

By 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 a certain capital
9 investment threshold; specifying the calculation of
10 the credit; authorizing use of the credit or portions
11 of the credit by the business or members of its
12 affiliated group of corporations; authorizing use of
13 the credit within a certain timeframe; requiring the
14 department to grant credits within a certain timeframe
15 after costs are certified by the Department of
16 Economic Opportunity; providing for revocation and
17 rescindment of credits under certain circumstances;
18 conforming provisions to changes made by the act;
19 amending s. 288.1089, F.S.; revising the definition of
20 the term "cumulative investment"; providing
21 applicability; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 220.191, Florida Statutes, is amended to
26 read:

27 220.191 Capital investment tax credit.—

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

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

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

38 (c) "Cumulative intellectual property investment" means the
39 total investment for the development of intellectual property
40 during the period from the start date of the project to the
41 completion of the project in buildings or equipment; in wages,
42 salaries, or other compensation paid to employees, including
43 amounts paid through an employee leasing company; and any
44 employer-paid taxes and benefits, regardless of location.

45 (d) "Direct production costs" means direct expenses related
46 to the preproduction, development or filming, and postproduction
47 of intellectual property. The term does not include the
48 distribution and marketing of intellectual property.

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

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

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

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

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59 ~~a.1.~~ The costs of acquiring, constructing, installing,
60 equipping, and financing a qualifying project, including all
61 obligations incurred for labor and obligations to contractors,
62 subcontractors, builders, and materialmen.

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

65 ~~c.3.~~ The costs of architectural and engineering services,
66 including test borings, surveys, estimates, plans and
67 specifications, preliminary investigations, environmental
68 mitigation, and supervision of construction, as well as the
69 performance of all duties required by or consequent to the
70 acquisition, construction, installation, and equipping of a
71 qualifying project.

72 ~~d.4.~~ The costs associated with the installation of fixtures
73 and equipment; surveys, including archaeological and
74 environmental surveys; site tests and inspections; subsurface
75 site work and excavation; removal of structures, roadways, and
76 other surface obstructions; filling, grading, paving, and
77 provisions for drainage, storm water retention, and installation
78 of utilities, including water, sewer, sewage treatment, gas,
79 electricity, communications, and similar facilities; and offsite
80 construction of utility extensions to the boundaries of the
81 property.

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

85 (f) "Employer-paid taxes and benefits" includes social
86 security tax; Medicare tax; federal unemployment and state
87 reemployment assistance taxes; workers' compensation premiums

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88 and benefits; vacation pay, holiday pay, and sick pay; payroll-
89 handling fees; mileage; car allowances; housing allowances; and
90 per diem.

91 (g)~~(d)~~ "Income generated by or arising out of the
92 qualifying project" means the qualifying project's annual
93 taxable income as determined by generally accepted accounting
94 principles and under s. 220.13. If a qualifying business has
95 more than one qualifying project pursuant to subparagraph
96 (2) (a)1., the term means the annual taxable income as determined
97 by generally accepted accounting principles and under s. 220.13
98 for each qualifying project, aggregated during the years that
99 more than one qualifying project is allowed to claim credits.

100 (h)~~(e)~~ "Intellectual property" means a qualifying
101 copyrightable project for which the cumulative intellectual
102 property investment is principally paid directly or indirectly
103 for the creation of the project.

104 (i) "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 (j)~~(f)~~ "Qualifying business" means a business which
112 establishes a qualifying project in this state and which is
113 certified by the Department of Economic Opportunity to receive
114 tax credits pursuant to this section.

115 (k) "Qualifying copyrightable project" means television or
116 streaming video projects that include only the following

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117 content: series, pilots, commercial advertisements, music
118 videos, music, animation, interactive entertainment, or sound
119 recording projects used in series or pilots. The term is limited
120 to projects recorded in this state, in whole or in part. The
121 term includes projects provided for distribution using delivery
122 systems that include film, videotape, computer disc, laser disc,
123 and any element of the digital domain from which the program is
124 viewed or reproduced and which is intended for licensing for
125 exhibition by individual television stations, groups of
126 stations, networks, cable television stations, public
127 broadcasting stations, corporations, live venues, the Internet,
128 or any other channel of exhibition except for theaters. The term
129 does not include software or feature-length films exceeding 80
130 minutes in length.

