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 1878

INTRODUCER: Senator Gruters

SUBJECT: Capital Investment Tax Credit

DATE: January 21, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	**Favorable**
2.			FT	
3.			AP	

I. Summary:

SB 1878 amends s. 220.191, F.S. to expand an existing credit under the Capital Tax Credit (CITC) to include certain projects for the development or creation of intellectual property, and to create an additional tax credit under the CITC relating to intellectual property projects.

The bill amends an existing credit under the CITC for certain high-impact sector facilities, and enterprise zone and brownfield area headquarters facilities, which is granted against the state corporate income tax or insurance premium tax. The bill adds to such categories a project or projects that involve the development or creation of intellectual property and that meet a certain average wage requirement.

The bill creates a new tax credit for qualifying businesses relating to intellectual property projects if one or more project is at least an aggregate of $500 million over a 3-year period. The tax credit is calculated as 20 percent of the eligible wages, salaries, employer-paid taxes and benefits, or other compensation paid to any individual, including amounts paid through an employee leasing company, and the direct production costs paid to any business, regardless of the location, generated by the qualifying project.

The credit is granted against the state corporate income tax, the state sales tax, or both.

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

The bill takes effect July 1, 2022.

II. Present Situation:

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC) was established by the Legislature in 1998 to attract and grow capital-intensive industries in the state.[1] The CITC is currently comprised of two tax credits–one that is available for three categories of qualifying projects and that provides a credit against the state corporate income tax or insurance premium tax[2], and a second that is limited to certain headquarters facilities and that provides a credit against the corporate income tax.[3] Both credits are granted to qualified businesses certified by the Department of Economic Opportunity (DEO).

Credit under s. 220.191(2), F.S.

The first credit under the CITC is available for three categories of qualifying projects:[4]
- A new or expanded Florida facility that is in a designated high-impact sector[5] and that creates at least 100 new jobs in Florida (high-impact sector facilities).
- A new or expanded Florida facility that is in a qualified target industry[6] and that creates or retains at least 1,000 jobs in Florida, 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 (QTI facilities).
- A new or expanded Florida headquarters facility that is 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 that makes a cumulative capital investment in this state of at least $250 million (headquarters facilities).

The annual credit amount is 5 percent of the eligible capital costs generated by the qualifying project for up to 20 years,[7] beginning with the commencement of operations of the project.[8] The credit is granted against state corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project. Annual limits for the tax credit apply, depending on the type of qualifying project:

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[1] Chapter 98-61, Laws of Fla.
[2] Section 220.191(2), F.S.
[3] Section 220.191(3), F.S.
[4] Section 220.191(1)(g) and (2)(a), F.S.
[5] The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, semi-conductors, transportation equipment manufacturing, advanced manufacturing, or a corporate headquarters facility. *See* Department of Economic Opportunity, *2021 Annual Incentives Report*, 41, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2020-2021-annual-incentives-report-final.pdf?sfvrsn=287550b0_2 (last visited Jan. 21, 2022).
[6] 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, *2021 Annual Incentives Report*, 12, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2020-2021-annual-incentives-report-final.pdf?sfvrsn=287550b0_2 (last visited Jan. 21, 2022).
[7] For qualified target industry facilities, the tax credit period is limited to 5 years. *See* s. 220.191(1)(g)2., F.S.
[8] 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. They do not include the cost of any property previously owned or leased by the qualifying business. *See* s. 220.191(1)(c), F.S.

- For a QTI facility, annual credits against the state corporate income tax may not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by, or arising out of, the qualifying project.[9]
- For high-impact sector facilities and headquarters facilities, the annual credit limits depend on the amount of cumulative capital investment resulting from the qualifying project:[10]
  - For a qualifying project resulting in a cumulative capital investment of at least $100 million, the annual credit may not exceed 100 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.
  - For a qualifying project resulting in a cumulative capital investment of at least $50 million to under $100 million, the annual credit may not exceed 75 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.
  - For a qualifying project resulting in a cumulative capital investment of at least $25 million to under $50 million, the annual credit may not exceed 50 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.

A qualifying project with less than a $25 million cumulative capital investment is not eligible for the credit.[11]

Generally, an unused credit may not be carried backward or forward to apply to tax liabilities in previous or subsequent years, respectively.[12] However, a business with a qualifying project resulting in a cumulative capital investment of at least $100 million may apply unused credits beginning with the 21st year after the commencement of the project's operations and ending the 30th year after the commencement of the project's operations.[13]

The credit may not be assigned or transferred, except by a qualifying business establishing a qualifying project that includes locating a new solar panel manufacturing facility in Florida and that generates a minimum of 400 jobs within 6 months after commencement of operations, with an average salary of at least $50,000. Such business may assign or transfer its annual credit or any portion thereof to any other business, subject to certain limitations and conditions.[14]

Credit under s. 220.191(3), F.S.

