

By the Committee on Commerce and Tourism; and Senator Gruters

577-03075-20

20201642c1

1 A bill to be entitled
2 An act relating to tax exemptions; amending s.
3 196.1978, F.S.; revising the affordable housing
4 property exemption to exempt from ad valorem taxation,
5 rather than provide a discount to, certain multifamily
6 projects after a certain timeframe; making clarifying
7 changes; amending s. 212.08, F.S.; providing a sales
8 tax exemption for certain aircraft equipment used as
9 part of certain governmental contracts; providing a
10 use tax exemption for certain aircraft owned by
11 nonresidents and used in service of certain
12 governmental contracts; providing construction;
13 providing a sales tax exemption for parts and
14 accessories necessary for the continued operation of
15 certain industrial machinery or equipment; amending s.
16 220.191, F.S.; redefining terms; defining the term
17 "intellectual property"; providing a credit against
18 the corporate income tax, the sales and use tax, or a
19 stated combination of the two taxes to a qualifying
20 business that establishes a qualifying project for the
21 creation of intellectual property which meets certain
22 capital investment criteria; specifying the
23 calculation of the credit; authorizing the carryover
24 or transfer of credits, subject to certain conditions;
25 conforming provisions to changes made by the act;
26 amending s. 288.1089, F.S.; revising the definition of
27 the term "cumulative investment" to conform to changes
28 made by the act; providing effective dates.
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577-03075-20

20201642c1

30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Effective January 1, 2021, section 196.1978,
33 Florida Statutes, is amended to read:

34 196.1978 Affordable housing property exemption.—

35 (1) Property used to provide affordable housing to eligible
36 persons as defined by s. 159.603 and natural persons or families
37 meeting the extremely-low-income, very-low-income, low-income,
38 or moderate-income limits specified in s. 420.0004, which is
39 owned entirely by a nonprofit entity that is a corporation not
40 for profit, qualified as charitable under s. 501(c)(3) of the
41 Internal Revenue Code and in compliance with Rev. Proc. 96-32,
42 1996-1 C.B. 717, is considered property owned by an exempt
43 entity and used for a charitable purpose, and those portions of
44 the affordable housing property that provide housing to natural
45 persons or families classified as extremely low income, very low
46 income, low income, or moderate income under s. 420.0004 are
47 exempt from ad valorem taxation to the extent authorized under
48 s. 196.196. All property identified in this subsection ~~section~~
49 must comply with the criteria provided under s. 196.195 for
50 determining exempt status and applied by property appraisers on
51 an annual basis. The Legislature intends that any property owned
52 by a limited liability company which is disregarded as an entity
53 for federal income tax purposes pursuant to Treasury Regulation
54 301.7701-3(b)(1)(ii) be treated as owned by its sole member.

55 (2) (a) Notwithstanding ss. 196.195 and 196.196, property in
56 a multifamily project that meets the requirements of this
57 paragraph is considered property used for a charitable purpose
58 and shall receive a 100 ~~50~~ percent discount from the amount of

577-03075-20

20201642c1

59 ad valorem tax otherwise owed beginning in the 16th ~~with the~~
60 ~~January 1 assessment after the 15th completed~~ year of the term
61 of the recorded agreement on those portions of the affordable
62 housing property that provide housing to natural persons or
63 families meeting the extremely-low-income, very-low-income, or
64 low-income limits specified in s. 420.0004. The multifamily
65 project must:

66 1. Contain more than 70 units that are used to provide
67 affordable housing to natural persons or families meeting the
68 extremely-low-income, very-low-income, or low-income persons
69 limits specified in s. 420.0004; and

70 2. Be subject to an agreement with the Florida Housing
71 Finance Corporation recorded in the official records of the
72 county in which the property is located to provide affordable
73 housing to natural persons or families meeting the extremely-
74 low-income, very-low-income, or low-income limits specified in
75 s. 420.0004.

76
77 This discount terminates if the property no longer serves
78 extremely-low-income, very-low-income, or low-income persons
79 pursuant to the recorded agreement.

80 (b) To receive the discount under paragraph (a), a
81 qualified applicant must submit an application to the county
82 property appraiser by March 1.

