

By the Committee on Commerce and Tourism; and 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.; defining and redefining
4 terms; providing a credit against the corporate income
5 tax, the sales and use tax, or a stated combination of
6 the two taxes to a qualifying business that
7 establishes a qualifying project for the creation of
8 intellectual property which meets certain capital
9 investment criteria; specifying the calculation of the
10 credit; authorizing use of the credit or portions of
11 the credit by the business members of its affiliated
12 group of corporations; authorizing the transfer of
13 credits, subject to certain conditions; requiring
14 credits to be granted as costs are certified by the
15 Department of Economic Opportunity; providing for
16 revocation and rescission of credits under certain
17 circumstances; providing a credit against the
18 corporate income tax, the sales and use tax, or a
19 stated combination of the two taxes to a qualifying
20 business that incurs eligible production
21 infrastructure costs that exceed a certain threshold;
22 specifying the calculation of the credit; prohibiting
23 the carryover of credits; authorizing use of unused
24 credits after a certain time period; providing a
25 credit against the corporate income tax, the sales and
26 use tax, or a stated combination of the two taxes to a
27 qualifying business that establishes a strategic
28 priority project that meets certain capital investment
29 criteria; specifying the calculation of the credit;

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30 authorizing the carryover or transfer of credits,
31 subject to certain conditions; conforming provisions
32 to changes made by the act; amending s. 288.1089,
33 F.S.; revising the definition of the term "cumulative
34 investment"; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 220.191, Florida Statutes, is amended to
39 read:

40 220.191 Capital investment tax credit.—

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

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

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

51 (c) "Cumulative intellectual property investment" means the
52 total investment for the development of intellectual property
53 during the period from the start date of the project to the
54 completion of the project in buildings or equipment; in wages,
55 salaries, or other compensation paid to employees, including
56 amounts paid through an employee leasing company and any
57 employer-paid taxes and benefits; and in the direct production
58 costs paid to any business, regardless of location.

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59 (d) "Direct production costs" means direct expenses related
60 to the preproduction, development or filming, and postproduction
61 of intellectual property. The term does not include the
62 distribution and marketing of intellectual property.

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

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

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

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

73 a.1. The costs of acquiring, constructing, installing,
74 equipping, and financing a qualifying project, including all
75 obligations incurred for labor and obligations to contractors,
76 subcontractors, builders, and materialmen.

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

79 c.3. The costs of architectural and engineering services,
80 including test borings, surveys, estimates, plans and
81 specifications, preliminary investigations, environmental
82 mitigation, and supervision of construction, as well as the
83 performance of all duties required by or consequent to the
84 acquisition, construction, installation, and equipping of a
85 qualifying project.

86 d.4. The costs associated with the installation of fixtures
87 and equipment; surveys, including archaeological and

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88 environmental surveys; site tests and inspections; subsurface
89 site work and excavation; removal of structures, roadways, and
90 other surface obstructions; filling, grading, paving, and
91 provisions for drainage, storm water retention, and installation
92 of utilities, including water, sewer, sewage treatment, gas,
93 electricity, communications, and similar facilities; and offsite
94 construction of utility extensions to the boundaries of the
95 property.

96 e. For the development or creation of intellectual
97 property, the wages, salaries, employer-paid taxes and benefits,
98 or other compensation paid to legal residents of this state,
99 including amounts paid through a loan-out company, an employee
100 leasing company, or a payroll service company; and the direct
101 production costs paid to any business authorized to do business
102 in this state.

103
104 Eligible capital costs do ~~shall~~ not include the cost of any
105 property previously owned or leased by the qualifying business.

106 (f) "Employer-paid taxes and benefits" includes social
107 security tax; Medicare tax; federal unemployment and state
108 reemployment assistance taxes; workers' compensation premiums
109 and benefits; vacation pay, holiday pay, and sick pay; payroll-
110 handling fees; mileage; car allowances; housing allowances; and
111 per diem.

112 (g) ~~(d)~~ "Income generated by or arising out of the
113 qualifying project" means the qualifying project's annual
114 taxable income as determined by generally accepted accounting
115 principles and under s. 220.13.

116 (h) ~~(e)~~ "Intellectual property" means a copyrightable

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117 project for which the eligible capital costs are principally
118 paid directly or indirectly for the development or creation of
119 the project. As used in this paragraph, the term "copyrightable
120 project" includes, but is not limited to, a copyrightable
121 software or multimedia application and its expansion content
122 made available to an end user, which includes, but is not
123 limited to, technological activities relating to updating the
124 project; internal development platforms that support the
125 production of multiple applications; cloud-based services that
126 support the functionality of multiple applications; and
127 copyrightable projects that include, but are not limited to,
128 digital visualization and sound synchronization technologies for
129 digital media, or that are necessary for the production of
130 scripted content intended for theatrical, streaming, or
131 television distribution.

