

HB 1125

2021

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 terms "intellectual property" and "strategic
5 priority project"; providing a credit against the
6 corporate income tax, the sales and use tax, or a
7 stated combination of the two taxes to a qualifying
8 business that establishes a qualifying project for the
9 creation of intellectual property which meets certain
10 capital investment criteria; specifying the
11 calculation of the credit; authorizing the carryover
12 or transfer of credits, subject to certain conditions;
13 providing a credit against the corporate income tax,
14 the sales and use tax, or a stated combination of the
15 two taxes to a qualifying business that establishes a
16 strategic priority project that meets certain capital
17 investment criteria; specifying the calculation of the
18 credit; authorizing the carryover or transfer of
19 credits, subject to certain conditions; conforming
20 provisions to changes made by the act; amending s.
21 288.1089, F.S.; revising the definition of the term
22 "cumulative investment" to conform to changes made by
23 the act; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

220.191 Capital investment tax credit.—

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

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

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

(c)1. "Eligible capital costs" means all expenses incurred by a qualifying business in connection with:

a. The acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations; or

b. A qualifying project for the development or creation of intellectual property during the period from the start date of the project to the completion of the project.

2. The term includes, ~~including,~~ but is not limited to:

a.1. The costs of acquiring, constructing, installing,

51 equipping, and financing a qualifying project, including all
52 obligations incurred for labor and obligations to contractors,
53 subcontractors, builders, and materialmen.

54 ~~b.2.~~ The costs of acquiring land or rights to land and any
55 cost incidental thereto, including recording fees.

56 ~~c.3.~~ The costs of architectural and engineering services,
57 including test borings, surveys, estimates, plans and
58 specifications, preliminary investigations, environmental
59 mitigation, and supervision of construction, as well as the
60 performance of all duties required by or consequent to the
61 acquisition, construction, installation, and equipping of a
62 qualifying project.

63 ~~d.4.~~ The costs associated with the installation of
64 fixtures and equipment; surveys, including archaeological and
65 environmental surveys; site tests and inspections; subsurface
66 site work and excavation; removal of structures, roadways, and
67 other surface obstructions; filling, grading, paving, and
68 provisions for drainage, storm water retention, and installation
69 of utilities, including water, sewer, sewage treatment, gas,
70 electricity, communications, and similar facilities; and offsite
71 construction of utility extensions to the boundaries of the
72 property.

73 e. For the development or creation of intellectual
74 property, the wages, salaries, or other compensation paid to
75 legal residents of this state, including amounts paid through a

76 loan-out company, an employee leasing company, or a payroll
77 service company. The term also includes expenditures for the
78 rental of tangible personal property or the provision of
79 services directly related to the development or creation of
80 intellectual property.

81
82 Eligible capital costs do ~~shall~~ not include the cost of any
83 property previously owned or leased by the qualifying business.

84 (d) "Income generated by or arising out of the qualifying
85 project" means the qualifying project's annual taxable income as
86 determined by generally accepted accounting principles and under
87 s. 220.13.

88 (e) "Intellectual property" means a copyrightable project
89 for which the eligible capital costs are principally paid
90 directly or indirectly for the development or creation of the
91 project. As used in this paragraph, the term "copyrightable
92 project" includes, but is not limited to, a copyrightable
93 software or multimedia application and its expansion content
94 made available to an end user, which includes, but is not
95 limited to, technological activities relating to updating the
96 project; internal development platforms that support the
97 production of multiple applications; cloud-based services that
98 support the functionality of multiple applications; and
99 copyrightable projects that include, but are not limited to,
100 digital visualization and sound synchronization technologies for

101 digital media, or that are necessary for the production of
102 scripted content intended for theatrical, streaming, or
103 television distribution.

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

111 (g)~~(f)~~ "Qualifying business" means a business which
112 establishes a qualifying project or strategic priority project
113 in this state and which is certified by the Department of
114 Economic Opportunity to receive tax credits pursuant to this
115 section.

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

118 1. A new or expanding facility in this state which creates
119 at least 100 new jobs in this state and is in one of the high-
120 impact sectors identified by Enterprise Florida, Inc., and
121 certified by the Department of Economic Opportunity pursuant to
122 s. 288.108(6), including, but not limited to, aviation,
123 aerospace, automotive, and silicon technology industries.
124 However, between July 1, 2011, and June 30, 2014, the
125 requirement that a facility be in a high-impact sector is waived

126 for any otherwise eligible business from another state which
127 locates all or a portion of its business to a Disproportionally
128 Affected County. For purposes of this section, the term
129 "Disproportionally Affected County" means Bay County, Escambia
130 County, Franklin County, Gulf County, Okaloosa County, Santa
131 Rosa County, Walton County, or Wakulla County.

