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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

220.191 Capital investment tax credit.—

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

(a) "Commencement of operations" means the beginning of



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11 active operations by a qualifying business of the principal
12 function for which a qualifying project was constructed.

13 (b) "Cumulative capital investment" means the total capital
14 investment in land, buildings, and equipment made in connection
15 with a qualifying project during the period from the beginning
16 of construction of the project to the commencement of
17 operations.

18 (c) "Cumulative intellectual property investment" means the
19 total investment for the development of intellectual property
20 during the period from the start date of the project to the
21 completion of the project in buildings or equipment; in wages,
22 salaries, or other compensation paid to employees, including
23 amounts paid through an employee leasing company and any
24 employer-paid taxes and benefits; and in the direct production
25 costs paid to any business, regardless of location.

26 (d) "Direct production costs" means direct expenses related
27 to the preproduction, development or filming, and postproduction
28 of intellectual property. The term does not include the
29 distribution and marketing of intellectual property.

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

32 a. The acquisition, construction, installation, and
33 equipping of a qualifying project during the period from the
34 beginning of construction of the project to the commencement of
35 operations; or

36 b. A qualifying project for the development or creation of
37 intellectual property during the period from the start date of
38 the project to the completion of the project.

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



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40 ~~a.1.~~ The costs of acquiring, constructing, installing,
41 equipping, and financing a qualifying project, including all
42 obligations incurred for labor and obligations to contractors,
43 subcontractors, builders, and materialmen.

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

46 ~~c.3.~~ The costs of architectural and engineering services,
47 including test borings, surveys, estimates, plans and
48 specifications, preliminary investigations, environmental
49 mitigation, and supervision of construction, as well as the
50 performance of all duties required by or consequent to the
51 acquisition, construction, installation, and equipping of a
52 qualifying project.

53 ~~d.4.~~ The costs associated with the installation of fixtures
54 and equipment; surveys, including archaeological and
55 environmental surveys; site tests and inspections; subsurface
56 site work and excavation; removal of structures, roadways, and
57 other surface obstructions; filling, grading, paving, and
58 provisions for drainage, storm water retention, and installation
59 of utilities, including water, sewer, sewage treatment, gas,
60 electricity, communications, and similar facilities; and offsite
61 construction of utility extensions to the boundaries of the
62 property.

63 e. For the development or creation of intellectual
64 property, the wages, salaries, employer-paid taxes and benefits,
65 or other compensation paid to legal residents of this state,
66 including amounts paid through a loan-out company, an employee
67 leasing company, or a payroll service company; and the direct
68 production costs paid to any business authorized to do business



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69 in this state.

70

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

73 (f) "Employer-paid taxes and benefits" includes social
74 security tax; Medicare tax; federal unemployment and state
75 reemployment assistance taxes; workers' compensation premiums
76 and benefits; vacation pay, holiday pay, and sick pay; payroll-
77 handling fees; mileage; car allowances; housing allowances; and
78 per diem.

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

83 (h) ~~(e)~~ "Intellectual property" means a copyrightable
84 project for which the eligible capital costs are principally
85 paid directly or indirectly for the development or creation of
86 the project. As used in this paragraph, the term "copyrightable
87 project" includes, but is not limited to, a copyrightable
88 software or multimedia application and its expansion content
89 made available to an end user, which includes, but is not
90 limited to, technological activities relating to updating the
91 project; internal development platforms that support the
92 production of multiple applications; cloud-based services that
93 support the functionality of multiple applications; and
94 copyrightable projects that include, but are not limited to,
95 digital visualization and sound synchronization technologies for
96 digital media, or that are necessary for the production of
97 scripted content intended for theatrical, streaming, or



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98 television distribution.

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

106 (j) "Production infrastructure costs" means the costs of
107 property intended to be used for the development of multiple
108 intellectual property projects. Such investment property
109 includes, but is not limited to, buildings, facilities, studios,
110 soundstages, and any ancillary machinery and equipment used for
111 the development of intellectual property, regardless of whether
112 the property is a fixture or is otherwise affixed to or
113 incorporated into real property. The term does not include the
114 direct production costs related to a specific intellectual
115 property project.

