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 Finance and Tax

BILL: CS/CS/SB 1390

INTRODUCER: Finance and Tax Committee; Commerce and Tourism Committee; and Senator Gruters

SUBJECT: Capital Investment Tax Credit

DATE: April 14, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1390 amends s. 220.191, F.S., to expand an existing credit under the Capital Investment Tax Credit (CITC) to include certain projects for the development or creation of intellectual property, and to create three additional tax credits under the CITC relating to intellectual property projects.

Additionally, the bill creates a new state corporate income tax credit, s. 220.197, F.S., for certain taxpayers in the passenger car rental and leasing industry.

Capital Investment Tax Credit

The bill amends an existing credit under the CITC to include a project or projects that involve the development or creation of intellectual property and that meet a certain average wage requirement. For intellectual property projects only, the bill includes in the basis for calculating the credit certain wages, salaries, employer-paid taxes and benefits, or other compensation paid, as well as certain direct production costs.

The bill creates three new tax credits for qualifying businesses relating to intellectual property projects:

- A credit for projects where the qualifying business makes one of three levels of cumulative intellectual property investment ($50 million per year for 3 consecutive years, $150 million

over 3 years, or $500 million over 3 years). The credit is calculated as 20 to 26 percent of certain costs, depending on the investment level.

- A credit for projects that incur eligible production infrastructure costs, which are costs of property intended to be used for the development of multiple intellectual property projects, and which exceed $100 million during a period of up to 10 years.
- A credit for qualifying businesses establishing strategic priority projects, which are intellectual property projects that demonstrate the potential for measurable value to Florida, and for which the eligible capital costs are at least $75 million. The credit is calculated as 20 percent of the eligible capital costs generated by the project.

The three new credits are granted against the state corporate income tax, the state sales tax, or both. The bill provides requirements and limitations for the use and transfer of credits and other administrative provisions.

Creation of Tax Credit for Certain Passenger Car Rental and Leasing Businesses

The bill creates a new state corporate income tax credit, in the amount of $2 million and against a taxpayer's liability in its 2018 taxable year, if:

- The taxpayer's business classification is in passenger car rental and leasing;
- The taxpayer deferred gains on the sale of personal property assets for federal income purposes under s. 1031 of the Internal Revenue Code during its taxable year beginning on or after August 1, 2016, but before August 1, 2017; and
- The taxpayer's final tax liability for its taxable year beginning on or after August 1, 2017, and before August 1, 2018, before application of the new credit, is greater than $15 million and is at least 700 percent greater than its final tax liability for its taxable year beginning on or after August 1, 2016, and before August 1, 2017.

The credit applies retroactively to January 1, 2018.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. Staff estimates that the bill will significantly reduce state tax revenues.

The bill takes effect July 1, 2021.

II. Present Situation:

Select State Taxes

The following describes select Florida taxes, which the bill provides credits against.

Corporate Income Tax

Florida imposes a tax on the taxable income of certain corporations and financial institutions doing business in Florida.[1] The current rate is 4.458 percent[2] of a taxpayer's net income for its taxable year (the calendar or fiscal year or period upon which its net income is computed).[3]

The calculation of Florida corporate income tax starts with a corporation's federal taxable income.[4] Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll, and 50 percent on sales.[5] Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first $50,000 of net income is exempt, effective with taxable years beginning January 1, 2013.[6]

Corporate income tax net collections in Fiscal Year 2019-2020 were $1.7 billion.[7]

Insurance Premium Tax

Florida imposes on insurers a tax on insurance premiums. For the tax imposed by s. 624.509(1), F.S., tax is due on:

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

The general tax rate is 1.75 percent of gross receipts on account of life and health insurance policies covering Florida residents and on account of all other types of policies and contracts covering property, subjects, or risks located, resident, or to be performed in Florida, minus reinsurance and return premiums.[8] Annuity policies or contracts held in Florida are taxed at 1 percent of gross receipts, and direct written premiums for bail bonds are taxed at 1.75 percent, excluding any amounts retained by licensed bail bond agents or appointed managing general agents.[9] The insurance premium tax is collected by the DOR and distributed to the General Revenue Fund.[10] Total insurance premium tax collections in Fiscal Year 2019-2020 were $893.7 million.[11]

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[1] Chapter 220, F.S.