132 2. A new or expanded facility in this state which is
133 engaged in a target industry designated pursuant to the
134 procedure specified in s. 288.106(2) and which is induced by
135 this credit to create or retain at least 1,000 jobs in this
136 state, provided that at least 100 of those jobs are new, pay an
137 annual average wage of at least 130 percent of the average
138 private sector wage in the area as defined in s. 288.106(2), and
139 make a cumulative capital investment of at least \$100 million.
140 Jobs may be considered retained only if there is significant
141 evidence that the loss of jobs is imminent. Notwithstanding
142 subsection (2), annual credits against the tax imposed by this
143 chapter may not exceed 50 percent of the increased annual
144 corporate income tax liability or the premium tax liability
145 generated by or arising out of a project qualifying under this
146 subparagraph. A facility that qualifies under this subparagraph
147 for an annual credit against the tax imposed by this chapter may
148 take the tax credit for a period not to exceed 5 years.

149 3. A new or expanded headquarters facility in this state
150 which locates in an enterprise zone and brownfield area and is

151 induced by this credit to create at least 1,500 jobs which on
152 average pay at least 200 percent of the statewide average annual
153 private sector wage, as published by the Department of Economic
154 Opportunity, and which new or expanded headquarters facility
155 makes a cumulative capital investment in this state of at least
156 \$250 million.

157 4. A project involving the creation of intellectual
158 property, provided that the project's jobs in this state pay an
159 annual average wage of at least 150 percent of the average
160 private sector wage in the area as defined in s. 288.106. A
161 project that qualifies under this subparagraph may consist of
162 one or more projects with different start and completion dates.

163 (i) "Strategic priority project" means a qualifying
164 project identified in subparagraph (h)4. which demonstrates the
165 potential for measurable value to this state, including, but not
166 limited to, marketing Florida as a visitor destination,
167 improvements to infrastructure supporting future industry use,
168 or measurable technology skills development for residents of
169 this state.

170 (2) (a) An annual credit against the tax imposed by this
171 chapter shall be granted to any qualifying business in an amount
172 equal to 5 percent of the eligible capital costs generated by a
173 qualifying project, for a period not to exceed 20 years
174 beginning with the commencement of operations of the project.
175 Unless assigned as described in this subsection, the tax credit

176 shall be granted against only the corporate income tax liability
177 or the premium tax liability generated by or arising out of the
178 qualifying project, and the sum of all tax credits provided
179 pursuant to this section shall not exceed 100 percent of the
180 eligible capital costs of the project. In no event may any
181 credit granted under this section be carried forward or backward
182 by any qualifying business with respect to a subsequent or prior
183 year. The annual tax credit granted under this section shall not
184 exceed the following percentages of the annual corporate income
185 tax liability or the premium tax liability generated by or
186 arising out of a qualifying project:

187 1. One hundred percent for a qualifying project which
188 results in a cumulative capital investment of at least \$100
189 million.

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

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

196 (b) A qualifying project which results in a cumulative
197 capital investment of less than \$25 million is not eligible for
198 the capital investment tax credit. An insurance company claiming
199 a credit against premium tax liability under this program shall
200 not be required to pay any additional retaliatory tax levied

201 pursuant to s. 624.5091 as a result of claiming such credit.
202 Because credits under this section are available to an insurance
203 company, s. 624.5091 does not limit such credit in any manner.