116 (k)~~(f)~~ "Qualifying business" means a business which
117 establishes a qualifying project or strategic priority project
118 in this state and which is certified by the Department of
119 Economic Opportunity to receive tax credits pursuant to this
120 section.

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

123 1. A new or expanding facility in this state which creates
124 at least 100 new jobs in this state and is in one of the high-
125 impact sectors identified by Enterprise Florida, Inc., and
126 certified by the Department of Economic Opportunity pursuant to



127 s. 288.108(6), including, but not limited to, aviation,
128 aerospace, automotive, and silicon technology industries.
129 However, between July 1, 2011, and June 30, 2014, the
130 requirement that a facility be in a high-impact sector is waived
131 for any otherwise eligible business from another state which
132 locates all or a portion of its business to a Disproportionally
133 Affected County. For purposes of this section, the term
134 "Disproportionally Affected County" means Bay County, Escambia
135 County, Franklin County, Gulf County, Okaloosa County, Santa
136 Rosa County, Walton County, or Wakulla County.

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

154 3. A new or expanded headquarters facility in this state
155 which locates in an enterprise zone and brownfield area and is



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156 induced by this credit to create at least 1,500 jobs which on
157 average pay at least 200 percent of the statewide average annual
158 private sector wage, as published by the Department of Economic
159 Opportunity, and which new or expanded headquarters facility
160 makes a cumulative capital investment in this state of at least
161 \$250 million.

162 4. A project involving the development or creation of
163 intellectual property, provided that the project's jobs in this
164 state pay an annual average wage of at least 150 percent of the
165 average private sector wage in the area as defined in s.
166 288.106. A project that qualifies under this subparagraph may
167 consist of one or more projects with different start and
168 completion dates.

169 (m) "Strategic priority project" means a qualifying project
170 identified in subparagraph (1)4. which demonstrates the
171 potential for measurable value to this state, including, but not
172 limited to, marketing this state as a visitor destination,
173 making improvements to infrastructure supporting future industry
174 use, or providing measurable technology skills development for
175 residents of this state.

176 (2) (a) An annual credit against the tax imposed by this
177 chapter shall be granted to any qualifying business in an amount
178 equal to 5 percent of the eligible capital costs generated by a
179 qualifying project, for a period not to exceed 20 years
180 beginning with the commencement of operations of the project.
181 Unless assigned as described in this subsection, the tax credit
182 shall be granted against only the corporate income tax liability
183 or the premium tax liability generated by or arising out of the
184 qualifying project, and the sum of all tax credits provided



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185 pursuant to this section shall not exceed 100 percent of the
186 eligible capital costs of the project. In no event may any
187 credit granted under this section be carried forward or backward
188 by any qualifying business with respect to a subsequent or prior
189 year. The annual tax credit granted under this section shall not
190 exceed the following percentages of the annual corporate income
191 tax liability or the premium tax liability generated by or
192 arising out of a qualifying project:

193 1. One hundred percent for a qualifying project which
194 results in a cumulative capital investment of at least \$100
195 million.

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

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

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

210 (c) A qualifying business that establishes a qualifying
211 project that includes locating a new solar panel manufacturing
212 facility in this state that generates a minimum of 400 jobs
213 within 6 months after commencement of operations with an average



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214 salary of at least \$50,000 may assign or transfer the annual
215 credit, or any portion thereof, granted under this section to
216 any other business. However, the amount of the tax credit that
217 may be transferred in any year shall be the lesser of the
218 qualifying business's state corporate income tax liability for
219 that year, as limited by the percentages applicable under
220 paragraph (a) and as calculated before ~~prior to~~ taking any
221 credit pursuant to this section, or the credit amount granted
222 for that year. A business receiving the transferred or assigned
223 credits may use the credits only in the year received, and the
224 credits may not be carried forward or backward. To perfect the
225 transfer, the transferor shall provide the department with a
226 written transfer statement notifying the department of the
227 transferor's intent to transfer the tax credits to the
228 transferee; the date the transfer is effective; the transferee's
229 name, address, and federal taxpayer identification number; the
230 tax period; and the amount of tax credits to be transferred. The
231 department shall, upon receipt of a transfer statement
232 conforming to the requirements of this paragraph, provide the
233 transferee with a certificate reflecting the tax credit amounts
234 transferred. A copy of the certificate must be attached to each
235 tax return for which the transferee seeks to apply such tax
236 credits.