131 (1)(g) "Qualifying project" means a facility or project in
132 this state meeting one or more of the following criteria:

133 1. A new or expanding facility in this state which creates
134 at least 100 new jobs in this state and is in one of the high-
135 impact sectors identified by Enterprise Florida, Inc., and
136 certified by the Department of Economic Opportunity pursuant to
137 s. 288.108(6), including, but not limited to, aviation,
138 aerospace, automotive, and silicon technology industries.
139 However, between July 1, 2011, and June 30, 2014, the
140 requirement that a facility be in a high-impact sector is waived
141 for any otherwise eligible business from another state which
142 locates all or a portion of its business to a Disproportionally
143 Affected County. For purposes of this section, the term
144 "Disproportionally Affected County" means Bay County, Escambia
145 County, Franklin County, Gulf County, Okaloosa County, Santa

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146 Rosa County, Walton County, or Wakulla County.

147 2. A new or expanded facility in this state which is
148 engaged in a target industry designated pursuant to the
149 procedure specified in s. 288.106(2) and which is induced by
150 this credit to create or retain at least 1,000 jobs in this
151 state, provided that at least 100 of those jobs are new, pay an
152 annual average wage of at least 130 percent of the average
153 private sector wage in the area as defined in s. 288.106(2), and
154 make a cumulative capital investment of at least \$100 million.
155 Jobs may be considered retained only if there is significant
156 evidence that the loss of jobs is imminent. Notwithstanding
157 subsection (2), annual credits against the tax imposed by this
158 chapter may not exceed 50 percent of the increased annual
159 corporate income tax liability or the premium tax liability
160 generated by or arising out of a project qualifying under this
161 subparagraph. A facility that qualifies under this subparagraph
162 for an annual credit against the tax imposed by this chapter may
163 take the tax credit for a period not to exceed 5 years.

164 3. A new or expanded headquarters facility in this state
165 which locates in an enterprise zone and brownfield area and is
166 induced by this credit to create at least 1,500 jobs which on
167 average pay at least 200 percent of the statewide average annual
168 private sector wage, as published by the Department of Economic
169 Opportunity, and which new or expanded headquarters facility
170 makes a cumulative capital investment in this state of at least
171 \$250 million.

172 4. A project involving the development or creation of
173 intellectual property, provided that the project's jobs in this
174 state pay an annual average wage of at least 150 percent of the

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175 average private sector wage in the area as defined in s.
176 288.106. A project that qualifies under this subparagraph may
177 consist of one or more projects with different start and
178 completion dates.

179 (2) (a) An annual credit against the tax imposed by this
180 chapter shall be granted to any qualifying business in an amount
181 equal to 5 percent of the eligible capital costs generated by a
182 qualifying project, for a period not to exceed 20 years
183 beginning with the commencement of operations of the project.
184 Unless assigned as described in this subsection, the tax credit
185 shall be granted against only the corporate income tax liability
186 or the premium tax liability generated by or arising out of the
187 qualifying project, and the sum of all tax credits provided
188 pursuant to this section may ~~shall~~ not exceed 100 percent of the
189 eligible capital costs of the project. In no event may any
190 credit granted under this section be carried forward or backward
191 by any qualifying business with respect to a subsequent or prior
192 year. The annual tax credit granted under this section may ~~shall~~
193 not exceed the following percentages of the annual corporate
194 income tax liability or the premium tax liability generated by
195 or arising out of a qualifying project:

196 1. One hundred percent for a qualifying project which
197 results in a cumulative capital investment of at least \$100
198 million.

