The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1390

INTRODUCER: Commerce and Tourism Committee and Senator Gruters

SUBJECT: Capital Investment Tax Credit

DATE: March 30, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	**Fav/CS**
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1390 amends s. 220.191, F.S., to allow eligible projects that create or develop intellectual property to qualify for the Capital Investment Tax Credit.

Under the bill, a project that creates intellectual property is eligible for a tax credit equal to 20 percent of the project's eligible capital costs if the cumulative intellectual property investment of one or more projects is in aggregate of at least $50 million per year for 3 years, or an aggregate of $150 million over a 3-year period. A business with a cumulative intellectual property investment of an aggregate of $500 million over a 3-year period is eligible for a tax credit equal to 26 percent of the wages or direct production costs generated by the project. These credits may be used by the business or any corporation affiliated with the business. The bill provides conditions for the revocation and repayment of such tax credits.

A qualifying business that establishes a certain intellectual property project is eligible for a tax credit equal to up to 100 percent of its eligible production infrastructure costs if such costs exceed $100 million during a period of up to 10 years.

A qualifying business that establishes a "strategic priority project," an intellectual property project that demonstrates the potential for measurable value to the state, is eligible for a tax credit equal to 20 percent of its eligible capital costs if the costs are at least $75 million.

Tax credits may be applied to the qualifying business's corporate income tax liability, sales and use tax liability, or both.

The bill takes effect July 1, 2021.

II. Present Situation:

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC), established by the Legislature in 1998 to attract and grow capital-intensive industries in the state, provides an annual tax credit against corporate income tax or insurance premium tax liabilities generated by a qualifying project.[1]

Eligible Projects

Section 220.191(1)(g), F.S., defines the projects that are eligible for the program. They include:

- A new or expanded facility in a designated high-impact sector[2] that creates at least 100 new jobs. High-impact sector projects fall into one of three tiers, depending on the project's cumulative capital investment;
- A new or expanded facility in a target industry[3] that creates or retains 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 result in a cumulative capital investment of at least $100 million; and
- A new or expanded headquarters facility located in an enterprise zone and brownfield area that creates at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage and makes a cumulative capital investment in this state of at least $250 million.

Tax Credits Allowable

Qualified businesses are generally allowed an annual tax credit equal to 5 percent of a project's eligible capital costs generated by a project for up to 20 years.[4]

The annual tax credit limit for the three tiers of high-impact sector projects may not exceed the following percentages of the annual corporate income or insurance premium tax liability generated by or arising out of a qualifying project:[5]

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[1] Chapter 98-61, Law of Fla.

[2] The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, silicon technology, transportation equipment manufacturing, and corporate headquarters. *See* Department of Economic Opportunity, *2020 Annual Incentives Report*, 52, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 30, 2021).

[3] The current qualified target industries are aviation and aerospace; corporate headquarters; clean technology; defense and homeland security; financial and professional services; global logistics and trade; information technology; life sciences; manufacturing; and research and development. *See* Department of Economic Opportunity, *2020 Annual Incentives Report*, 12, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 30, 2021).

[4] Section 220.191(2)(a), F.S. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations.

[5] *Id.*

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

Target industry projects are eligible for an annual credit equal to one-half of the increase in the tax liability arising out of the project without regard to the amount of eligible capital costs, but may only receive a tax credit for 5 years.[6]

Headquarters facility projects may take an annual credit equal to the lessor of 5 percent of the project's eligible capital costs or $15 million. Tax credits for headquarters facility projects may only be applied against corporate income tax liability.[7]

Tax Credit Carryover and Transfer

Only recipients of a tax credit associated with a corporate headquarters facility project or certain high-impact sector projects are permitted to carry forward unused credit. If the full tax credit associated with a corporate headquarters facility is not used in any one year, the taxpayer can carry the unused credit forward to any year within the normal 20-year window.[8] A high-impact sector business that meets the $100 million capital investment threshold that was unable to fully use its available credit between years 1 and 20 is permitted to use that credit in years 21 through 30 following the commencement of operations.[9]

Generally, tax credits may not be transferred or sold to other businesses. However, if a qualifying project establishes a new solar panel manufacturing facility that generates at least 400 jobs within 6 months of commencing operations and pays those jobs at least $50,000, it may transfer its annual tax credit to another business. A business receiving the transferred credits may only use the credits in the year received.[10]