83 (c) The property appraiser shall apply the discount by
84 reducing the taxable value on those portions of the affordable
85 housing property that provide housing to natural persons or
86 families meeting the extremely-low-income, very-low-income, or
87 low-income limits specified in s. 420.0004 before certifying the

577-03075-20

20201642c1

88 tax roll to the tax collector.

89 1. The property appraiser shall first ascertain all other
90 applicable exemptions, including exemptions provided pursuant to
91 local option, and deduct all other exemptions from the assessed
92 value.

93 2. One hundred ~~Fifty~~ percent of the remaining value shall
94 be subtracted to yield the discounted taxable value.

95 3. The resulting taxable value shall be included in the
96 certification for use by taxing authorities in setting millage.

97 4. The property appraiser shall place the discounted amount
98 on the tax roll when it is extended.

99 Section 2. Effective July 1, 2020, paragraph (fff) of
100 subsection (7) of section 212.08, Florida Statutes, is amended,
101 and paragraph (u) is added to subsection (5) of that section, to
102 read:

103 212.08 Sales, rental, use, consumption, distribution, and
104 storage tax; specified exemptions.—The sale at retail, the
105 rental, the use, the consumption, the distribution, and the
106 storage to be used or consumed in this state of the following
107 are hereby specifically exempt from the tax imposed by this
108 chapter.

109 (5) EXEMPTIONS; ACCOUNT OF USE.—

110 (u) Aircraft equipment used in governmental contracts.—
111 Equipment, including electric and hydraulic ground power units,
112 jet starter units, oxygen servicing and test equipment, engine
113 trim boxes, and communications and avionics test sets, which is
114 used to service, test, operate, upgrade, or configure aircraft
115 for advanced training purposes as part of any contract with the
116 United States Department of Defense or with a military branch of

577-03075-20

20201642c1

117 a recognized foreign government, is exempt from the tax imposed
118 by this chapter.

119 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
120 entity by this chapter do not inure to any transaction that is
121 otherwise taxable under this chapter when payment is made by a
122 representative or employee of the entity by any means,
123 including, but not limited to, cash, check, or credit card, even
124 when that representative or employee is subsequently reimbursed
125 by the entity. In addition, exemptions provided to any entity by
126 this subsection do not inure to any transaction that is
127 otherwise taxable under this chapter unless the entity has
128 obtained a sales tax exemption certificate from the department
129 or the entity obtains or provides other documentation as
130 required by the department. Eligible purchases or leases made
131 with such a certificate must be in strict compliance with this
132 subsection and departmental rules, and any person who makes an
133 exempt purchase with a certificate that is not in strict
134 compliance with this subsection and the rules is liable for and
135 shall pay the tax. The department may adopt rules to administer
136 this subsection.

137 (fff) *Aircraft temporarily in the state.*—

138 1. An aircraft owned by a nonresident is exempt from the
139 use tax imposed under this chapter if the aircraft enters and
140 remains in this state for less than a total of 21 days during
141 the 6-month period after the date of purchase. The temporary use
142 of the aircraft and subsequent removal from this state may be
143 proven by invoices for fuel, tie-down, or hangar charges issued
144 by out-of-state vendors or suppliers or similar documentation
145 that clearly and specifically identifies the aircraft. The

577-03075-20

20201642c1

146 exemption provided in this subparagraph is in addition to the
147 exemptions provided in subparagraphs 2. and 3. ~~subparagraph 2.~~
148 and s. 212.05(1) (a).

149 2. An aircraft owned by a nonresident is exempt from the
150 use tax imposed under this chapter if the aircraft enters or
151 remains in this state exclusively for purposes of flight
152 training, repairs, alterations, refitting, or modification. Such
153 purposes shall be supported by written documentation issued by
154 in-state vendors or suppliers which clearly and specifically
155 identifies the aircraft. The exemption provided in this
156 subparagraph is in addition to the exemptions provided in
157 subparagraph 1. and s. 212.05(1) (a).

158 3. An aircraft owned by a nonresident is exempt from the
159 use tax imposed under this chapter if the aircraft enters or
160 remains in this state exclusively to be used in service of a
161 contract with the United States Department of Defense or with a
162 military branch of a recognized foreign government. The
163 exemption provided in this subparagraph is in addition to the
164 exemptions provided in subparagraph 1. and s. 212.05(1) (a).