The second credit under the CITC is limited to qualifying businesses that establish a headquarters facility qualifying project. The annual credit amount is the lesser of $15 million or 5 percent of the eligible capital costs made in connection with a qualifying project for up to 20 years, beginning with the commencement of the project.[15] The credit is granted against the

[9] Section 220.191(1)(g)2., F.S.
[10] Section 220.191(2)(a), F.S.
[11] Section 220.191(2)(b), F.S.
[12] Section 220.191(2)(a), F.S.
[13] Section 220.191(2)(d), F.S.
[14] Section 220.191(2)(c), F.S.
[15] Section 220.191(3)(a), F.S.

state corporate income tax liability of the qualifying business. The total tax credit is limited to 100 percent of the qualifying project's eligible capital costs.[16]

Unused credits may be carried forward for up to 20 years after the commencement of the project's operations.[17] The credit may be used by certain related entities of the qualifying business.[18]

Certification of Qualifying Businesses and Issuance of Tax Credits

The DEO must certify a business as eligible to receive either of the CITC tax credits 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.[19] 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.[20] Qualifying businesses must also affirmatively demonstrate to the Department of Revenue (DOR) that they meet job creation and capital investment requirements.[21]

Economic Impact

According to the DEO, there were 65 active CITC awardees with 31 reporting performance as of Fiscal Year 2020-2021; the DEO confirmed 3,216 jobs created and over $313 million in capital investment in said fiscal year.[22] Over $70 million in tax credits were approved to be claimed by qualified business in calendar year 2020.[23]

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[16] *Id.*
[17] Section 220.191(3)(b), F.S.
[18] Section 220.191(3)(c), F.S.
[19] 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 Jan. 21, 2022). *See* also s. 220.191(5), F.S.
[20] Section 220.191(4), F.S.
[21] Section 220.191(7), F.S.
[22] Department of Economic Opportunity, *2021 Annual Incentives Report*, 8, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2020-2021-annual-incentives-report-final.pdf?sfvrsn=287550b0_2 (last visited Jan. 21, 2022).
[23] *Id* at 37.

Select State Taxes

The following describes select Florida taxes, which the bill provides credits against.

Corporate Income Tax

Florida imposes a tax on the taxable income of certain corporations and financial institutions doing business in Florida.[24] The current rate is 5.5 percent[25] of a taxpayer's net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).[26]

The calculation of Florida corporate income tax starts with a corporation's federal taxable income.[27] Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll, and 50 percent on sales.[28] Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first $50,000 of net income is exempt, effective with taxable years beginning January 1, 2013.[29]

Corporate income tax net collections in Fiscal Year 2020-2021 were a little over $3 billion.[30]

Insurance Premium Tax

Florida imposes on insurers a tax on insurance premiums. For the tax imposed by s. 624.509(1), F.S., tax is due on:

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

The general tax rate is 1.75 percent of gross receipts on account of life and health insurance policies covering Florida residents and on account of all other types of policies and contracts covering property, subjects, or risks located, resident, or to be performed in Florida, minus reinsurance and return premiums.[31] Annuity policies or contracts held in Florida are taxed at 1 percent of gross receipts, and direct written premiums for bail bonds are taxed at 1.75 percent, excluding any amounts retained by licensed bail bond agents or appointed managing general agents.[32] The insurance premium tax is collected by the DOR and distributed to the General

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[24] Chapter 220, F.S.
[25] The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate returned to 5.5 percent for taxable years beginning on or after January 1, 2022.
[26] Sections 220.11(2) and 220.63(2), F.S.
[27] Section 220.12, F.S.
[28] Section 220.15, F.S.
[29] Section 220.14, F.S.
[30] Revenue Estimating Conference, *General Revenue Consensus Estimating Conference Comparison Report* (August 17, 2021), 27, *available at* http://www.edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf (last visited Jan. 21, 2022).
[31] Section 624.509(1), F.S.
[32] *Id.*

Revenue Fund.[33] Total insurance premium tax collections in Fiscal Year 2020-2021 were $1.1 billion.[34]

Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,[35] transient rentals,[36] and a limited number of services, and a 5.5 percent sales and use tax on commercial real estate rentals[37] (state sales tax). Chapter 212, F.S., authorizes the levy and collection of the state sales tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances.[38] Florida requires a dealer to add the tax to the sales price of the taxable good or service and collect it from the purchaser at the time of sale.[39] Total sales tax collections in Fiscal Year 2021-2022 is estimated at $32.7 billion.[40]

In addition to the state sales tax, county and municipal governments and school districts are authorized to levy certain local discretionary sales surtaxes (also referred to as local option sales taxes), subject to certain requirements and limitations.[41]

III. Effect of Proposed Changes:

The bill amends s. 220.191, F.S., to expand the credit under s. 220.191(2), F.S., to add certain projects involving the development or creation of intellectual property to the list of eligible categories, and to create one new tax credit under the CITC.