Issuance of Tax Credits

The Department of Economic Opportunity (DEO) must certify a business as eligible to receive a tax credit before the commencement of operations of a qualifying project. If a business is certified, the DEO will enter into an agreement with the business that specifies the planned commencement date of operations and the total amount of credit the business can expect if the project proceeds as planned. Agreements are drafted so that a qualified business's annual credit amount begins on the date of commencement of operations, beginning the 20-year credit period. If for some reason operations do not commence on time, the 20-year window is not adjusted.[11]

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[6] Section 220.191(1)(g)2., F.S.
[7] Section 220.191(3)(a), F.S.
[8] Section 220.191(3)(b), F.S.
[9] Section 220.191(2)(d), F.S.
[10] Section 220.191(2)(c), F.S.
[11] Florida Senate Committee on Finance and Tax, *Issue Brief 2012-2014: Review of the Capital Investment Tax Credit* (September 2011), *available at* https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-204ft.pdf (last visited Mar. 30, 2021).

Before receiving a tax credit each year, a qualifying business must achieve and maintain its minimum employment goals beginning with the commencement of operations of a qualifying project.[12]

Economic Impact

According to the DEO, there were 61 active CITC awardees with 32 reporting performance as of Fiscal Year 2019-2020; the DEO confirmed 2,887 jobs created and over $308 million in capital investment in said fiscal year.[13] Over $67 million in tax credits were approved to be claimed by qualified business in calendar year 2019.[14]

III. Effect of Proposed Changes:

The bill amends s. 220.191, F.S., to allow eligible projects that create or develop intellectual property to qualify for the Capital Investment Tax Credit; the bill establishes four different tax credits available to qualifying business that establish an intellectual property project.

Intellectual property includes copyrightable projects for the development of computer software or multimedia application and related expansion content; internal development platforms; cloud-based services; and data visualization and sound synchronization technologies for digital media.

Eligible capital costs for intellectual property projects are all expenses incurred in connection with the project from the start date of the project to the completion date of the project. Such expenses include, but are not limited to, wages, salaries, employer-paid taxes and benefits or other compensation paid to legal residents of Florida, as well as direct production costs paid to any business authorized to do business in Florida.

Direct production costs are direct expenses related to the preproduction, development or filming, and postproduction of intellectual property, not including the distribution and marketing of intellectual property.

Production infrastructure costs are the cost of property, including buildings, facilities, studios, soundstages, and equipment, intended to be used for the development of multiple intellectual property projects.

A project's cumulative intellectual property investment is the total investment made from the start date of the project to the completion date of the project in buildings or equipment; wages, salaries, employer-paid taxes and benefits; and direct production costs paid to any business, regardless of its location.

The annual average wage of an intellectual property project's jobs must be at least 150 percent of the average private sector wage in the area. A project that creates intellectual property may consist of one or more projects with different start and completion dates.

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[12] Section 220.191(4), F.S.

[13] Department of Economic Opportunity, *2020 Annual Incentives Report*, 8, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 30, 2021).

[14] *Id* at 49.

A business that establishes an intellectual property project is eligible for a tax credit equal to 20 percent of the project's eligible capital costs if the cumulative intellectual property investment of one or more is at least $50 million dollars per year for 3 consecutive years, or an aggregate of $150 million over a 3-year period. A business with a cumulative intellectual property investment of an aggregate of $500 million over a 3-year period is eligible for a tax credit equal to 26 percent of the wages or direct production costs generated by the project.

Such tax credits may be used in whole or in part by the qualifying business or any corporation associated with the business, or may be transferred to any third party within 1 year. Taxpayers electing to use the tax credit may do so in any one year or years beginning with the commencement of the project and ending the second year after the completion of the project; recipients of a transferred credit must use the credit in the year received.

If a business that receives a 20 percent tax credit fails to meet the required level of cumulative intellectual property investment, any previously issued tax credit will be revoked and rescinded. If a business that receives a 26 percent tax credit fails to meet the investment requirements, any tax credit amount that exceeds 20 percent will be revoked and rescinded. A business that uses or transfers a credit prior to its revocation and rescission must repay the credit with interest, pursuant to s. 213.235, F.S., and a 10 percent penalty.

A qualifying business that establishes an intellectual property project is eligible for a tax credit equal to up to 100 percent of its eligible production infrastructure costs if such costs exceed $100 million during a period of up to 10 years. Tax credits may not exceed 100 percent of the business's corporate income and sales and use tax liability. A business may not carry its tax credit forward or backward; however, if a business does not have sufficient tax liability to fully use its credit in any given year, the business may use any unused amounts between the 11th and 20th years following the project's commencement of operations.

A qualifying business that establishes a "strategic priority project," an intellectual property project that demonstrates the potential for measurable value to the state, is eligible for a tax credit equal to 20 percent of the eligible capital costs if the capital costs are at least $75 million. There is no annual average wage requirement for a strategic priority project's jobs.

