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 Innovation, Industry, and Technology

BILL: SB 1268

INTRODUCER: Senator Gruters

SUBJECT: Capital Investment Tax Credit

DATE: February 7, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	IT	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 1268 amends ss. 220.191, F.S., to allow eligible projects that create intellectual property to qualify for the Capital Investment Tax Credit (CITC) against a qualified taxpayer’s liability for corporate income tax or insurance premium tax generated by the project.

The bill expands the time frame for calculating the amount of cumulative capital investment and eligible capital costs made in connection with a project. Under the bill, for all eligible projects, including those that do not create intellectual property, capital investments and eligible capital costs include those made or incurred from the start date of an eligible project to the completion of the project.

The bill has an impact on state government. See Section V, Fiscal Impact Statement.

The bill is effective upon becoming a law.

II. Present Situation:

The CITC is an incentive used to attract and grow capital-intensive industries in Florida. It is an annual tax credit, provided for up to 20 years, against corporate income tax or insurance premium tax liabilities generated by or arising out of the qualifying project.

The projects that are eligible for the CITC include:

- A new or expanded facility which creates at least 100 new jobs in Florida in designated portions of these high-impact sectors[1] identified by Enterprise Florida, Inc., and certified by the Department of Economic Opportunity (DEO):[2]
    - Clean energy;
    - Financial services;
    - Information technology;
    - Life sciences [biomedical];
    - Semi-conductors [silicon technology];
    - Transportation equipment manufacturing;
    - Advanced manufacturing; or
    - A corporate headquarters facility.
- A new or expanded facility engaged in a designated target industry which is induced by the CITC to create or retain 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 results in a cumulative capital investment of at least $100 million.[3]
- A new or expanded headquarters facility which locates in an enterprise zone and brownfield area[4] and is induced by the CITC to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, and which new or expanded headquarters facility makes a cumulative capital investment in Florida of at least $250 million. Headquarters projects can also qualify with a capital investment as low as $15 million.[5]

The level of the CITC available to a qualifying project is determined by a project's eligible capital costs.[6] 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.[7] Taxpayers are generally allowed an annual CITC equal to five percent of the project's eligible capital costs, against the corporate income tax liability of insurance premium tax liability generated by the qualifying project, for a period not to exceed 20 years.[8]

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[1] *See* the list of qualified industries in the DEO's 2019 Incentives Report, at p. 56, at http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-2019-annual-incentives-report---final.pdf?sfvrsn=c2a340b0_2 (last visited Feb. 6, 2020) According to the Office of Program Policy Analysis and Government Accountability (OPPAGA) in its Report No. 19-07, *Florida Economic Development Program Evaluations – Year 7* (December 2019), at p. 17, the high-impact sectors designated by DEO currently include the following business sectors: Transportation Equipment (Aviation/Aerospace), Information Technology, Life Sciences, Financial Services, Corporate Headquarters, and Clean Energy. *See* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1916rpt.pdf (last visited Feb. 6, 2020).

[2] *See* s. 288.108(6), F.S.

[3] *See* s. 288.106(2)(q), F.S., for the method of designation of a target industry; the term "target industry business" does not include business involving retail; certain municipal/investor-owned electric utilities, or rural electric cooperatives; any phosphate or other solid minerals severance, mining, or processing; any oil or gas exploration or production; or any business subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

[4] A brownfield area is designated by a local government for possible cleanup and rehabilitation of polluted sites. *See* s. 376.80, F.S., for the brownfield area administration process.

[5] *See* s. 220.191(3)(a), F.S.

[6] *See* s. 220.191(2)(a), F.S.

[7] Section 220.191(1)(c), F.S.