204 (c) A qualifying business that establishes a qualifying
205 project that includes locating a new solar panel manufacturing
206 facility in this state that generates a minimum of 400 jobs
207 within 6 months after commencement of operations with an average
208 salary of at least \$50,000 may assign or transfer the annual
209 credit, or any portion thereof, granted under this section to
210 any other business. However, the amount of the tax credit that
211 may be transferred in any year shall be the lesser of the
212 qualifying business's state corporate income tax liability for
213 that year, as limited by the percentages applicable under
214 paragraph (a) and as calculated before ~~prior to~~ taking any
215 credit pursuant to this section, or the credit amount granted
216 for that year. A business receiving the transferred or assigned
217 credits may use the credits only in the year received, and the
218 credits may not be carried forward or backward. To perfect the
219 transfer, the transferor shall provide the department with a
220 written transfer statement notifying the department of the
221 transferor's intent to transfer the tax credits to the
222 transferee; the date the transfer is effective; the transferee's
223 name, address, and federal taxpayer identification number; the
224 tax period; and the amount of tax credits to be transferred. The
225 department shall, upon receipt of a transfer statement

226 conforming to the requirements of this paragraph, provide the
227 transferee with a certificate reflecting the tax credit amounts
228 transferred. A copy of the certificate must be attached to each
229 tax return for which the transferee seeks to apply such tax
230 credits.

231 (d) If the credit granted under subparagraph (a)1. is not
232 fully used in any one year because of insufficient tax liability
233 on the part of the qualifying business, the unused amounts may
234 be used in any one year or years beginning with the 21st year
235 after the commencement of operations of the project and ending
236 the 30th year after the commencement of operations of the
237 project.

238 (3) (a) Notwithstanding subsection (2), a credit against
239 the tax imposed by this chapter, against state taxes collected
240 or accrued under chapter 212, or against a stated combination of
241 the two taxes must be granted to a qualifying business that
242 establishes a qualifying project identified in subparagraph
243 (1) (h)4. for which the eligible capital costs of one or more
244 projects are an aggregate of at least \$50 million per year for 3
245 years. The tax credit must be granted in an amount equal to 20
246 percent of the eligible capital costs generated by the
247 qualifying project. The tax credit shall be granted against the
248 tax liability of the qualifying business.

249 (b) At the time a tax credit is granted under this
250 subsection, a qualifying business granted the credit shall elect

251 to either use or transfer the tax credit.

252 1. A qualifying business that elects to transfer the tax
253 credit shall transfer the tax credit within 1 year after the
254 date the tax credit is granted. A business receiving the
255 transferred tax credit may use the credit only in the year
256 received, and the credit may not be carried forward or backward.
257 To perfect the transfer, the transferor shall provide the
258 department with a written transfer statement of the transferor's
259 intent to transfer the tax credits to the transferee; the date
260 the transfer is effective; the transferee's name, address, and
261 federal taxpayer identification number; the tax period to which
262 the transfer applies; and the amount of tax credits to be
263 transferred. The department shall, upon receipt of a transfer
264 statement conforming to the requirements of this subparagraph,
265 provide the transferee with a certificate reflecting the tax
266 credit amounts transferred. A copy of the certificate must be
267 attached to each tax return for which the transferee seeks to
268 apply such tax credits.

269 2. A qualifying business that elects to use the tax credit
270 may use the tax credit in any one year or years beginning with
271 the commencement of the project and ending the second year after
272 the completion of the project.

273 (4) (a) Notwithstanding subsection (2), a credit against
274 the tax imposed by this chapter, against state taxes collected
275 or accrued under chapter 212, or against a stated combination of

276 the two taxes must be granted to a qualifying business that
277 establishes a strategic priority project as defined in paragraph
278 (1) (i), for which the eligible capital costs are at least \$75
279 million. The tax credit must be granted in an amount equal to 20
280 percent of the eligible capital costs generated by the
281 qualifying project. The tax credit shall be granted against the
282 tax liability of the qualifying business.

283 (b) At the time a tax credit is granted under this
284 subsection, a qualifying business granted the credit shall elect
285 to either use or transfer the tax credit.

286 1. A qualifying business that elects to transfer the tax
287 credit shall transfer the tax credit within 1 year after the
288 date the tax credit is granted. A business receiving the
289 transferred tax credit may use the credit only in the year
290 received, and the credit may not be carried forward or backward.
291 To perfect the transfer, the transferor shall provide the
292 department with a written transfer statement of the transferor's
293 intent to transfer the tax credits to the transferee; the
294 effective date of the transfer; the transferee's name, address,
295 and federal taxpayer identification number; the tax period to
296 which the transfer applies; and the amount of tax credits to be
297 transferred. Upon receipt of a transfer statement conforming to
298 the requirements of this subparagraph, the department shall
299 provide the transferee with a certificate reflecting the tax
300 credit amounts transferred. A copy of the certificate must be

301 attached to each tax return for the period for which the
 302 transferee seeks to apply such tax credits.