132 (i) "Jobs" means full-time equivalent positions, as that
133 term is consistent with terms used by the Department of Economic
134 Opportunity and the United States Department of Labor for
135 purposes of reemployment assistance tax administration and
136 employment estimation, resulting directly from a project in this
137 state. The term does not include temporary construction jobs
138 involved in the construction of the project facility.

139 (j) "Production infrastructure costs" means the costs of
140 property intended to be used for the development of multiple
141 intellectual property projects. Such investment property
142 includes, but is not limited to, buildings, facilities, studios,
143 soundstages, and any ancillary machinery and equipment used for
144 the development of intellectual property, regardless of whether
145 the property is a fixture or is otherwise affixed to or

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146 incorporated into real property. The term does not include the
147 direct production costs related to a specific intellectual
148 property project.

149 (k)~~(f)~~ "Qualifying business" means a business which
150 establishes a qualifying project or strategic priority project
151 in this state and which is certified by the Department of
152 Economic Opportunity to receive tax credits pursuant to this
153 section.

154 (l)~~(g)~~ "Qualifying project" means a facility or project in
155 this state meeting one or more of the following criteria:

156 1. A new or expanding facility in this state which creates
157 at least 100 new jobs in this state and is in one of the high-
158 impact sectors identified by Enterprise Florida, Inc., and
159 certified by the Department of Economic Opportunity pursuant to
160 s. 288.108(6), including, but not limited to, aviation,
161 aerospace, automotive, and silicon technology industries.
162 However, between July 1, 2011, and June 30, 2014, the
163 requirement that a facility be in a high-impact sector is waived
164 for any otherwise eligible business from another state which
165 locates all or a portion of its business to a Disproportionally
166 Affected County. For purposes of this section, the term
167 "Disproportionally Affected County" means Bay County, Escambia
168 County, Franklin County, Gulf County, Okaloosa County, Santa
169 Rosa County, Walton County, or Wakulla County.

170 2. A new or expanded facility in this state which is
171 engaged in a target industry designated pursuant to the
172 procedure specified in s. 288.106(2) and which is induced by
173 this credit to create or retain at least 1,000 jobs in this
174 state, provided that at least 100 of those jobs are new, pay an

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175 annual average wage of at least 130 percent of the average
176 private sector wage in the area as defined in s. 288.106(2), and
177 make a cumulative capital investment of at least \$100 million.
178 Jobs may be considered retained only if there is significant
179 evidence that the loss of jobs is imminent. Notwithstanding
180 subsection (2), annual credits against the tax imposed by this
181 chapter may not exceed 50 percent of the increased annual
182 corporate income tax liability or the premium tax liability
183 generated by or arising out of a project qualifying under this
184 subparagraph. A facility that qualifies under this subparagraph
185 for an annual credit against the tax imposed by this chapter may
186 take the tax credit for a period not to exceed 5 years.

187 3. A new or expanded headquarters facility in this state
188 which locates in an enterprise zone and brownfield area and is
189 induced by this credit to create at least 1,500 jobs which on
190 average pay at least 200 percent of the statewide average annual
191 private sector wage, as published by the Department of Economic
192 Opportunity, and which new or expanded headquarters facility
193 makes a cumulative capital investment in this state of at least
194 \$250 million.

195 4. A project involving the development or creation of
196 intellectual property, provided that the project's jobs in this
197 state pay an annual average wage of at least 150 percent of the
198 average private sector wage in the area as defined in s.
199 288.106. A project that qualifies under this subparagraph may
200 consist of one or more projects with different start and
201 completion dates.

202 (m) "Strategic priority project" means a qualifying project
203 identified in subparagraph (1)4. which demonstrates the

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204 potential for measurable value to this state, including, but not
205 limited to, marketing this state as a visitor destination,
206 making improvements to infrastructure supporting future industry
207 use, or providing measurable technology skills development for
208 residents of this state.