[8] Section 220.191(2)(a), F.S. A credit may not be carried forward or backward to a subsequent or prior year, except that, if a credit granted to a project that results in a cumulative capital investment of at least $100 million is not fully used in any one

The annual CITC may not exceed the following percentages of the annual corporate income tax liability or the insurance premium tax liability generated by or arising out of a qualifying project:

- 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.
- 50 percent for a qualifying project which results in a cumulative capital investment of at least $25 million but less than $50 million.[9]

III. Effect of Proposed Changes:

SB 1268 expands the list of property that qualifies as a capital investment for purposes of the CITC to include intellectual property. Under the bill, the term "intellectual property" means a copyrightable project for which the eligible capital costs are principally paid directly or indirectly for the creation of the project.

The term "copyrightable project" includes, but is not limited to:

- A copyrightable software or multimedia application and its expansion content made available to an end user;
- Internal development platforms that support the production of multiple applications:
- Cloud-based services that support the functionality of multiple applications; and
- Copyrighted projects registered with the United States Copyright Office which include digital visualization and sound synchronization technologies.[10]

A copyrightable project constituting intellectual property under the bill may not be intended for distribution solely inside Florida, and at least 75 percent of the project's forecasted revenues must originate outside Florida.

For intellectual property projects, the eligible capital costs include wages, salaries, or other compensation paid to legal residents of Florida, as well as the cost of newly purchased software and hardware unique to the project, such as servers, data processing, and visualization technologies that are located in and exclusively used in Florida for the project. The annual average wage of project jobs must be at least 150 percent of the average private sector wage in the area. For intellectual property projects, the qualifying project may be made up of one or more projects with different start and completion dates.

Under the bill, for a qualifying business that establishes qualifying intellectual property projects, a CITC must be granted when the cumulative capital investment for multiple projects is an

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year because of the qualifying business' insufficient tax liability, the unused amount may be used during the period beginning with the 21st year and ending with the 30th year, after the commencement of the project.

[9] *Id*.

[10] Examples of such technology are computer graphic software and animation technology. For academic coursework in such technology, *see* the University of Florida's Digital Arts and Sciences program in the Herbert Wertheim College of Engineering at https://www.cise.ufl.edu/academics/undergraduate/academic-programs/bachelors-degree-programs/#das-degree (last visited Feb. 6, 2020) and Stetson University's Undergraduate Catalog (2019-2010 Edition) at https://catalog.stetson.edu/undergraduate/arts-sciences/computer-science/#coursestext (last visited Feb. 6, 2020).

aggregate of at least $50 million annually for three years, and the capital investment for each individual project is at least $3.75 million.

The CITC may be applied against the liability of a qualified business for corporate income tax and sales and other taxes, or a combination thereof, collected or accrued under ch. 220, F.S., or ch. 212, F.S., respectively. The amount of a CITC is equal to 20 percent of a qualified project's eligible capital costs.

Taxpayers that are unable to use a CITC in a single year due to insufficient tax liability of the qualifying business may be transfer or use any unused amount in any one year or years beginning with the year of the completion of the project and ending the ninth year after completion. Additionally, a taxpayer may elect to transfer unused CITC in any year, but taxpayers receiving credits must use them in the year received, and the credits may not be carried forward or backward. The bill does not limit the type or class of taxpayers that may receive unused CITC by transfer.

A transfer of CITC must be perfected using the procedure set forth in s. 220.191(2)(c), F.S., relating to notices from transferring taxpayers to the Department of Revenue (DOR) of a transfer, certification by the DOR of a transfer, and documentation required for application of the transferred tax credits.[11]

The bill expands the time frame set forth in s. 220.191(5), F.S., relating to the date a qualifying business must achieve and maintain its minimum employment goals prior to receiving a CITC. In addition to the current law requirement that this goal to be met by the project's commencement of operations, the bill provides that such goal may also be achieved by the project completion date.

The bill expands the time frame set forth in s. 220.191(6), F.S., relating to the certifying of a business by the DEO as eligible to receive CITC. In addition to the current law requirement that the DEO first certify a business as eligible for CITC prior to the commencement of its operations, the bill provides that DEO may alternatively certify such eligibility prior to the project's completion date.

