. 8, 2019).

²² Department of Economic Opportunity and Enterprise Florida, *2018 Incentives Report*, <http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-annual-incentives-report.pdf?sfvrsn=2> (last visited Nov. 8, 2019).

²³ *Id.*

²⁴ See s. 288.106(2)(n), F.S.

²⁵ See s. 288.106(2)(q), F.S.

²⁶ Enterprise Florida, *Qualified Target Industries for Incentives*, https://www.enterpriseflorida.com/wp-content/uploads/SI_Targeted_Industries.pdf (last visited Nov. 8, 2019).

²⁷ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet estimated the fiscal impact of the bill.

B. Private Sector Impact:

The bill increases the combined corporate income tax savings from \$9 million to \$50 million annually.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 220.196 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