209 (2) (a) An annual credit against the tax imposed by this
210 chapter shall be granted to any qualifying business in an amount
211 equal to 5 percent of the eligible capital costs generated by a
212 qualifying project, for a period not to exceed 20 years
213 beginning with the commencement of operations of the project.
214 Unless assigned as described in this subsection, the tax credit
215 shall be granted against only the corporate income tax liability
216 or the premium tax liability generated by or arising out of the
217 qualifying project, and the sum of all tax credits provided
218 pursuant to this section shall not exceed 100 percent of the
219 eligible capital costs of the project. In no event may any
220 credit granted under this section be carried forward or backward
221 by any qualifying business with respect to a subsequent or prior
222 year. The annual tax credit granted under this section shall not
223 exceed the following percentages of the annual corporate income
224 tax liability or the premium tax liability generated by or
225 arising out of a qualifying project:

226 1. One hundred percent for a qualifying project which
227 results in a cumulative capital investment of at least \$100
228 million.

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

232 3. Fifty percent for a qualifying project which results in

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233 a cumulative capital investment of at least \$25 million but less
234 than \$50 million.

235 (b) A qualifying project which results in a cumulative
236 capital investment of less than \$25 million is not eligible for
237 the capital investment tax credit. An insurance company claiming
238 a credit against premium tax liability under this program shall
239 not be required to pay any additional retaliatory tax levied
240 pursuant to s. 624.5091 as a result of claiming such credit.
241 Because credits under this section are available to an insurance
242 company, s. 624.5091 does not limit such credit in any manner.

243 (c) A qualifying business that establishes a qualifying
244 project that includes locating a new solar panel manufacturing
245 facility in this state that generates a minimum of 400 jobs
246 within 6 months after commencement of operations with an average
247 salary of at least \$50,000 may assign or transfer the annual
248 credit, or any portion thereof, granted under this section to
249 any other business. However, the amount of the tax credit that
250 may be transferred in any year shall be the lesser of the
251 qualifying business's state corporate income tax liability for
252 that year, as limited by the percentages applicable under
253 paragraph (a) and as calculated before ~~prior to~~ taking any
254 credit pursuant to this section, or the credit amount granted
255 for that year. A business receiving the transferred or assigned
256 credits may use the credits only in the year received, and the
257 credits may not be carried forward or backward. To perfect the
258 transfer, the transferor shall provide the department with a
259 written transfer statement notifying the department of the
260 transferor's intent to transfer the tax credits to the
261 transferee; the date the transfer is effective; the transferee's

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262 name, address, and federal taxpayer identification number; the
263 tax period; and the amount of tax credits to be transferred. The
264 department shall, upon receipt of a transfer statement
265 conforming to the requirements of this paragraph, provide the
266 transferee with a certificate reflecting the tax credit amounts
267 transferred. A copy of the certificate must be attached to each
268 tax return for which the transferee seeks to apply such tax
269 credits.

270 (d) If the credit granted under subparagraph (a)1. is not
271 fully used in any one year because of insufficient tax liability
272 on the part of the qualifying business, the unused amounts may
273 be used in any one year or years beginning with the 21st year
274 after the commencement of operations of the project and ending
275 the 30th year after the commencement of operations of the
276 project.

277 (3) (a)1. Notwithstanding subsection (2), a credit against
278 the tax imposed by this chapter, against state taxes collected
279 or accrued under chapter 212, or against a stated combination of
280 the two taxes must be granted to a qualifying business that
281 establishes a qualifying project identified in subparagraph
282 (1)(1)4. for which the cumulative intellectual property
283 investment of one or more projects is, at the election of the
284 qualifying business, at least:

285 a. Fifty million dollars per year for 3 consecutive years;
286 b. An aggregate of \$150 million over a 3-year period; or
287 c. An aggregate of \$500 million over a 3-year period.

288 2. For sub-subparagraphs 1.a. and b., the tax credit must
289 be granted in an amount equal to 20 percent of the eligible
290 capital costs generated by the qualifying project. The tax

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291 credit must be granted against the tax liability of the
292 qualifying business.

293 3. For projects meeting the threshold of sub-subparagraph
294 1.c., the tax credit must be granted in an amount equal to 26
295 percent of the eligible wages, salaries, employer paid taxes and
296 benefits, or other compensation paid to any individual,
297 including amounts paid through an employee leasing company, and
298 the direct production costs paid to any business, regardless of
299 the location, generated by the qualifying project. The tax
300 credit must be granted against the tax liability of the
301 qualifying business.

302 (b)1. The credit granted under this subsection may be used
303 in whole or in part by the qualifying business or any
304 corporation that is a member of that qualifying business'
305 affiliated group of corporations. Any credit may be used by any
306 of the affiliated corporations to the same extent as it could
307 have been used by the qualifying business. However, any such use
308 may not operate to increase the amount of the credit or extend
309 the period within which the credit must be used.