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

202 3. Fifty percent for a qualifying project which results in
203 a cumulative capital investment of at least \$25 million but less

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204 than \$50 million.

205 (b) A qualifying project which results in a cumulative
206 capital investment of less than \$25 million is not eligible for
207 the capital investment tax credit. An insurance company claiming
208 a credit against premium tax liability under this program may
209 ~~shall~~ not be required to pay any additional retaliatory tax
210 levied pursuant to s. 624.5091 as a result of claiming such
211 credit. Because credits under this section are available to an
212 insurance company, s. 624.5091 does not limit such credit in any
213 manner.

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

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233 name, address, and federal taxpayer identification number; the
234 tax period; and the amount of tax credits to be transferred. The
235 department shall, upon receipt of a transfer statement
236 conforming to the requirements of this paragraph, provide the
237 transferee with a certificate reflecting the tax credit amounts
238 transferred. A copy of the certificate must be attached to each
239 tax return for which the transferee seeks to apply such tax
240 credits.

241 (d) If the credit granted under subparagraph (a)1. is not
242 fully used in any one year because of insufficient tax liability
243 on the part of the qualifying business, the unused amounts may
244 be used in any one year or years beginning with the 21st year
245 after the commencement of operations of the project and ending
246 the 30th year after the commencement of operations of the
247 project.

248 (3) (a) Notwithstanding subsection (2), a credit against the
249 tax imposed by this chapter, against state taxes collected or
250 accrued under chapter 212, or against a stated combination of
251 the two taxes must be granted to a qualifying business that
252 establishes a qualifying project pursuant to subparagraph
253 (1) (1)4. for which the cumulative intellectual property
254 investment of one or more projects is, at the election of the
255 qualifying business, at least an aggregate of \$500 million over
256 a 3-year period. The tax credit must be granted in an amount
257 equal to 20 percent of the eligible wages, salaries, employer-
258 paid taxes and benefits, or other compensation paid to any
259 individual, including amounts paid through an employee leasing
260 company, and the direct production costs paid to any business,
261 regardless of the location, generated by the qualifying project.

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262 The tax credit must be granted against the tax liability of the
263 qualifying business.

264 (b) The credit granted under this subsection may be used in
265 whole or in part by the qualifying business or any corporation
266 that is a member of that qualifying business' affiliated group
267 of corporations. Any credit may be used by any of the affiliated
268 corporations to the same extent as it could have been used by
269 the qualifying business. However, any such use may not operate
270 to increase the amount of the credit or extend the period within
271 which the credit must be used.

272 (c) A qualifying business that elects to use the tax credit
273 may use the tax credit in any one year or years beginning with
274 the commencement of the project and ending the second year after
275 the completion of the project.

276 (d) Notwithstanding the cumulative intellectual property
277 investment threshold under paragraph (a), the department must
278 grant tax credits to a qualifying business within 30 days after
279 the date any costs described in this subsection are certified by
280 the Department of Economic Opportunity.

281 (e)1. If the qualifying business fails to meet the level of
282 cumulative intellectual property investment required by this
283 subsection, then any previously granted tax credit issued
284 pursuant to this subsection must be revoked and rescinded.

285 2. This paragraph may not result in the revocation or
286 rescindment of any credits or incentives awarded to a project
287 outside of this subsection.

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

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291 4. If such revoked and rescinded credit has already been
292 transferred to another business, the transferor must repay the
293 credit plus the interest applicable under s. 213.235 and a 10
294 percent penalty.

295 (4) (a) Notwithstanding subsection (2), an annual credit
296 against the tax imposed by this chapter ~~must~~ shall be granted to
297 a qualifying business ~~that~~ which establishes a qualifying
298 project pursuant to subparagraph ~~(1) (1) 3. ~~(1) (g) 3.~~~~, in an amount
299 equal to the lesser of \$15 million or 5 percent of the eligible
300 capital costs made in connection with a qualifying project, for
301 a period not to exceed 20 years beginning with the commencement
302 of operations of the project. The tax credit must ~~shall~~ be
303 granted against the corporate income tax liability of the
304 qualifying business and as further provided in paragraph (c).
305 The total tax credit provided pursuant to this subsection must
306 ~~shall~~ be equal to no more than 100 percent of the eligible
307 capital costs of the qualifying project.