[2] The tax rate was adjusted downward to 4.458 percent pursuant to s. 220.1105, F.S., for taxable years beginning on or after January 1, 2019. Pursuant to s. 220.1105(5), F.S., the rate is scheduled to return to 5.5 percent for taxable years beginning on or after January 1, 2022.

[3] Sections 220.11(2) and 220.63(2), F.S.

[4] Section 220.12, F.S.

[5] Section 220.15, F.S.

[6] Section 220.14, F.S.

[7] Revenue Estimating Conference, *General Revenue Consensus Estimating Conference Comparison Report* (December 21, 2020), 27, *available at* http://www.edr.state.fl.us/Content/conferences/generalrevenue/grpackage.pdf (last visited April 11, 2021).

[8] Section 624.509(1), F.S.

[9] *Id.*

[10] Section 624.509(3), F.S.

[11] *Supra* note 7, at 34.

Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,[12] transient rentals,[13] and a limited number of services, and a 5.5 percent sales and use tax on commercial real estate rentals[14] (state sales tax). Chapter 212, F.S., authorizes the levy and collection of the state sales tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances.[15] Florida requires a dealer to add the tax to the sales price of the taxable good or service and collect it from the purchaser at the time of sale.[16] Total sales tax collections in Fiscal Year 2019-2020 were estimated at $29.3 billion.[17]

In addition to the state sales tax, county and municipal governments and school districts are authorized to levy certain local discretionary sales surtaxes (also referred to as local option sales taxes), subject to certain requirements and limitations.[18]

Capital Investment Tax Credit

The Capital Investment Tax Credit (CITC) was established by the Legislature in 1998 to attract and grow capital-intensive industries in the state.[19] The CITC is currently comprised of two tax credits–one that is available for three categories of qualifying projects and that provides a credit against the state corporate income tax or insurance premium tax[20], and a second that is limited to certain headquarters facilities and that provides a credit against the corporate income tax.[21] Both credits are granted to qualified businesses certified by the Department of Economic Opportunity (DEO).

Credit under s. 220.191(2), F.S.

The first credit under the CITC is available for three categories of qualifying projects:[22]

- A new or expanded Florida facility that is in a designated high-impact sector[23] and that creates at least 100 new jobs in Florida (high-impact sector facilities).

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[12] Section 212.04, F.S.
[13] Section 212.03, F.S.
[14] Section 212.031, F.S.
[15] Section 212.02(14)(a), F.S.
[16] *See* ss. 212.07(2) and 212.06(3)(a), F.S.
[17] Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 159 (2020), *available at* http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited April 11, 2021).
[18] *See* ss. 212.054 and 212.055, F.S.
[19] Chapter 98-61, Laws of Fla.
[20] Section 220.191(2), F.S.
[21] Section 220.191(3), F.S.
[22] Section 220.191(1)(g) and (2)(a), F.S.
[23] The sectors currently designated as high impact are clean energy, life sciences, financial services, information technology, semi-conductors, transportation equipment manufacturing, advanced manufacturing, or a corporate headquarters facility. *See* Department of Economic Opportunity, *2020 Annual Incentives Report*, 53-54, *available at* https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited April 11, 2021).

- A new or expanded Florida facility that is in a qualified target industry[24] and that creates or retains at least 1,000 jobs in Florida, 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 (QTI facilities).
- A new or expanded Florida headquarters facility that is 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 that makes a cumulative capital investment in this state of at least $250 million (headquarters facilities).

The annual credit amount is 5 percent of the eligible capital costs generated by the qualifying project for up to 20 years,[25] beginning with the commencement of operations of the project.[26] The credit is granted against state corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project. Annual limits for the tax credit apply, depending on the type of qualifying project:

- For a QTI facility, annual credits against the state corporate income tax may not exceed 50 percent of the increased annual corporate income tax liability or the premium tax liability generated by, or arising out of, the qualifying project.[27]
- For high-impact sector facilities and headquarters facilities, the annual credit limits depend on the amount of cumulative capital investment resulting from the qualifying project:
  - For a qualifying project resulting in a cumulative capital investment of at least $100 million, the annual credit may not exceed 100 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.
  - For a qualifying project resulting in a cumulative capital investment of at least $50 million to under $100 million, the annual credit may not exceed 75 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.
  - For a qualifying project resulting in a cumulative capital investment of at least $25 million to under $50 million, the annual credit may not exceed 50 percent of the annual corporate income tax liability or premium tax liability generated by, or arising out of, the qualifying project.

A qualifying project with less than a $25 million cumulative capital investment is not eligible for the credit.