310 2. The credit granted under this subsection may be
311 transferred to any third party. A qualifying business that
312 elects to transfer the tax credit shall transfer the tax credit
313 within 1 year after the date the tax credit is granted. A
314 business receiving the transferred tax credit may use the credit
315 only in the year received, and the credit may not be carried
316 forward or backward. To perfect the transfer, the transferor
317 shall provide the department with a written transfer statement
318 of the transferor's intent to transfer the tax credits to the
319 transferee; the date the transfer is effective; the transferee's

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320 name, address, and federal taxpayer identification number; the
321 tax period to which the transfer applies; and the amount of tax
322 credits to be transferred. The department shall, upon receipt of
323 a transfer statement conforming to the requirements of this
324 subparagraph, provide the transferee with a certificate
325 reflecting the tax credit amounts transferred. A copy of the
326 certificate must be attached to each tax return for which the
327 transferee seeks to apply such tax credits.

328 (c) A qualifying business that elects to use the tax credit
329 may use the tax credit in any one year or years beginning with
330 the commencement of the project and ending the second year after
331 the completion of the project.

332 (d) Notwithstanding the cumulative intellectual property
333 investment thresholds under subparagraph (a)1., tax credits must
334 be granted as costs described in that subparagraph are certified
335 by the Department of Economic Opportunity.

336 (e)1. In any year in which the qualifying business fails to
337 meet the level of cumulative intellectual property investment
338 required by this subsection for that year:

339 a. For purposes of sub-subparagraph (a)1.a., any previously
340 granted tax credit issued pursuant to this subsection in such
341 year must be revoked and rescinded.

342 b. For purposes of sub-subparagraph (a)1.b., any previously
343 granted tax credit issued pursuant to this subsection must be
344 revoked and rescinded.

345 c. For purposes of sub-subparagraph (a)1.c., the portion of
346 any previously granted tax credit that exceeds 20 percent of
347 costs specified in subparagraph (a)3. which was issued pursuant
348 to this subsection must be revoked and rescinded. However, if

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349 the total cumulative intellectual property investment is less
350 than \$150 million, sub-subparagraph b. applies.

351 2. This paragraph may not result in the revocation or
352 rescission of any credits or incentives awarded to a project
353 outside of this subsection.

354 3. If such revoked and rescinded credit has already been
355 claimed on a return, the business must repay the credit plus the
356 interest applicable under s. 213.235 and a 10 percent penalty.

357 4. If such revoked and rescinded credit has already been
358 transferred to another business, the transferor must repay the
359 credit plus interest applicable under s. 231.235 and a 10
360 percent penalty.

361 (4) Notwithstanding subsection (2), an annual credit
362 against the tax imposed by this chapter, against state taxes
363 collected or accrued under chapter 212, or against a stated
364 combination of the two taxes must be granted to a qualifying
365 business that establishes a qualifying project that incurs
366 eligible production infrastructure costs in this state exceeding
367 \$100 million during a period not to exceed 10 years, beginning
368 with the commencement of operations of the project. The sum of
369 all tax credits provided pursuant to this subsection may not
370 exceed 100 percent of the eligible production infrastructure
371 costs of the project. Any credit granted under this subsection
372 may not be carried forward or backward by any qualifying
373 business with respect to a subsequent or prior year. The annual
374 tax credit granted under this section may not exceed 100 percent
375 of the sum of the annual corporate income tax liability and the
376 sales and use tax liability of the qualifying business. If the
377 credit granted under this subsection is not fully used in any

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378 given year because of insufficient tax liability on the part of
379 the qualifying business, the unused amounts may be used in any
380 given year or years beginning with the 11th year after the
381 commencement of operations of the project and ending the 20th
382 year after the commencement of operations of the project.

383 (5) (a) Notwithstanding subsection (2), a credit against the
384 tax imposed by this chapter, against state taxes collected or
385 accrued under chapter 212, or against a stated combination of
386 the two taxes must be granted to a qualifying business that
387 establishes a strategic priority project as defined in paragraph
388 (1) (i), for which the eligible capital costs are at least \$75
389 million. The tax credit must be granted in an amount equal to 20
390 percent of the eligible capital costs generated by the
391 qualifying project. The tax credit must be granted against the
392 tax liability of the qualifying business.