165 Section 3. Effective October 1, 2020, paragraph (jjj) of
166 subsection (7) of section 212.08, Florida Statutes, is amended
167 to read:

168 212.08 Sales, rental, use, consumption, distribution, and
169 storage tax; specified exemptions.—The sale at retail, the
170 rental, the use, the consumption, the distribution, and the
171 storage to be used or consumed in this state of the following
172 are hereby specifically exempt from the tax imposed by this
173 chapter.

174 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any

577-03075-20

20201642c1

175 entity by this chapter do not inure to any transaction that is
176 otherwise taxable under this chapter when payment is made by a
177 representative or employee of the entity by any means,
178 including, but not limited to, cash, check, or credit card, even
179 when that representative or employee is subsequently reimbursed
180 by the entity. In addition, exemptions provided to any entity by
181 this subsection do not inure to any transaction that is
182 otherwise taxable under this chapter unless the entity has
183 obtained a sales tax exemption certificate from the department
184 or the entity obtains or provides other documentation as
185 required by the department. Eligible purchases or leases made
186 with such a certificate must be in strict compliance with this
187 subsection and departmental rules, and any person who makes an
188 exempt purchase with a certificate that is not in strict
189 compliance with this subsection and the rules is liable for and
190 shall pay the tax. The department may adopt rules to administer
191 this subsection.

192 (jjj) *Certain machinery and equipment.*—

193 1. Industrial machinery and equipment purchased by eligible
194 manufacturing businesses which is used at a fixed location in
195 this state for the manufacture, processing, compounding, or
196 production of items of tangible personal property for sale is
197 exempt from the tax imposed by this chapter. If, at the time of
198 purchase, the purchaser furnishes the seller with a signed
199 certificate certifying the purchaser's entitlement to exemption
200 pursuant to this paragraph, the seller is not required to
201 collect the tax on the sale of such items, and the department
202 shall look solely to the purchaser for recovery of the tax if it
203 determines that the purchaser was not entitled to the exemption.

577-03075-20

20201642c1

204 2. For purposes of this paragraph, the term:

205 a. "Eligible manufacturing business" means any business
206 whose primary business activity at the location where the
207 industrial machinery and equipment is located is within the
208 industries classified under NAICS codes 31, 32, 33, 112511, and
209 423930.

210 b. "Eligible postharvest activity business" means a
211 business whose primary business activity, at the location where
212 the postharvest machinery and equipment is located, is within
213 the industries classified under NAICS code 115114.

214 c. "NAICS" means those classifications contained in the
215 North American Industry Classification System, as published in
216 2007 by the Office of Management and Budget, Executive Office of
217 the President.

218 d. "Primary business activity" means an activity
219 representing more than 50 percent of the activities conducted at
220 the location where the industrial machinery and equipment or
221 postharvest machinery and equipment is located.

222 e. "Industrial machinery and equipment" means tangible
223 personal property or other property that has a depreciable life
224 of 3 years or more and that is used as an integral part in the
225 manufacturing, processing, compounding, or production of
226 tangible personal property for sale. The term includes tangible
227 personal property or other property that has a depreciable life
228 of 3 years or more which is used as an integral part in the
229 recycling of metals for sale. A building and its structural
230 components are not industrial machinery and equipment unless the
231 building or structural component is so closely related to the
232 industrial machinery and equipment that it houses or supports

577-03075-20

20201642c1

233 that the building or structural component can be expected to be
234 replaced when the machinery and equipment are replaced. Heating
235 and air conditioning systems are not industrial machinery and
236 equipment unless the sole justification for their installation
237 is to meet the requirements of the production process, even
238 though the system may provide incidental comfort to employees or
239 serve, to an insubstantial degree, nonproduction activities. The
240 term includes parts and accessories for industrial machinery and
241 equipment only to the extent that the parts and accessories are
242 necessary for the continued operation of the industrial
243 machinery or equipment or were purchased before the date the
244 machinery and equipment were ~~are~~ placed in service.