[24] 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 April 11, 2021).

[25] For qualified target industry facilities, the tax credit period is limited to 5 years. *See* s. 220.191(1)(g)2., F.S.

[26] 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. They do not include the cost of any property previously owned or leased by the qualifying business.

[27] Section 220.191(1)(g)2., F.S.

Generally, an unused credit may not be carried backward or forward to apply to tax liabilities in previous or subsequent years, respectively.[28] However, a business with a qualifying project resulting in a cumulative capital investment of at least $100 million may apply unused credits beginning with the 21st year after the commencement of the project's operations and ending the 30th year after the commencement of the project's operations.[29]

The credit may not be assigned or transferred, except by a qualifying business establishing a qualifying project that includes locating a new solar panel manufacturing facility in Florida and that generates a minimum of 400 jobs within 6 months after commencement of operations, with an average salary of at least $50,000. Such business may assign or transfer its annual credit or any portion thereof to any other business, subject to certain limitations and conditions.[30]

Credit under s. 220.191(3), F.S.

The second credit under the CITC is limited to qualifying businesses that establish a headquarters facility qualifying project. The annual credit amount is the lesser of $15 million or 5 percent of the eligible capital costs made in connection with a qualifying project for up to 20 years, beginning with the commencement of the project.[31] The credit is granted against the state corporate income tax liability of the qualifying business. The total tax credit is limited to 100 percent of the qualifying project's eligible capital costs.

Unused credits may be carried forward for up to 20 years after the commencement of the project's operations.[32] The credit may be used by certain related entities of the qualifying business.[33]

Certification of Qualifying Businesses and Issuance of Tax Credits

The DEO must certify a business as eligible to receive either of the CITC tax credits 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.[34] 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.[35] Qualifying businesses must also affirmatively demonstrate to the Department of Revenue (DOR) that they meet job creation and capital investment requirements.[36]

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[28] Section 220.191(2)(a), F.S.
[29] Section 220.191(2)(d), F.S.
[30] Section 220.191(2)(c), F.S.
[31] Section 220.191(3)(a), F.S.
[32] Section 220.191(3)(b), F.S.
[33] Section 220.191(3)(c), F.S.
[34] 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 April 11, 2021). *See* also s. 220.191(5), F.S.
[35] Section 220.191(4), F.S.
[36] Section 220.191(7), F.S.

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.[37] Over $67 million in tax credits were approved to be claimed by qualified business in calendar year 2019.[38]

Section 1031 of the Internal Revenue Code, Federal Changes, and Florida Impacts

Generally, federal income tax is due on the gain from the sale of business or investment property. Section 1031 of the Internal Revenue Code (IRC) provides an exception and allows a taxpayer to postpone paying tax on the gain if it reinvests the proceeds as part of a qualifying "like-kind exchange," i.e., the property is exchanged solely for other business or investment property of like kind.[39] For exchanges that were completed before 2018, like-kind exchanges could involve personal property or real property.

Thus, a business that was regularly exchanging old business equipment for new business equipment might avoid having to recognize any relevant income for federal tax purposes by exchanging the old equipment for new equipment, rather than selling the old equipment and buying new equipment in separate transactions. For example, this type of transaction could be used by a rental car company that regularly updates its rental fleet.[40] A company using like-kind exchanges and not recognizing income for federal tax purposes would also not recognize that income for Florida income tax purposes, because Florida net income is based on federal taxable income and Florida follows the federal treatment of the issue.

The Tax Cuts and Jobs Act of 2017 (TCJA) amended s. 1031 of the IRC to limit like-kind exchanges to real property only, for exchanges after 2017.[41] Therefore, a taxpayer that previously used like-kind exchanges for personal property was required to report any gain or loss as part of its income. The effect of losing this ability to use like-kind exchanges may be mitigated at the federal level because the TCJA provides a 100-percent bonus depreciation deduction on the new equipment purchase.[42] Essentially, the bonus depreciation deduction allows the taxpayer to expense (or deduct as a current rather than a capital expense) up to the entire cost of the property in the taxable year it is placed in service.