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



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243 project.

244 (3) (a) 1. Notwithstanding subsection (2), a credit against
245 the tax imposed by this chapter, against state taxes collected
246 or accrued under chapter 212, or against a stated combination of
247 the two taxes must be granted to a qualifying business that
248 establishes a qualifying project identified in subparagraph
249 (1) (1) 4. for which the cumulative intellectual property
250 investment of one or more projects is, at the election of the
251 qualifying business, at least:

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

255 2. For sub-subparagraphs 1.a. and b., the tax credit must
256 be granted in an amount equal to 20 percent of the eligible
257 capital costs generated by the qualifying project. The tax
258 credit must be granted against the tax liability of the
259 qualifying business.

260 3. For projects meeting the threshold of sub-subparagraph
261 1.c., the tax credit must be granted in an amount equal to 26
262 percent of the eligible wages, salaries, employer paid taxes and
263 benefits, or other compensation paid to any individual,
264 including amounts paid through an employee leasing company, and
265 the direct production costs paid to any business, regardless of
266 the location, generated by the qualifying project. The tax
267 credit must be granted against the tax liability of the
268 qualifying business.

269 (b) 1. The credit granted under this subsection may be used
270 in whole or in part by the qualifying business or any
271 corporation that is a member of that qualifying business'



272 affiliated group of corporations. Any credit may be used by any
273 of the affiliated corporations to the same extent as it could
274 have been used by the qualifying business. However, any such use
275 may not operate to increase the amount of the credit or extend
276 the period within which the credit must be used.

277 2. The credit granted under this subsection may be
278 transferred to any third party. A qualifying business that
279 elects to transfer the tax credit shall transfer the tax credit
280 within 1 year after the date the tax credit is granted. A
281 business receiving the transferred tax credit may use the credit
282 only in the year received, and the credit may not be carried
283 forward or backward. To perfect the transfer, the transferor
284 shall provide the department with a written transfer statement
285 of the transferor's intent to transfer the tax credits to the
286 transferee; the date the transfer is effective; the transferee's
287 name, address, and federal taxpayer identification number; the
288 tax period to which the transfer applies; and the amount of tax
289 credits to be transferred. The department shall, upon receipt of
290 a transfer statement conforming to the requirements of this
291 subparagraph, provide the transferee with a certificate
292 reflecting the tax credit amounts transferred. A copy of the
293 certificate must be attached to each tax return for which the
294 transferee seeks to apply such tax credits.

295 (c) A qualifying business that elects to use the tax credit
296 may use the tax credit in any one year or years beginning with
297 the commencement of the project and ending the second year after
298 the completion of the project.

299 (d) Notwithstanding the cumulative intellectual property
300 investment thresholds under subparagraph (a)1., tax credits must



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301 be granted as costs described in that subparagraph are certified
302 by the Department of Economic Opportunity.

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

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

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

312 c. For purposes of sub-subparagraph (a)1.c., the portion of
313 any previously granted tax credit that exceeds 20 percent of
314 costs specified in subparagraph (a)3. which was issued pursuant
315 to this subsection must be revoked and rescinded. However, if
316 the total cumulative intellectual property investment is less
317 than \$150 million, sub-subparagraph b. applies.

318 2. This paragraph may not result in the revocation or
319 rescission of any credits or incentives awarded to a project
320 outside of this subsection.

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

324 4. If such revoked and rescinded credit has already been
325 transferred to another business, the transferor must repay the
326 credit plus interest applicable under s. 231.235 and a 10
327 percent penalty.