245 f. "Postharvest activities" means services performed on
246 crops, after their harvest, with the intent of preparing them
247 for market or further processing. Postharvest activities
248 include, but are not limited to, crop cleaning, sun drying,
249 shelling, fumigating, curing, sorting, grading, packing, and
250 cooling.

251 g. "Postharvest machinery and equipment" means tangible
252 personal property or other property with a depreciable life of 3
253 years or more which is used primarily for postharvest
254 activities. A building and its structural components are not
255 postharvest industrial machinery and equipment unless the
256 building or structural component is so closely related to the
257 postharvest machinery and equipment that it houses or supports
258 that the building or structural component can be expected to be
259 replaced when the postharvest machinery and equipment is
260 replaced. Heating and air conditioning systems are not
261 postharvest machinery and equipment unless the sole

577-03075-20

20201642c1

262 justification for their installation is to meet the requirements
263 of the postharvest activities process, even though the system
264 may provide incidental comfort to employees or serve, to an
265 insubstantial degree, nonpostharvest activities.

266 3. Postharvest machinery and equipment purchased by an
267 eligible postharvest activity business which is used at a fixed
268 location in this state is exempt from the tax imposed by this
269 chapter. All labor charges for the repair of, and parts and
270 materials used in the repair of and incorporated into, such
271 postharvest machinery and equipment are also exempt. If, at the
272 time of purchase, the purchaser furnishes the seller with a
273 signed certificate certifying the purchaser's entitlement to
274 exemption pursuant to this subparagraph, the seller is not
275 required to collect the tax on the sale of such items, and the
276 department shall look solely to the purchaser for recovery of
277 the tax if it determines that the purchaser was not entitled to
278 the exemption.

279 Section 4. Section 220.191, Florida Statutes, is amended to
280 read:

281 220.191 Capital investment tax credit.—

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

284 (a) "Commencement of operations" means the beginning of
285 active operations by a qualifying business of the principal
286 function for which a qualifying project was constructed.

287 (b) "Cumulative capital investment" means the total capital
288 investment in land, buildings, ~~and~~ equipment, and intellectual
289 property made in connection with a qualifying project during the
290 period from the beginning of construction or the start date of

577-03075-20

20201642c1

291 the project to the commencement of operations or the completion
292 of the project, as applicable.

293 (c) "Eligible capital costs" means all expenses incurred by
294 a qualifying business in connection with the acquisition,
295 construction, installation, ~~and~~ equipping, and development of a
296 qualifying project during the period from the beginning of
297 construction or the start date of the project to the
298 commencement of operations or the completion of the project, as
299 applicable, including, but not limited to:

300 1. The costs of acquiring, constructing, installing,
301 equipping, and financing a qualifying project, including all
302 obligations incurred for labor and obligations to contractors,
303 subcontractors, builders, and materialmen.

304 2. The costs of acquiring land or rights to land and any
305 cost incidental thereto, including recording fees.

306 3. The costs of architectural and engineering services,
307 including test borings, surveys, estimates, plans and
308 specifications, preliminary investigations, environmental
309 mitigation, and supervision of construction, as well as the
310 performance of all duties required by or consequent to the
311 acquisition, construction, installation, and equipping of a
312 qualifying project.

313 4. The costs associated with the installation of fixtures
314 and equipment; surveys, including archaeological and
315 environmental surveys; site tests and inspections; subsurface
316 site work and excavation; removal of structures, roadways, and
317 other surface obstructions; filling, grading, paving, and
318 provisions for drainage, storm water retention, and installation
319 of utilities, including water, sewer, sewage treatment, gas,

577-03075-20

20201642c1

320 electricity, communications, and similar facilities; and offsite
321 construction of utility extensions to the boundaries of the
322 property.

323 5. For the development of intellectual property, the wages,
324 salaries, or other compensation paid to legal residents of this
325 state and the costs of newly purchased computer software and
326 hardware unique to the project, including servers, data
327 processing, and visualization technologies, which are located
328 and used exclusively in this state for the project.

329
330 Eligible capital costs shall not include the cost of any
331 property previously owned or leased by the qualifying business.

332 (d) "Income generated by or arising out of the qualifying
333 project" means the qualifying project's annual taxable income as
334 determined by generally accepted accounting principles and under
335 s. 220.13.

