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 1246

INTRODUCER: Senator Rodrigues

SUBJECT: Capital Investment Tax Credit

DATE: March 26, 2021 REVISED:

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

I. Summary:

SB 1246 amends s. 220.191, F.S., to permit certain qualifying travel agency or passenger car rental businesses to carry over 50 percent of their unused capital investment tax credits from calendar year 2020 if the business's gross receipts between April 1 and December 31, 2020, were 50 percent lower than its receipts from the same period in 2019.

A business may transfer its tax credits to another taxpayer, use its tax credits against amounts payable for sales and use tax liability, or apply its unused tax credits against corporate income tax payments for tax years beginning January 1, 2021, and ending December 31, 2025.

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by $1.7 million and reduce local government receipts by $600,000 in Fiscal Year 2021-2022.

The bill takes effect July 1, 2021.

II. Present Situation:

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC), established by the Legislature in 1998 to attract and grow capital-intensive industries in the state, provides an annual tax credit against corporate income tax or insurance premium tax liabilities generated by a qualifying project.[1]

Eligible Projects

Section 220.191(1)(g), F.S., defines the projects that are eligible for the program. They include:

[1] Chapter 98-61, Law of Fla.

- A new or expanded facility in a designated high-impact sector[2] that creates at least 100 new jobs. High-impact sector projects fall into one of three tiers, depending on the project's cumulative capital investment;
- A new or expanded facility in a target industry[3] that creates or retains at least 1,000 jobs, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and result in a cumulative capital investment of at least $100 million; and
- A new or expanded headquarters facility located in an enterprise zone and brownfield area that creates at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage and makes a cumulative capital investment in this state of at least $250 million.

Tax Credits Allowable

Qualified businesses are generally allowed an annual tax credit equal to 5 percent of a project's eligible capital costs generated by a project for up to 20 years.[4]

The annual tax credit limit for the three tiers of high-impact sector projects may not exceed the following percentages of the annual corporate income or insurance premium tax liability generated by or arising out of a qualifying project:[5]

- 100 percent for a qualifying project which results in a cumulative capital investment of at least $100 million;
- 75 percent for a qualifying project which results in a cumulative capital investment of at least $50 million but less than $100 million; or
- 50 percent for a qualifying project which results in a cumulative capital investment of at least $25 million but less than $50 million.

Target industry projects are eligible for an annual credit equal to one-half of the increase in the tax liability arising out of the project without regard to the amount of eligible capital costs, but may only receive a tax credit for 5 years.[6]

Headquarters facility projects may take an annual credit equal to the lesser of 5 percent of the project's eligible capital costs or $15 million. Tax credits for headquarters facility projects may only be applied against corporate income tax liability.[7]

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[2] The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, silicon technology, transportation equipment manufacturing, and corporate headquarters. *See* Department of Economic Opportunity, *2020 Annual Incentives Report*, 52, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 26, 2021).

[3] The current qualified target industries are aviation and aerospace; corporate headquarters; clean technology; defense and homeland security; financial and professional services; global logistics and trade; information technology; life sciences; manufacturing; and research and development. *See* Department of Economic Opportunity, *2020 Annual Incentives Report,* 12, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 26, 2021).

[4] Section 220.191(2)(a), F.S. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations.

[5] *Id.*

[6] Section 220.191(1)(g)2., F.S.

[7] Section 220.191(3)(a), F.S.

Tax Credit Carryover and Transfer

Only recipients of a tax credit associated with a corporate headquarters facility project or certain high-impact sector projects are permitted to carry forward unused credit. If the full tax credit associated with a corporate headquarters facility is not used in any one year, the taxpayer can carry the unused credit forward to any year within the normal 20-year window.[8] A high-impact sector business that meets the $100 million capital investment threshold that was unable to fully use its available credit between years 1 and 20 is permitted to use that credit in years 21 through 30 following the commencement of operations.[9]

Generally, tax credits may not be transferred or sold to other businesses. However, if a qualifying project establishes a new solar panel manufacturing facility that generates at least 400 jobs within 6 months of commencing operations and pays those jobs at least $50,000, it may transfer its annual tax credit to another business. A business receiving the transferred credits may only use the credits in the year received.[10]