The bill conforms cross references and other technical bill drafting conventions.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[11] *See* s. 220.191(2)(c), F.S. The written transfer statement must include: notification of the intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The DOR must, upon receipt of a conforming transfer statement, provide the transferee with a certificate reflecting the tax credit amounts transferred, and the transferee must attach a copy of the certificate to each tax return for which the transferee seeks to apply such tax credits.

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:

None.

B. Private Sector Impact:

Qualifying businesses with a qualifying project that includes intellectual property created as part of its cumulative capital investment will be eligible for the CITC.

C. Government Sector Impact:

The Revenue Estimating Conference has not yet analyzed this bill. The Office of Economic and Demographic Research evaluated the economic benefits of the CITC program in 2017.[12] For the evaluation of the program, the return on investment (ROI) results from proportionally allocating the economic activity attributable to the program payments made by the state.[13]

The ROI for the CITC program in EDR's 2017 evaluation is .043, based on the state payment (tax credits granted) of $66.7 million.[14] In its 2020 evaluation of the CITC program, the ROI is .27, based on the state's payment of $79.3 million.[15] In both evaluations, the CITC program does not break even, however, the state generates enough revenues to recover a portion of its cost in the investment.[16]

[12] *See* http://edr.state.fl.us/Content/returnoninvestment/ROISELECTPROGRAMS2017final.pdf
[13] *Id*. at p. 2; the evaluation method used by EDR "is similar to the scenario EDR typically reports and feels is most indicative of the program's real return in state revenues." *Id*., and *see also* pp. 9 to 13.
[14] *Id*.
[15] *See* http://www.edr.state.fl.us/Content//returnoninvestment/ROISELECTPROGRAMS2020final.pdf (last visited Feb. 6, 2020).
[16] *Id*. at pp. 6 to 7. *See also* pp. 11 to 17.

EDR notes in its 2020 evaluation:

> Since the CITC program's inception, fifty-three projects have applied, been approved, and are active CITC projects. Of the 53 projects, 20 have confirmed capital investment of at least the $25 million threshold, with a total confirmed capital investment over the life of the program of over $3.7 billion. There were 16 projects expected to have been able to utilize the credit within the review period based on potential job and capital investment milestones. Only twelve of the sixteen businesses have taken the credit since its inception. Of the over $1.84 billion in potential credits [footnote omitted] that could have been taken by qualifying businesses to date, only $269,074,090 has been taken, or 14.6 percent of the total potential. That is, there are still approximately $1.57 billion in outstanding credits that could be claimed in future years.[17]

The Department of Revenue (DOR) notes various concerns about the measurement of a taxpayer's cumulative capital investment in eligible projects, including those that do not create intellectual property, as well as the calculation of and length of time for which a CITC may be granted.[18] The DOR estimates for Fiscal Year 2020-2021, the required modifications to its System for Unified Tax and its electronic services will cost approximately $91,000.[19]

According to the DEO, the bill does not impact its technology systems.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, the time period for calculation of "cumulative capital investment" and "eligible capital costs" is expanded and will apply to all eligible projects, even those that do not include the creation of intellectual property. *See* lines 28 through 40. For example, project fees incurred prior to the beginning of construction of a building appear to qualify under the definition of "cumulative capital investment" revised by the bill. If such expansion is unintentional, consideration of an amendment may be appropriate to revise the terms "cumulative capital investment" and "eligible capital costs."

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[17] *Id*. at p. 16.

[18] *See 2020 Agency Legislative Bill Analysis (Department of Revenue) for SB 1268,* Jan. 14, 2020 (on file with Senate Committee on Innovation, Industries, and Technology) at pp. 6 to 7.

[19] *Id*. at pp. 7 to 8.

[20] *See 2020 Agency Legislative Bill Analysis (Department of Economic Opportunity) for SB 1268,* Jan. 9, 2020 (on file with Senate Committee on Innovation, Industries, and Technology) at p. 6.

Similarly, the bill provides project dates including "start date," "the completion of the project," and "completion date." It is unclear how and by whom these dates will be determined. Consideration of an amendment may be appropriate to clarify these terms.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 220.191 and 288.1089.

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.