336 (e) "Intellectual property" means a copyrightable project
337 for which the eligible capital costs are principally paid
338 directly or indirectly for the creation of the project. As used
339 in this paragraph, the term "copyrightable project" includes,
340 but is not limited to, a copyrightable software or multimedia
341 application and its expansion content made available to an end
342 user, internal development platforms that support the production
343 of multiple applications, cloud-based services that support the
344 functionality of multiple applications, and copyrighted projects
345 registered with the United States Copyright Office which include
346 digital visualization and sound synchronization technologies.
347 The project may not be intended for distribution solely inside
348 this state, and at least 75 percent of forecasted revenues for

577-03075-20

20201642c1

349 the project must be from outside this state.

350 (f) "Jobs" means full-time equivalent positions, as that
351 term is consistent with terms used by the Department of Economic
352 Opportunity and the United States Department of Labor for
353 purposes of reemployment assistance tax administration and
354 employment estimation, resulting directly from a project in this
355 state. The term does not include temporary construction jobs
356 involved in the construction of the project facility.

357 (g)~~(f)~~ "Qualifying business" means a business which
358 establishes a qualifying project in this state and which is
359 certified by the Department of Economic Opportunity to receive
360 tax credits pursuant to this section.

361 (h)~~(g)~~ "Qualifying project" means a facility or project in
362 this state meeting one or more of the following criteria:

363 1. A new or expanding facility in this state which creates
364 at least 100 new jobs in this state and is in one of the high-
365 impact sectors identified by Enterprise Florida, Inc., and
366 certified by the Department of Economic Opportunity pursuant to
367 s. 288.108(6), including, but not limited to, aviation,
368 aerospace, automotive, and silicon technology industries.
369 However, between July 1, 2011, and June 30, 2014, the
370 requirement that a facility be in a high-impact sector is waived
371 for any otherwise eligible business from another state which
372 locates all or a portion of its business to a Disproportionally
373 Affected County. For purposes of this section, the term
374 "Disproportionally Affected County" means Bay County, Escambia
375 County, Franklin County, Gulf County, Okaloosa County, Santa
376 Rosa County, Walton County, or Wakulla County.

377 2. A new or expanded facility in this state which is

577-03075-20

20201642c1

378 engaged in a target industry designated pursuant to the
379 procedure specified in s. 288.106(2) and which is induced by
380 this credit to create or retain at least 1,000 jobs in this
381 state, provided that at least 100 of those jobs are new, pay an
382 annual average wage of at least 130 percent of the average
383 private sector wage in the area as defined in s. 288.106(2), and
384 make a cumulative capital investment of at least \$100 million.
385 Jobs may be considered retained only if there is significant
386 evidence that the loss of jobs is imminent. Notwithstanding
387 subsection (2), annual credits against the tax imposed by this
388 chapter may not exceed 50 percent of the increased annual
389 corporate income tax liability or the premium tax liability
390 generated by or arising out of a project qualifying under this
391 subparagraph. A facility that qualifies under this subparagraph
392 for an annual credit against the tax imposed by this chapter may
393 take the tax credit for a period not to exceed 5 years.

394 3. A new or expanded headquarters facility in this state
395 which locates in an enterprise zone and brownfield area and is
396 induced by this credit to create at least 1,500 jobs which on
397 average pay at least 200 percent of the statewide average annual
398 private sector wage, as published by the Department of Economic
399 Opportunity, and which new or expanded headquarters facility
400 makes a cumulative capital investment in this state of at least
401 \$250 million.

402 4. For the creation of intellectual property, a qualifying
403 project may be made up of one or more projects with different
404 start and completion dates. The annual average wage of the
405 project jobs in this state must be at least 150 percent of the
406 average private sector wage in the area as defined in s.

577-03075-20

20201642c1

407 288.106(2)(c).