Issuance of Tax Credits

The Department of Economic Opportunity (DEO) must certify a business as eligible to receive a tax credit before the commencement of operations of a qualifying project. If a business is certified, the DEO will enter into an agreement with the business that specifies the planned commencement date of operations and the total amount of credit the business can expect if the project proceeds as planned. Agreements are drafted so that a qualified business's annual credit amount begins on the date of commencement of operations, beginning the 20-year credit period. If for some reason operations do not commence on time, the 20-year window is not adjusted.[11]

Before receiving a tax credit each year, a qualifying business must achieve and maintain its minimum employment goals beginning with the commencement of operations of a qualifying project.[12]

Economic Impact

According to the DEO, there were 61 active CITC awardees with 32 reporting performance as of Fiscal Year 2019-2020; the DEO confirmed 2,887 jobs created and over $308 million in capital investment in said fiscal year.[13] Over $67 million in tax credits were approved to be claimed by qualified business in calendar year 2019.[14]

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[8] Section 220.191(3)(b), F.S.
[9] Section 220.191(2)(d), F.S.
[10] Section 220.191(2)(c), F.S.
[11] Florida Senate Committee on Finance and Tax, *Issue Brief 2012-2014: Review of the Capital Investment Tax Credit* (September 2011), *available at* https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-204ft.pdf (last visited Mar. 26, 2021).
[12] Section 220.191(4), F.S.
[13] Department of Economic Opportunity, *2020 Annual Incentives Report*, 8, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 26, 2021).
[14] *Id* at 49.

III. Effect of Proposed Changes:

The bill permits businesses that operate within the standard industrial classification codes of 4724, travel agencies, or 7514, passenger car rentals, to carry over unused capital investment tax credits generated from the 2020 calendar year. A business may use up to 50 percent of its unused tax credits in the tax year beginning January 1, 2021, if its gross total receipts between April 1 and December 31, 2020, were 50 percent lower than its receipts from the same period in 2019.

A business may either:

- Transfer its unused tax credits to another taxpayer subject to corporate income taxes;
- Use its unused tax credits against amounts payable to the Department of Revenue, either as consumer or dealer, for sales and use tax liability; or
- Apply its unused tax credits against corporate income tax payments for tax years beginning January 1, 2021, and ending December 31, 2025.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,[15, 16] which is $2.2 million or less for Fiscal Year 2021-2022.[17]

The Revenue Estimating Conference determined that the bill will reduce local government receipts by $600,000 in Fiscal Year 2021-2022 only.[18] Therefore, the mandate provisions of Art. VII, s. 18 of the State Constitution do not apply.

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[15] FLA. CONST. art. VII, s. 18(d).

[16] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Mar. 26, 2021).

[17] Based on the Demographic Estimating Conference's population adopted on November 13, 2020. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Mar. 26, 2021).

[18] Office of Economic and Demographic Research, *Revenue Estimating Conference Report: SB 1246* (2021), 203-204, *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0319.pdf (last visited Mar. 26, 2021).

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 determined that the bill will reduce General Revenue Fund receipts by $1.7 million and reduce local government receipts by $600,000 in Fiscal Year 2021-2022 only.[19]

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Revenue estimates that it will require $93,990 in nonrecurring funds to modify its software and databases in order to implement the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 28-30 allow a qualifying business to apply its unused tax credits against corporate income tax payments for tax years beginning January 1, 2021, and ending December 31, 2025. It is unclear if taxpayers can only use their carried-forward credits in any one tax year between January 1, 2021, and December 31, 2025, or if they may use the credits during multiple tax years within that period.

[19] *Id.*

It is unclear if the carryover provisions created by the bill apply only to taxpayers who file taxes based on the calendar year, or if taxpayers who file taxes in tax years beginning or ending within the 2020 calendar year.

Lines 23-24 permit a business to transfer its unused tax credits to another taxpayer subject to corporate income tax, but the bill does not specify a period of time during which the recipient of a transferred tax credit must use the credit.

The Department of Revenue requests emergency rulemaking authority in order to establish rules on how a taxpayer would document a credit transfer or carryover.

VIII. Statutes Affected:

This bill substantially amends section 220.191 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.