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

396 1. A qualifying business that elects to transfer the tax
397 credit shall transfer the tax credit within 1 year after the
398 date the tax credit is granted. A business receiving the
399 transferred tax credit may use the credit only in the year
400 received, and the credit may not be carried forward or backward.
401 To perfect the transfer, the transferor shall provide the
402 department with a written transfer statement of the transferor's
403 intent to transfer the tax credits to the transferee; the
404 effective date of the transfer; the transferee's name, address,
405 and federal taxpayer identification number; the tax period to
406 which the transfer applies; and the amount of tax credits to be

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407 transferred. Upon receipt of a transfer statement conforming to
408 the requirements of this subparagraph, the department shall
409 provide the transferee with a certificate reflecting the tax
410 credit amounts transferred. A copy of the certificate must be
411 attached to each tax return for the period for which the
412 transferee seeks to apply such tax credits.

413 2. A qualifying business that elects to use the tax credit
414 may use the tax credit in any one year or years beginning with
415 the commencement of the project and ending the second year after
416 the completion of the project.

417 (6) (a) Notwithstanding subsection (2), an annual credit
418 against the tax imposed by this chapter ~~must~~ ~~shall~~ be granted to
419 a qualifying business which establishes a qualifying project
420 pursuant to subparagraph (1) (1) 3. ~~(1) (g) 3.~~, in an amount equal
421 to the lesser of \$15 million or 5 percent of the eligible
422 capital costs made in connection with a qualifying project, for
423 a period not to exceed 20 years beginning with the commencement
424 of operations of the project. The tax credit ~~must~~ ~~shall~~ be
425 granted against the corporate income tax liability of the
426 qualifying business and as further provided in paragraph (c).
427 The total tax credit provided pursuant to this subsection ~~must~~
428 ~~shall~~ be equal to no more than 100 percent of the eligible
429 capital costs of the qualifying project.

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

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

440 (c) The credit granted under this subsection may be used in
441 whole or in part by the qualifying business or any corporation
442 that is either a member of that qualifying business's affiliated
443 group of corporations, is a related entity taxable as a
444 cooperative under subchapter T of the Internal Revenue Code, or,
445 if the qualifying business is an entity taxable as a cooperative
446 under subchapter T of the Internal Revenue Code, is related to
447 the qualifying business. Any entity related to the qualifying
448 business may continue to file as a member of a Florida-nexus
449 consolidated group pursuant to a prior election made under s.
450 220.131(1), Florida Statutes (1985), even if the parent of the
451 group changes due to a direct or indirect acquisition of the
452 former common parent of the group. Any credit can be used by any
453 of the affiliated companies or related entities referenced in
454 this paragraph to the same extent as it could have been used by
455 the qualifying business. However, any such use shall not operate
456 to increase the amount of the credit or extend the period within
457 which the credit must be used.

458 (7) ~~(4)~~ Before ~~Prior to~~ receiving tax credits pursuant to
459 this section, a qualifying business must achieve and maintain
460 the minimum employment goals beginning with the commencement of
461 operations or the completion date of ~~a~~ a qualifying project and
462 continuing each year thereafter during which tax credits are
463 available pursuant to this section.

464 (8) ~~(5)~~ Applications must ~~shall~~ be reviewed and certified

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465 pursuant to s. 288.061. The Department of Economic Opportunity,
466 upon a recommendation by Enterprise Florida, Inc., shall first
467 certify a business as eligible to receive tax credits pursuant
468 to this section before ~~prior to~~ the commencement of operations
469 or the completion date of a qualifying project, and such
470 certification must ~~shall~~ be transmitted to the Department of
471 Revenue. Upon receipt of the certification, the Department of
472 Revenue shall enter into a written agreement with the qualifying
473 business specifying, at a minimum, the method by which income
474 generated by or arising out of the qualifying project will be
475 determined.

476 (9) ~~(6)~~ The Department of Economic Opportunity, in
477 consultation with Enterprise Florida, Inc., is authorized to
478 develop the necessary guidelines and application materials for
479 the certification process described in subsection (8) ~~(5)~~.

480 (10) ~~(7)~~ It shall be the responsibility of the qualifying
481 business to affirmatively demonstrate to the satisfaction of the
482 Department of Revenue that such business meets the job creation
483 and capital investment requirements of this section.

484 (11) ~~(8)~~ The Department of Revenue may specify by rule the
485 methods by which a project's pro forma annual taxable income is
486 determined.

487 Section 2. Paragraph (d) of subsection (2) of section
488 288.1089, Florida Statutes, is amended to read:

489 288.1089 Innovation Incentive Program.—

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

491 (d) "Cumulative investment" means cumulative capital
492 investment and all eligible capital costs, as defined in s.
493 220.191, Florida Statutes (2020).

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