However, Florida's treatment of bonus depreciation requires a taxpayer to add back to its taxable income the full amount deducted for bonus depreciation for federal purposes and then apply a

[37] 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 April 11, 2021).
[38] *Id* at 49.
[39] 26 U.S.C. s. 1031; Internal Revenue Service, *Like-Kind Exchanges Under IRC Section 1031*, FS-2008-18, Feb. 2008, *available at* https://www.irs.gov/pub/irs-news/fs-08-18.pdf (last visited April 14, 2021).
[40] Gerald Auten, David Joulfaian, and Romen Mookerjee, *Recent Trends in Like-kind Exchanges*, 1 (August 1, 2017), *available at* https://ssrn.com/abstract=3049029 or http://dx.doi.org/10.2139/ssrn.3049029. "Indeed, the most common like-kind exchanges are now those involving the 'trade-in' of vehicles and replacement vehicles and vehicle fleets, e.g., by rental car companies, farmers, and businesses."
[41] Pub. L. No. 115-97, s. 13303 (2017).
[42] 26 U.S.C. s. 168(k).

straight-line seven-year subtraction schedule beginning with the year of the addback.[43] The schedule applies notwithstanding any sale or disposition of the property that is the subject of the adjustments and regardless of whether such property remains in service in the hands of the taxpayer.[44] For Florida tax purposes, a taxpayer that used like-kind exchanges for personal property before 2018 is now required to report their gains as income and then "spread" the bonus depreciation amount over seven years.

III. Effect of Proposed Changes:

Capital Investment Tax Credit

The bill amends s. 220.191, F.S., to expand the credit under s. 220.191(2), F.S., to add certain projects involving the development or creation of intellectual property to the list of eligible categories, and to create three new tax credits under the CITC.

Expansion of the Credit under s. 220.191(2), F.S.

The bill expands the credit by adding to the categories of qualifying projects a project involving the development or creation of intellectual property, which may consist of one or more projects with different start and completion dates, provided that the project's jobs in Florida pay at least 150 percent of the annual average private sector wage in the area (intellectual property project).

The bill defines "intellectual property" as a copyrightable project for which the eligible capital costs are principally paid directly or indirectly for the development or creation of the project. The bill provides examples of "copyrightable projects," including:

- A copyrightable software or multimedia application and its expansion content made available to an end user, including technological activities relating to updating the project.
- Internal development platforms that support the production of multiple applications.
- Cloud-based services that support the functionality of multiple applications.
- Digital visualization and sound synchronization technologies for digital media.
- Copyrightable projects that are necessary for the production of scripted content intended for theatrical, streaming, or television distribution.

The bill also expands the definition of "eligible capital costs" to include:

- Expenses incurred by a qualifying business in connection with a qualifying project for the development or creation of intellectual property during the period from the start date to the completion of the project; and
- For intellectual property development, the wages, salaries, employer-paid taxes and benefits, or other compensation paid to legal residents of Florida, including amounts paid through a loan-out company, an employee leasing company, or a payroll service company; and the direct production costs paid to any business authorized to do business in Florida.

The bill defines "employer-paid taxes and benefits" to include social security tax; Medicare tax; federal unemployment and state reemployment assistance taxes; workers' compensation premiums and benefits; vacation pay, holiday pay, and sick pay; payroll-handling fees; mileage;

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[43] Section 220.13(1)(e)1., F.S.

[44] *Id.*

car allowances; housing allowances; and per diem. "Direct production costs" is defined to mean direct expenses related to the preproduction, development or filming, and postproduction of intellectual property, but does not include the distribution and marketing of intellectual property.

A qualifying business establishing an intellectual property project would be eligible for a corporate income tax credit or an insurance premium tax credit for 5 percent of the above expenses.

The current requirements, limitations, and other provisions of the s. 220.191(2), F.S., credit, as discussed above, apply to intellectual property projects. The applicable annual credit limits for intellectual property projects is the same as for high-impact sector facilities and headquarters facilities.

Creation of Credit for Intellectual Property Investment (new s. 220.191(3), F.S.)

The bill creates a tax credit for qualifying businesses establishing intellectual property projects that meet certain levels of cumulative intellectual property investment (IP investment credit).

The bill defines "cumulative intellectual property investment" as the total investment for the development of intellectual property during the period from the start date of the project to the completion of the project in buildings or equipment; in wages, salaries, or other compensation paid to employees, including amounts paid through an employee leasing company and any employer-paid taxes and benefits; and in the direct production costs paid to any business, regardless of location.

Unlike existing CITC credits, the IP investment credit is granted against the state corporate income tax, the state sales tax, or a stated combination of the two.