303 2. A qualifying business that elects to use the tax credit
 304 may use the tax credit in any one year or years beginning with
 305 the commencement of the project and ending the second year after
 306 the completion of the project.

307 (5) (a) Notwithstanding subsection (2), an annual credit
 308 against the tax imposed by this chapter must ~~shall~~ be granted to
 309 a qualifying business which establishes a qualifying project
 310 pursuant to subparagraph (1) (h) 3. ~~(1) (g) 3.~~, in an amount equal
 311 to the lesser of \$15 million or 5 percent of the eligible
 312 capital costs made in connection with a qualifying project, for
 313 a period not to exceed 20 years beginning with the commencement
 314 of operations of the project. The tax credit must ~~shall~~ be
 315 granted against the corporate income tax liability of the
 316 qualifying business and as further provided in paragraph (c).
 317 The total tax credit provided pursuant to this subsection must
 318 ~~shall~~ be equal to no more than 100 percent of the eligible
 319 capital costs of the qualifying project.

320 (b) If the credit granted under this subsection is not
 321 fully used in any one year because of insufficient tax liability
 322 on the part of the qualifying business, the unused amount may be
 323 carried forward for a period not to exceed 20 years after the
 324 commencement of operations of the project. The carryover credit
 325 may be used in a subsequent year when the tax imposed by this

326 chapter for that year exceeds the credit for which the
327 qualifying business is eligible in that year under this
328 subsection after applying the other credits and unused
329 carryovers in the order provided by s. 220.02(8).

330 (c) The credit granted under this subsection may be used
331 in whole or in part by the qualifying business or any
332 corporation that is either a member of that qualifying
333 business's affiliated group of corporations, is a related entity
334 taxable as a cooperative under subchapter T of the Internal
335 Revenue Code, or, if the qualifying business is an entity
336 taxable as a cooperative under subchapter T of the Internal
337 Revenue Code, is related to the qualifying business. Any entity
338 related to the qualifying business may continue to file as a
339 member of a Florida-nexus consolidated group pursuant to a prior
340 election made under s. 220.131(1), Florida Statutes (1985), even
341 if the parent of the group changes due to a direct or indirect
342 acquisition of the former common parent of the group. Any credit
343 can be used by any of the affiliated companies or related
344 entities referenced in this paragraph to the same extent as it
345 could have been used by the qualifying business. However, any
346 such use shall not operate to increase the amount of the credit
347 or extend the period within which the credit must be used.

348 (6)~~(4)~~ Before ~~Prior to~~ receiving tax credits pursuant to
349 this section, a qualifying business must achieve and maintain
350 the minimum employment goals beginning with the commencement of

351 operations or the completion date of ~~at~~ a qualifying project and
352 continuing each year thereafter during which tax credits are
353 available pursuant to this section.

354 (7)-(5) Applications must ~~shall~~ be reviewed and certified
355 pursuant to s. 288.061. The Department of Economic Opportunity,
356 upon a recommendation by Enterprise Florida, Inc., shall first
357 certify a business as eligible to receive tax credits pursuant
358 to this section before ~~prior to~~ the commencement of operations
359 or the completion date of a qualifying project, and such
360 certification must ~~shall~~ be transmitted to the Department of
361 Revenue. Upon receipt of the certification, the Department of
362 Revenue shall enter into a written agreement with the qualifying
363 business specifying, at a minimum, the method by which income
364 generated by or arising out of the qualifying project will be
365 determined.

366 (8)-(6) The Department of Economic Opportunity, in
367 consultation with Enterprise Florida, Inc., is authorized to
368 develop the necessary guidelines and application materials for
369 the certification process described in subsection (7)-(5).

370 (9)-(7) It shall be the responsibility of the qualifying
371 business to affirmatively demonstrate to the satisfaction of the
372 Department of Revenue that such business meets the job creation
373 and capital investment requirements of this section.

374 (10)-(8) The Department of Revenue may specify by rule the
375 methods by which a project's pro forma annual taxable income is

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376 | determined.

377 | Section 2. Paragraph (d) of subsection (2) of section
378 | 288.1089, Florida Statutes, is amended to read:

379 | 288.1089 Innovation Incentive Program.—

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

381 | (d) "Cumulative investment" means cumulative capital
382 | investment and all eligible capital costs, as defined in s.
383 | 220.191, Florida Statutes (2020).

384 | Section 3. This act shall take effect July 1, 2021.