308 (b) If the credit granted under this subsection is not
309 fully used in any one year because of insufficient tax liability
310 on the part of the qualifying business, the unused amount may be
311 carried forward for a period not to exceed 20 years after the
312 commencement of operations of the project. The carryover credit
313 may be used in a subsequent year when the tax imposed by this
314 chapter for that year exceeds the credit for which the
315 qualifying business is eligible in that year under this
316 subsection after applying the other credits and unused
317 carryovers in the order provided by s. 220.02(8).

318 (c) The credit granted under this subsection may be used in
319 whole or in part by the qualifying business or any corporation

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320 that is either a member of that qualifying business's affiliated
321 group of corporations, is a related entity taxable as a
322 cooperative under subchapter T of the Internal Revenue Code, or,
323 if the qualifying business is an entity taxable as a cooperative
324 under subchapter T of the Internal Revenue Code, is related to
325 the qualifying business. Any entity related to the qualifying
326 business may continue to file as a member of a Florida-nexus
327 consolidated group pursuant to a prior election made under s.
328 220.131(1), Florida Statutes (1985), even if the parent of the
329 group changes due to a direct or indirect acquisition of the
330 former common parent of the group. Any credit can be used by any
331 of the affiliated companies or related entities referenced in
332 this paragraph to the same extent as it could have been used by
333 the qualifying business. However, any such use may ~~shall~~ not
334 operate to increase the amount of the credit or extend the
335 period within which the credit must be used.

336 (6) ~~(4)~~ Before ~~Prior to~~ receiving tax credits pursuant to
337 this section, a qualifying business must achieve and maintain
338 the minimum employment goals beginning with the commencement of
339 operations or the completion date of ~~at~~ a qualifying project and
340 continuing each year thereafter during which tax credits are
341 available pursuant to this section.

342 (6) ~~(5)~~ Applications must ~~shall~~ be reviewed and certified
343 pursuant to s. 288.061. The Department of Economic Opportunity,
344 upon a recommendation by Enterprise Florida, Inc., shall first
345 certify a business as eligible to receive tax credits pursuant
346 to this section before ~~prior to~~ the commencement of operations
347 or the completion date of a qualifying project, and such
348 certification must ~~shall~~ be transmitted to the Department of

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349 Revenue. Upon receipt of the certification, the Department of
350 Revenue shall enter into a written agreement with the qualifying
351 business specifying, at a minimum, the method by which income
352 generated by or arising out of the qualifying project will be
353 determined.

354 (7)~~(6)~~ The Department of Economic Opportunity, in
355 consultation with Enterprise Florida, Inc., is authorized to
356 develop the necessary guidelines and application materials for
357 the certification process described in subsection (6) ~~(5)~~.

358 (8)~~(7)~~ It shall be the responsibility of the qualifying
359 business to affirmatively demonstrate to the satisfaction of the
360 Department of Revenue that such business meets the job creation
361 and capital investment requirements of this section.

362 (9)~~(8)~~ The Department of Revenue may specify by rule the
363 methods by which a project's pro forma annual taxable income is
364 determined.

365 Section 2. Paragraph (d) of subsection (2) of section
366 288.1089, Florida Statutes, is amended to read:

367 288.1089 Innovation Incentive Program.—

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

369 (d) "Cumulative investment" means cumulative capital
370 investment and all eligible capital costs, as defined in s.
371 220.191, Florida Statutes (2021).

372 Section 3. The amendments made by this act to s. 220.191,
373 Florida Statutes, do not apply to any qualifying project
374 application certified before December 31, 2021.

375 Section 4. This act shall take effect July 1, 2022.