328 (4) Notwithstanding subsection (2), an annual credit
329 against the tax imposed by this chapter, against state taxes



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330 collected or accrued under chapter 212, or against a stated
331 combination of the two taxes must be granted to a qualifying
332 business that establishes a qualifying project that incurs
333 eligible production infrastructure costs in this state exceeding
334 \$100 million during a period not to exceed 10 years, beginning
335 with the commencement of operations of the project. The sum of
336 all tax credits provided pursuant to this subsection may not
337 exceed 100 percent of the eligible production infrastructure
338 costs of the project. Any credit granted under this subsection
339 may not be carried forward or backward by any qualifying
340 business with respect to a subsequent or prior year. The annual
341 tax credit granted under this section may not exceed 100 percent
342 of the sum of the annual corporate income tax liability and the
343 sales and use tax liability of the qualifying business. If the
344 credit granted under this subsection is not fully used in any
345 given year because of insufficient tax liability on the part of
346 the qualifying business, the unused amounts may be used in any
347 given year or years beginning with the 11th year after the
348 commencement of operations of the project and ending the 20th
349 year after the commencement of operations of the project.

350 (5) (a) Notwithstanding subsection (2), a credit against the
351 tax imposed by this chapter, against state taxes collected or
352 accrued under chapter 212, or against a stated combination of
353 the two taxes must be granted to a qualifying business that
354 establishes a strategic priority project as defined in paragraph
355 (1) (i), for which the eligible capital costs are at least \$75
356 million. The tax credit must be granted in an amount equal to 20
357 percent of the eligible capital costs generated by the
358 qualifying project. The tax credit must be granted against the



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359 tax liability of the qualifying business.

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

363 1. A qualifying business that elects to transfer the tax
364 credit shall transfer the tax credit within 1 year after the
365 date the tax credit is granted. A business receiving the
366 transferred tax credit may use the credit only in the year
367 received, and the credit may not be carried forward or backward.
368 To perfect the transfer, the transferor shall provide the
369 department with a written transfer statement of the transferor's
370 intent to transfer the tax credits to the transferee; the
371 effective date of the transfer; the transferee's name, address,
372 and federal taxpayer identification number; the tax period to
373 which the transfer applies; and the amount of tax credits to be
374 transferred. Upon receipt of a transfer statement conforming to
375 the requirements of this subparagraph, the department shall
376 provide the transferee with a certificate reflecting the tax
377 credit amounts transferred. A copy of the certificate must be
378 attached to each tax return for the period for which the
379 transferee seeks to apply such tax credits.

380 2. A qualifying business that elects to use the tax credit
381 may use the tax credit in any one year or years beginning with
382 the commencement of the project and ending the second year after
383 the completion of the project.

384 (6) (a) Notwithstanding subsection (2), an annual credit
385 against the tax imposed by this chapter ~~shall~~ must be granted to
386 a qualifying business which establishes a qualifying project
387 pursuant to subparagraph (1) (1) 3. ~~(1) (g) 3.~~, in an amount equal



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388 to the lesser of \$15 million or 5 percent of the eligible
389 capital costs made in connection with a qualifying project, for
390 a period not to exceed 20 years beginning with the commencement
391 of operations of the project. The tax credit must ~~shall~~ be
392 granted against the corporate income tax liability of the
393 qualifying business and as further provided in paragraph (c).
394 The total tax credit provided pursuant to this subsection must
395 ~~shall~~ be equal to no more than 100 percent of the eligible
396 capital costs of the qualifying project.

397 (b) If the credit granted under this subsection is not
398 fully used in any one year because of insufficient tax liability
399 on the part of the qualifying business, the unused amount may be
400 carried forward for a period not to exceed 20 years after the
401 commencement of operations of the project. The carryover credit
402 may be used in a subsequent year when the tax imposed by this
403 chapter for that year exceeds the credit for which the
404 qualifying business is eligible in that year under this
405 subsection after applying the other credits and unused
406 carryovers in the order provided by s. 220.02(8).

407 (c) The credit granted under this subsection may be used in
408 whole or in part by the qualifying business or any corporation
409 that is either a member of that qualifying business's affiliated
410 group of corporations, is a related entity taxable as a
411 cooperative under subchapter T of the Internal Revenue Code, or,
412 if the qualifying business is an entity taxable as a cooperative
413 under subchapter T of the Internal Revenue Code, is related to
414 the qualifying business. Any entity related to the qualifying
415 business may continue to file as a member of a Florida-nexus
416 consolidated group pursuant to a prior election made under s.