Expansion of the Credit

The bill expands the credit by adding to the categories of qualifying projects a project involving the development or creation of intellectual property, which may consist of one or more projects with different start and completion dates, provided that the project's jobs in Florida pay at least 150 percent of the annual average private sector wage in the area (intellectual property project).

The bill defines "intellectual property" as a qualifying copyrightable project for which the cumulative intellectual property investment is principally paid directly or indirectly for the creation of the project. The bill provides examples of "qualifying copyrightable projects," as television or streaming video projects that include only the following content: series, pilots, commercial advertisements, music videos, music, animation, interactive entertainment, or sound recording projects used in series or pilots. Projects are limited to being recorded in this state, in whole or in part. The term also includes projects provided for distribution using delivery systems

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[33] Section 624.509(3), F.S.
[34] *Supra* note 30, at 34.
[35] Section 212.04, F.S.
[36] Section 212.03, F.S.
[37] Section 212.031, F.S.
[38] Section 212.02(14)(a), F.S.
[39] *See* ss. 212.07(2) and 212.06(3)(a), F.S.
[40] Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 155 (2021), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf (last visited Jan. 21, 2022).
[41] *See* ss. 212.054 and 212.055, F.S.

that include film, videotape, computer disc, laser disc, and any element of the digital domain from which the program is viewed or reproduced and which is intended for licensing for exhibition by individual television stations, groups of stations, networks, cable television stations, public broadcasting stations, corporations, live venues, the Internet, or any other channel or exhibition except for theaters. Software or feature-length films exceeding 80 minutes in length are excluded.

The bill also expands the definition of "eligible capital costs" to include 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.

The bill defines "employer-paid taxes and benefits" to include social security tax; Medicare tax; federal unemployment and state reemployment assistance taxes; workers' compensation premiums and benefits; vacation pay, holiday pay, and sick pay; payroll-handling fees; mileage; car allowances; housing allowances; and per diem. "Direct production costs" is defined to mean direct expenses related to the preproduction, development or filming, and postproduction of intellectual property, but does not include the distribution and marketing of intellectual property.

A qualifying business establishing an intellectual property project would be eligible for a corporate income tax credit or an insurance premium tax credit for 5 percent of the above expenses.

The current requirements, limitations, and other provisions of the s. 220.191(2), F.S., credit, as discussed above, apply to intellectual property projects. The applicable annual credit limits for intellectual property projects is the same as for high-impact sector facilities and headquarters facilities.

Creation of Credit for Intellectual Property Investment

The bill creates a tax credit for qualifying business establishing intellectual property projects that meet certain levels of cumulative intellectual property investment (IP investment credit).

The bill defines "cumulative intellectual property investment" as the total investment for the development of intellectual property during the period from the start date of the project to the completion of the project in buildings or equipment; in wages, salaries, or other compensation paid to employees, including amounts paid through an employee leasing company and any employer-paid taxes and benefits regardless of location.

Unlike existing CITC credits, the IP investment credit is granted against the state corporate income tax, the state sales tax, or a stated combination of the two.

To qualify for the credit, a qualifying business must elect to make a cumulative intellectual property investment of one or more projects is at least an aggregate of $500 million over a 3-year period. The tax credit is calculated as 20 percent of the eligible wages, salaries, employer-paid taxes and benefits, or other compensation paid to any individual, including amounts paid through an employee leasing company, and the direct production costs paid to any business, regardless of the location, generated by the qualifying project. The tax credit must be granted against the tax liability of the qualifying business.

The tax credit may be used in any one year or years beginning with the commencement of the project and ending the second year after the completion of the project.

The DEO must grant tax credits within 30 days after it certifies the costs. If the qualifying business fails to meet the required cumulative intellectual property investment level, any previously granted IP investment credit must be revoked and rescinded. A qualified business is subject to a 10 percent penalty and interest, along with repayment of the credit, if a revoked and rescinded credit has already been claimed on a return or transferred to another business.

Other Changes

The bill amends the definition of "cumulative investment" under the Innovation Incentive Program in s. 288.1089, F.S., to specify that the expanded definition of "eligible capital costs" for CITC made by the bill does not apply to that program, which incorporates the definition of "eligible capital costs" by reference.

The provisions of the bill do not apply to any qualifying project application certified before December 31, 2021.

The bill takes effect July 1, 2022.

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 determined the fiscal impact of the bill.

B. Private Sector Impact:

A qualified business establishing a qualifying project involving the development or creation of intellectual property may benefit from substantial reductions in state corporate income tax, insurance premium tax, or state sales tax liabilities through the credits amended and created by the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On line 44 of the bill, cumulative intellectual property investment includes employer-paid taxes and benefits, regardless of location. On line 119 of the bill, a qualifying copyrightable project is limited to projects recorded in Florida, in whole or in part.

It is unclear if *regardless of location* or *in whole or in part* would allow a qualifying business establishing intellectual property projects outside of Florida to be eligible for the Florida tax credits.

VIII. Statutes Affected:

This bill substantially amends sections 220.191 and 288.1089 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.