408 (2)(a) An annual credit against the tax imposed by this
409 chapter shall be granted to any qualifying business in an amount
410 equal to 5 percent of the eligible capital costs generated by a
411 qualifying project, for a period not to exceed 20 years
412 beginning with the commencement of operations of the project.
413 Unless assigned as described in this subsection, the tax credit
414 shall be granted against only the corporate income tax liability
415 or the premium tax liability generated by or arising out of the
416 qualifying project, and the sum of all tax credits provided
417 pursuant to this section shall not exceed 100 percent of the
418 eligible capital costs of the project. In no event may any
419 credit granted under this section be carried forward or backward
420 by any qualifying business with respect to a subsequent or prior
421 year. The annual tax credit granted under this section shall not
422 exceed the following percentages of the annual corporate income
423 tax liability or the premium tax liability generated by or
424 arising out of a qualifying project:

425 1. One hundred percent for a qualifying project which
426 results in a cumulative capital investment of at least \$100
427 million.

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

431 3. Fifty percent for a qualifying project which results in
432 a cumulative capital investment of at least \$25 million but less
433 than \$50 million.

434 (b) A qualifying project which results in a cumulative
435 capital investment of less than \$25 million is not eligible for

577-03075-20

20201642c1

436 the capital investment tax credit. An insurance company claiming
437 a credit against premium tax liability under this program shall
438 not be required to pay any additional retaliatory tax levied
439 pursuant to s. 624.5091 as a result of claiming such credit.
440 Because credits under this section are available to an insurance
441 company, s. 624.5091 does not limit such credit in any manner.

442 (c) A qualifying business that establishes a qualifying
443 project that includes locating a new solar panel manufacturing
444 facility in this state that generates a minimum of 400 jobs
445 within 6 months after commencement of operations with an average
446 salary of at least \$50,000 may assign or transfer the annual
447 credit, or any portion thereof, granted under this section to
448 any other business. However, the amount of the tax credit that
449 may be transferred in any year shall be the lesser of the
450 qualifying business's state corporate income tax liability for
451 that year, as limited by the percentages applicable under
452 paragraph (a) and as calculated prior to taking any credit
453 pursuant to this section, or the credit amount granted for that
454 year. A business receiving the transferred or assigned credits
455 may use the credits only in the year received, and the credits
456 may not be carried forward or backward. To perfect the transfer,
457 the transferor shall provide the department with a written
458 transfer statement notifying the department of the transferor's
459 intent to transfer the tax credits to the transferee; the date
460 the transfer is effective; the transferee's name, address, and
461 federal taxpayer identification number; the tax period; and the
462 amount of tax credits to be transferred. The department shall,
463 upon receipt of a transfer statement conforming to the
464 requirements of this paragraph, provide the transferee with a

577-03075-20

20201642c1

465 certificate reflecting the tax credit amounts transferred. A
466 copy of the certificate must be attached to each tax return for
467 which the transferee seeks to apply such tax credits.

468 (d) If the credit granted under subparagraph (a)1. is not
469 fully used in any one year because of insufficient tax liability
470 on the part of the qualifying business, the unused amounts may
471 be used in any one year or years beginning with the 21st year
472 after the commencement of operations of the project and ending
473 the 30th year after the commencement of operations of the
474 project.

475 (3) (a) Notwithstanding subsection (2), a credit against the
476 tax imposed by this chapter, against state taxes collected or
477 accrued under chapter 212, or against a stated combination of
478 the two taxes shall be granted to a qualifying business that
479 establishes a qualifying project pursuant to subparagraph
480 (1) (h)4. for which the cumulative capital investment of one or
481 more projects is an aggregate of at least \$50 million per year
482 for 3 years, and the capital investment of each individual
483 project is at least \$3.75 million. The tax credit shall be
484 granted in an amount equal to 20 percent of the eligible capital
485 costs generated by the qualifying project. The tax credit shall
486 be granted against the tax liability of the qualifying business.

487 (b) If the credit granted under this subsection is not
488 fully used in 1 year because of insufficient tax liability on
489 the part of the qualifying business, the unused amounts may be
490 transferred or used in any one year or years beginning with the
491 year of the completion date of the project and ending the 9th
492 year after the completion date of the project. A business
493 receiving the transferred credits may use the credits only in

577-03075-20

20201642c1

494 the year received, and the credits may not be carried forward or
495 backward. A transfer must be perfected in accordance with the
496 requirements of paragraph (2) (c).