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417 220.131(1), Florida Statutes (1985), even if the parent of the
418 group changes due to a direct or indirect acquisition of the
419 former common parent of the group. Any credit can be used by any
420 of the affiliated companies or related entities referenced in
421 this paragraph to the same extent as it could have been used by
422 the qualifying business. However, any such use shall not operate
423 to increase the amount of the credit or extend the period within
424 which the credit must be used.

425 (7)~~(4)~~ Before ~~Prior to~~ receiving tax credits pursuant to
426 this section, a qualifying business must achieve and maintain
427 the minimum employment goals beginning with the commencement of
428 operations or the completion date of ~~a~~ a qualifying project and
429 continuing each year thereafter during which tax credits are
430 available pursuant to this section.

431 (8)~~(5)~~ Applications must ~~shall~~ be reviewed and certified
432 pursuant to s. 288.061. The Department of Economic Opportunity,
433 upon a recommendation by Enterprise Florida, Inc., shall first
434 certify a business as eligible to receive tax credits pursuant
435 to this section before ~~prior to~~ the commencement of operations
436 or the completion date of a qualifying project, and such
437 certification must ~~shall~~ be transmitted to the Department of
438 Revenue. Upon receipt of the certification, the Department of
439 Revenue shall enter into a written agreement with the qualifying
440 business specifying, at a minimum, the method by which income
441 generated by or arising out of the qualifying project will be
442 determined.

443 (9)~~(6)~~ The Department of Economic Opportunity, in
444 consultation with Enterprise Florida, Inc., is authorized to
445 develop the necessary guidelines and application materials for



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446 the certification process described in subsection (8)~~(5)~~.

447 (10)~~(7)~~ It shall be the responsibility of the qualifying
448 business to affirmatively demonstrate to the satisfaction of the
449 Department of Revenue that such business meets the job creation
450 and capital investment requirements of this section.

451 (11)~~(8)~~ The Department of Revenue may specify by rule the
452 methods by which a project's pro forma annual taxable income is
453 determined.

454 Section 2. Paragraph (d) of subsection (2) of section
455 288.1089, Florida Statutes, is amended to read:

456 288.1089 Innovation Incentive Program.—

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

458 (d) "Cumulative investment" means cumulative capital
459 investment and all eligible capital costs, as defined in s.
460 220.191, Florida Statutes (2020).

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

462

463 ===== T I T L E A M E N D M E N T =====

464 And the title is amended as follows:

465 Delete everything before the enacting clause
466 and insert:

467 A bill to be entitled
468 An act relating to the capital investment tax credit;
469 amending s. 220.191, F.S.; defining and redefining
470 terms; providing a credit against the corporate income
471 tax, the sales and use tax, or a stated combination of
472 the two taxes to a qualifying business that
473 establishes a qualifying project for the creation of
474 intellectual property which meets certain capital



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475 investment criteria; specifying the calculation of the
476 credit; authorizing use of the credit or portions of
477 the credit by the business members of its affiliated
478 group of corporations; authorizing the transfer of
479 credits, subject to certain conditions; requiring
480 credits to be granted as costs are certified by the
481 Department of Economic Opportunity; providing for
482 revocation and rescission of credits under certain
483 circumstances; providing a credit against the
484 corporate income tax, the sales and use tax, or a
485 stated combination of the two taxes to a qualifying
486 business that incurs eligible production
487 infrastructure costs that exceed a certain threshold;
488 specifying the calculation of the credit; prohibiting
489 the carryover of credits; authorizing use of unused
490 credits after a certain time period; providing a
491 credit against the corporate income tax, the sales and
492 use tax, or a stated combination of the two taxes to a
493 qualifying business that establishes a strategic
494 priority project that meets certain capital investment
495 criteria; specifying the calculation of the credit;
496 authorizing the carryover or transfer of credits,
497 subject to certain conditions; conforming provisions
498 to changes made by the act; amending s. 288.1089,
499 F.S.; revising the definition of the term "cumulative
500 investment"; providing an effective date.