To qualify for the credit, a qualifying business must elect to make a cumulative intellectual property investment for one or more projects of at least:
- Fifty million dollars per year for 3 consecutive years (1.a.);
- An aggregate of $150 million over a 3-year period (1.b.); or
- An aggregate of $500 million over a 3-year period (1.c.).

For the 1.a. and 1.b. options, the tax credit is calculated as 20 percent of the eligible capital costs generated by the qualifying project. As stated above, the definition of "eligible capital costs" is expanded under the bill to include wages, salaries, employer-paid taxes and benefits, or other compensation paid to legal residents of Florida and certain direct production costs. For the 1.c. option, the tax credit is calculated as 26 percent of the eligible wages, salaries, employer-paid taxes and benefits, or other compensation paid to any individual, including amounts paid through an employee leasing company, and the direct production costs paid to any business, regardless of the location, generated by the qualifying project.

The credit may be used by an affiliated corporation of the qualifying business and may be transferred to any third party. Certain requirements and limitations apply to the transfer of credits and the use of transferred credits. A qualifying business that elects to use the credit may use it in any year or years beginning with the project's commencement and ending the second year after the project's completion.

The DEO must grant tax credits as it certifies costs. In any year in which the qualifying business fails to meet the required cumulative intellectual property investment level, any previously granted IP investment credit must be revoked and rescinded for the 1.a. and 1.b. options, and for the 1.c. option, the portion of any previously granted IP investment credit that exceeds 20 percent of the eligible wages, salaries, employer-paid taxes and benefits, or other compensation paid to any individual, including amounts paid through an employee leasing company, and the direct production costs paid to any business, regardless of the location, which were generated by the qualifying project, must be revoked and rescinded. A qualified business is subject to a 10 percent penalty and interest, along with repayment of the credit, if a revoked and rescinded credit has already been claimed on a return or transferred to another business.

Creation of Credit for Production Infrastructure Costs (new s. 220.191(4), F.S.)

The bill creates a tax credit for a qualifying business establishing a qualifying project that incurs eligible production infrastructure costs exceeding $100 million during a period of up to 10 years, beginning with the commencement of the project's operations (production infrastructure credit).

The bill defines "production infrastructure costs" as the costs of property intended to be used for the development of multiple intellectual property projects, with examples of investment property being buildings, facilities, studios, soundstages, and any ancillary machinery and equipment used for the development of intellectual property, regardless of whether the property is a fixture or is otherwise affixed to or incorporated into real property. The term does not include direct production costs related to a specific intellectual property project.

The credit is granted against the state corporate income tax, the state sales tax, or a stated combination of the two. The bill does not specify how the credit is calculated, but specifies that the sum of all production infrastructure credits is limited to 100 percent of the eligible production infrastructure costs of the project.

Unused credit may not be carried forward or backward, except that unused amounts may be used in any given year or years beginning with the 11th year after the project's commencement of operations and ending the 20th year after the project's commencement of operations. The annual tax credit is limited to 100 percent of the sum of the qualifying business' annual corporate income tax liability and sales and use tax liability.

Creation of Credit for Strategic Priority Projects (new s. 220.191(5), F.S.)

The bill creates a tax credit for a qualifying business establishing a strategic priority project for which the eligible capital costs are at least $75 million (strategic priority project credit).

A "strategic priority project" is an intellectual property project that "demonstrates the potential for measurable value to this state, including, but not limited to, marketing this state as a visitor destination, making improvements to infrastructure supporting future industry use, or providing measurable technology skills development for residents of this state." The bill amends the definition of "qualifying business" to include a business that establishes a strategic priority project in Florida and that is certified by the DEO.

The credit is granted against the state corporate income tax, the state sales tax, or a stated combination of the two. The tax credit is calculated as 20 percent of the eligible capital costs generated by the qualifying project.

A qualifying business receiving the strategic priority project credit must elect to either use or transfer the credit at the time it is granted. Certain requirements and limitations apply to the transfer of credits and the use of transferred credits. A qualifying business that elects to use the credit may use the credit in any one year or years, beginning with the project's commencement and ending the second year after the project's completion.

Other Changes

The existing credit under s. 220.191(3), F.S., is maintained, but the subsection is redesignated to subsection (6).

The bill amends the requirement for qualifying businesses receiving a CITC to achieve and maintain minimum employment goals by adding the qualifying project's completion date as an alternative starting date of such requirement. The bill amends the requirement for the DEO to certify a business as eligible for a CITC by adding the qualifying project's completion date as an alternative deadline for such requirement.