497 (4) (a) Notwithstanding subsection (2), an annual credit
498 against the tax imposed by this chapter shall be granted to a
499 qualifying business which establishes a qualifying project
500 pursuant to subparagraph (1) (h) 3. ~~(1) (g) 3.~~, in an amount equal
501 to the lesser of \$15 million or 5 percent of the eligible
502 capital costs made in connection with a qualifying project, for
503 a period not to exceed 20 years beginning with the commencement
504 of operations of the project. The tax credit shall be granted
505 against the corporate income tax liability of the qualifying
506 business and as further provided in paragraph (c). The total tax
507 credit provided pursuant to this subsection shall be equal to no
508 more than 100 percent of the eligible capital costs of the
509 qualifying project.

510 (b) If the credit granted under this subsection is not
511 fully used in any one year because of insufficient tax liability
512 on the part of the qualifying business, the unused amount may be
513 carried forward for a period not to exceed 20 years after the
514 commencement of operations of the project. The carryover credit
515 may be used in a subsequent year when the tax imposed by this
516 chapter for that year exceeds the credit for which the
517 qualifying business is eligible in that year under this
518 subsection after applying the other credits and unused
519 carryovers in the order provided by s. 220.02(8).

520 (c) The credit granted under this subsection may be used in
521 whole or in part by the qualifying business or any corporation
522 that is either a member of that qualifying business's affiliated

577-03075-20

20201642c1

523 group of corporations, is a related entity taxable as a
524 cooperative under subchapter T of the Internal Revenue Code, or,
525 if the qualifying business is an entity taxable as a cooperative
526 under subchapter T of the Internal Revenue Code, is related to
527 the qualifying business. Any entity related to the qualifying
528 business may continue to file as a member of a Florida-nexus
529 consolidated group pursuant to a prior election made under s.
530 220.131(1), Florida Statutes (1985), even if the parent of the
531 group changes due to a direct or indirect acquisition of the
532 former common parent of the group. Any credit can be used by any
533 of the affiliated companies or related entities referenced in
534 this paragraph to the same extent as it could have been used by
535 the qualifying business. However, any such use shall not operate
536 to increase the amount of the credit or extend the period within
537 which the credit must be used.

538 (5)~~(4)~~ Prior to receiving tax credits pursuant to this
539 section, a qualifying business must achieve and maintain the
540 minimum employment goals beginning with the commencement of
541 operations or the completion date of ~~a~~ a qualifying project and
542 continuing each year thereafter during which tax credits are
543 available pursuant to this section.

544 (6)~~(5)~~ Applications shall be reviewed and certified
545 pursuant to s. 288.061. The Department of Economic Opportunity,
546 upon a recommendation by Enterprise Florida, Inc., shall first
547 certify a business as eligible to receive tax credits pursuant
548 to this section prior to the commencement of operations or the
549 completion date of a qualifying project, and such certification
550 shall be transmitted to the Department of Revenue. Upon receipt
551 of the certification, the Department of Revenue shall enter into

577-03075-20

20201642c1

552 a written agreement with the qualifying business specifying, at
553 a minimum, the method by which income generated by or arising
554 out of the qualifying project will be determined.

555 (7)~~(6)~~ The Department of Economic Opportunity, in
556 consultation with Enterprise Florida, Inc., is authorized to
557 develop the necessary guidelines and application materials for
558 the certification process described in subsection (6) ~~(5)~~.

559 (8)~~(7)~~ It shall be the responsibility of the qualifying
560 business to affirmatively demonstrate to the satisfaction of the
561 Department of Revenue that such business meets the job creation
562 and capital investment requirements of this section.

563 (9)~~(8)~~ The Department of Revenue may specify by rule the
564 methods by which a project's pro forma annual taxable income is
565 determined.

566 Section 5. Paragraph (d) of subsection (2) of section
567 288.1089, Florida Statutes, is amended to read:

568 288.1089 Innovation Incentive Program.—

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

570 (d) "Cumulative investment" means cumulative capital
571 investment and all eligible capital costs, as defined in former
572 s. 220.191, Florida Statutes 2019.

573 Section 6. Except as otherwise expressly provided in this
574 act, this act shall take effect upon becoming a law.