Upon being granted a tax credit for a strategic priority project, taxpayers must elect to either use or transfer the tax credit. Taxpayers electing to use the tax credit may do so in any one year or years beginning with the commencement of the project and ending the second year after the completion of the project. Taxpayers electing to transfer the credit must do so within 1 year; recipients must use the credit in the year received.

Tax credits issued to businesses that establish an intellectual property project or a strategic priority project may be applied to the qualifying business's corporate income tax liability, sales and use tax liability, or both.

The DEO must first certify a business as eligible to receive a tax credit under the CITC before the commencement of operations *or the completion date* of a qualifying project. Before receiving a tax credit each year, a qualifying business must achieve and maintain its minimum employment goals beginning with the commencement of operations *or the completion date* of a qualifying project.

The bill updates a cross-reference in s. 288.1089, F.S., referring to the definition of "cumulative investment" in s. 220.191, F.S.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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

B. Private Sector Impact:

Qualified businesses that establish qualified intellectual property projects will realize savings on corporate income tax and sales and use tax liabilities.

C. Government Sector Impact:

The Department of Revenue estimates that it will require $77,529 in nonrecurring funds to modify its software and databases in order to implement the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill makes several references to, but does not define, the start date and completion of an intellectual property project. For example, lines 69-71 amend the definition of "eligible capital costs" to include expenses incurred by an intellectual property project during the period from the start date of the project to the completion of the project. It is unclear if this period is intended to begin on the date the project planning begins or the date development work begins. Similarly, the completion of a project could be interpreted as the date the development of a project concludes or when the project is delivered to a client.

Eligible capital costs for intellectual property projects include wages, salaries, or other compensation paid to legal residents of Florida, but the bill does not specify whether the wages and salaries are limited to wages and salaries of the project's jobs.

Under the bill, a project that creates or develops intellectual property may consist of one or more projects with different start and completion dates. It is unclear if all the jobs created by a business with multiple projects must pay the annual average wage requirement of 150 percent of the average private sector wage in that area. Additionally, it is unclear if a qualifying business with multiple projects would be eligible to claim a tax credit for each qualifying project.

Lines 202-208 define a "strategic priority project" as an intellectual property project that demonstrates the potential for "measurable value" to the state, but it is unclear how and by whom "value to the state" will be measured.

The bill provides for a tax credit for intellectual property projects, production infrastructure projects, and strategic priority projects in ss. 220.191(3)(a), (4), and (5)(a), F.S. Existing language for CITC tax credits offered to other projects requires projects to meet certain job creation goals in order to receive an annual tax credit for a period of 20 years; the bill does not require intellectual property projects to create a certain number of jobs in order to receive a tax credit.

Lines 310-327 and 396-412 authorize businesses with qualified intellectual property projects or strategic priority projects that receive a tax credit to either use or transfer the tax credit. However, the bill does not specify how many transfers may be made each year or how many taxpayers the credits may be transferred to.

Lines 458-463 require a qualifying business to achieve and maintain the minimum employment goals beginning with the commencement of operations *or the completion date* of a qualifying project before receiving a tax credit. Lines 464-475 require the DEO to certify a business as eligible to receive a tax credit under the CITC before the commencement of operations *or the completion date* of a qualifying project. As written, it is unclear whether the option to use the completion date of a project for certification and to meet the minimum employment goals only applies to intellectual property projects. Section 220.191(2)(a), F.S., for example, provides that a tax credit shall be granted to a qualified business for a period of 20 years beginning with the commencement of operations of the project.

The Department of Revenue requests emergency rulemaking authority to implement the bill, and recommends the following language:

> "(1) The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purposes of administering this act.
> (2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.
> (3) This section shall take effect upon this act becoming law and expires July 1, 2022."

VIII. Statutes Affected:

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

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 29, 2021:
The committee substitute:
- Defines "cumulative intellectual property investment," "direct production costs," "employer-paid taxes and benefits," and "production infrastructure costs";
- Expands the investment requirements that a business that establishes an intellectual property project must meet in order to receive a 20 percent tax credit;
- Creates a tax credit equal to 26 percent of a project's wages and direct production costs for projects that meet certain investment requirements;
- Creates a tax credit equal to up to 100 percent of a project's production infrastructure costs for projects that meet certain production infrastructure cost requirements;
- Provides that certain tax credits may be used by a business or any corporation affiliated with the business; and
- Provides conditions for the revocation and repayment of certain tax credits.

B. Amendments:

None.