The bill amends the definition of "cumulative investment" under the Innovation Incentive Program, s. 288.1089, F.S., to specify that the expanded definition of "eligible capital costs" for CITC made by the bill does not apply to that program, which incorporates the definition of "eligible capital costs" by reference.

Creation of Tax Credit for Certain Passenger Car Rental and Leasing Businesses

The bill creates a new state corporate income tax credit, in the amount of $2 million and against a taxpayer's liability in its 2018 taxable year, if:

- The taxpayer's business classification under the North American Industry Classification System is in passenger car rental and leasing (code 53211);
- The taxpayer deferred gains on the sale of personal property assets for federal income purposes under s. 1031 of the IRC during its taxable year beginning on or after August 1, 2016, but before August 1, 2017; and
- The taxpayer's final tax liability for its taxable year beginning on or after August 1, 2017, and before August 1, 2018, before application of the new credit, is greater than $15 million and is at least 700 percent greater than its final tax liability for its taxable year beginning on or after August 1, 2016, and before August 1, 2017.

The bill defines the term "NAICS." The credit applies retroactively to January 1, 2018.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill. Staff estimates that the bill will reduce state revenues by a significant but indeterminate amount.

B. Private Sector Impact:

A qualified business establishing a qualifying project involving the development or creation of intellectual property or a strategic priority project, or a taxpayer transferred the credit by such business, may benefit from substantial reductions in state corporate income tax, insurance premium tax, or state sales tax liabilities through the credits amended and created by the bill.

A corporate income taxpayer that is in the passenger car rental and leasing industry and that meets the criteria of the bill may receive a refund of $2 million from their 2018 taxable year tax liability.

C. Government Sector Impact:

The DOR will incur administrative costs to implement the bill.[45]

VI. Technical Deficiencies:

- It appears that "of operations" should be added after "commencement" on lines 336 and 421, in reference to the defined term on lines 49-51.

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 75-77 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 208-214 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 308-333 and 399-418 authorize businesses with qualified intellectual property projects or strategic priority projects that receive a tax credit to either use or transfer the tax credit.

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[45] The DOR estimated it required a $77,529 appropriation in Fiscal Year 2020-2021 to implement SB 1390. Florida Dep't of Revenue, Agency Analysis of Senate Bill 1390, 9-10, March 9, 2021, (on file with the Senate Committee on Finance and Tax). An updated estimate for CS/SB 1390 is not available at this time.

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 464-469 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 471-477 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.

- Lines 296-298 and 305-307 require that the IP investment credit be granted against the tax liability of the qualifying business, but these appear to contradict lines 308-315 and 316-333, which allow the credit to be used by an affiliated corporation of the qualifying business or be transferred to a third party, respectively.

- Under the IP investment credit (lines 283-366), the 1.a. ($50M/year for 3 consecutive years) and 1.b. ($150M over 3 years) cumulative intellectual property investment options are provided the same credit and are subject to the same limitations. It is unclear under what circumstances a qualifying business would elect the 1.a. option.

- Lines 342-356 provide if, in any year, a qualifying business fails to meet the required level of cumulative intellectual property investment for the IP investment credit for that year, any previously granted tax in such year must be revoked and rescinded. However, the investment requirements in the 1.b. and 1.c. options are for an aggregated amount over a 3-year period. It appears that “year” should be replaced with “period” in these lines.

- The production infrastructure credit (lines 367-388) does not specify how the credit is calculated.

- The production infrastructure credit is available for qualifying businesses establishing qualifying projects that incur a certain level of eligible production infrastructure costs (lines 372 and 376), but the bill does not specify criteria for the eligibility of production infrastructure costs.

- Lines 397-398 require the strategic priority project credit to be granted against the tax liability of the qualifying business, but these appear to contradict lines 399-418, which allow the credit to be transferred to another taxpayer.

- Section 220.02(8), F.S., provides the order in which credits may be applied against a corporation’s income tax liability. The bill does not specify the order in which the like-kind exchange credit created in the bill is to be applied.

- The DOR requests emergency rulemaking authority to implement the bill, and recommends the following language[46]:

  "(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.

The bill creates section 220.197 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 Finance and Tax on April 14, 2021:
The committee substitute adds a new state corporate income tax credit in the amount of $2 million for taxpayers that are in the passenger car rental and leasing industry and that meet certain criteria.

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.

[46] *Id.* at 8.