

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/SB 952

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Gruters

SUBJECT: Taxation

DATE: February 1, 2022 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-------------|
| 1. | Lloyd | Caldwell | MS | Fav/CS |
| 2. | Covin | Babin | FT | Pre-meeting |
| 3. | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 952 creates a Documentary Stamp Tax exemption for federal loans made in response to a state of emergency declared by executive order or proclamation of the Governor. The bill also increases the combined amount of tax credits which may be awarded to qualified businesses for research and development under s. 220.196, F.S., from \$9 million to \$50 million in any calendar year and provides that the increase first applies to the 2022 allocation of tax credits for expenses incurred in the 2021 calendar year.

The Revenue Estimating Conference estimates that the portion of the bill that grants the exemption from Documentary Stamp Tax will reduce General Revenue Fund receipts by zero or an indeterminate amount beginning in Fiscal Year 2022-2023. The portions of the bill that increase the credits allowed for Research and Development Expenditures will reduce General Revenue Fund receipts by \$41 million dollars in Fiscal Year 2022-2023 and by \$41 million in future years.

The bill takes effect upon becoming a law.

II. Present Situation:

Documentary Stamp Tax

Florida levies a Documentary Stamp Tax on certain documents, which is comprised of two taxes imposed on different bases at varying rates. The tax on deeds and other documents related to real property is 70 cents per \$100,¹ and the tax on bonds, debentures, certificates of indebtedness, promissory notes, nonnegotiable notes, and other written obligations to pay money is 35 cents per \$100.^{2,3} Documentary Stamp Taxes levied on promissory notes, nonnegotiable notes, and written obligations may not exceed \$2,450.⁴

Documentary Stamp Tax revenue accounted for approximately 3.3 percent of the state's General Revenue in Fiscal Year 2021-2022.⁵

Certain transactions are exempt from the Documentary Stamp Tax.⁶ Any loan made by the Small Business Emergency Bridge Loan Program in response to a disaster for which the Governor declares a state of emergency and any loan made by the Agricultural Economic Development Program pursuant to s. 570.82, F.S., are exempt from the Documentary Stamp Tax.⁷

Federal CARES Act

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020, in response to the COVID-19 pandemic. The CARES Act established, among other programs, the Paycheck Protection Program (PPP), which expanded the scope of both the businesses eligible for – and allowable uses of – loans made under section 7(a) of the Small Business Act.⁸ In addition to businesses which had already been eligible for Small Business Administration (SBA) loans, eligibility was expanded to businesses, nonprofits, veterans' organizations, and tribal businesses with fewer than 500 employees or that meet the size standards based on the business's NAICS code.⁹

COVID-19 State of Emergency

On March 9, 2020, Governor DeSantis issued Executive Order 20-52, which declared that a state of emergency existed in Florida due to the COVID-19 pandemic.¹⁰ On April 6, 2020, Governor DeSantis issued Executive Order 20-95, suspending the collection of Documentary Stamp Taxes

¹ Section 201.02(1)(a), F.S.

² Section 201.07, F.S.

³ Section 201.08(1)(a), F.S.

⁴ *Id.*

⁵ The Florida Legislature, Fiscal Analysis in Brief, 2021 Legislative Sessions Including Special Session A, 32 (July 2021), available at <http://edr.state.fl.us/Content/revenues/reports/fiscal-analysis-in-brief/FiscalAnalysisinBrief2021.pdf> (last visited Jan. 27, 2022).

⁶ Chapter 201, F.S.

⁷ Section 201.25, F.S.

⁸ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102, 134 Stat. 286 (2020).

⁹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102, 134 Stat. 288 (2020).

¹⁰ Governor Ron DeSantis, Fla. Exec. Order No. 20-52 (Mar. 9, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited Jan. 28, 2022).

levied on notes and other written obligations made under Title I of the federal CARES Act.¹¹ The suspension remained in effect until the expiration of Executive Order 20-52 on May 3, 2021, when the Governor issued Executive Orders 20-101 and 102 ending the state of emergency related to COVID-19.^{12,13}

Federal Tax Credit

The U.S. Research and Experimentation Tax Credit¹⁴ was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.¹⁵ In 2015, the Protecting Americans from Tax Hikes (PATH) Act permanently extended the Research and Experimentation Tax Credit (also known as the Research and Development Tax Credit or R&D) after 16 temporary extensions.¹⁶

In September 2021, the Internal Revenue Service (IRS) issued a *Memorandum* containing new guidance for taxpayers who apply for a refund claim for a research credit. This memorandum describes new requirements for increased documentation and more detailed information, including a declaration under the penalty of perjury verifying that the information and facts provided by the taxpayer are accurate.¹⁷ These changes remained in a grace period until January 10, 2022, and then transitioned to a one-year transition period during which the IRS provides taxpayers 30 days to perfect research credit claims for refund prior to a final determination by the IRS.¹⁸

To qualify as a valid research credit claim request, the taxpayer, at a minimum, must:

- Identify all the business components to which the I.R.C. § 41 research credit claim relates for that year.
- For each business component,
 - Identify all research activities performed;
 - Identify all individuals who performed each research activity; and
 - Identify all the information each individual sought to discover.
- Provide the total qualified employee wage expenses, total qualified supply expenses, and total qualified contract research expenses for the claim year.¹⁹

¹¹ Governor Ron DeSantis, Fla. Exec. Order No. 20-95 (Apr. 6, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-95.pdf (last visited Jan. 28, 2022).

¹² Section 252.36(2), F.S., provides that states of emergency may not continue for more than 60 days unless renewed by the Governor.

¹³ Governor Ron DeSantis, Fla. Exec. Orders No. 21-101 and 102 (May 3, 2021), available at <https://www.flgov.com/2021-executive-orders/> (last visited Jan. 28, 2022).

¹⁴ The U.S. Research and Experimentation Tax Credit is also known as the Research and Development Tax Credit, 26 U.S.C. § 41, Credit for increasing research activities.

¹⁵ Francisco Moris, *The U.S. Research and Experimentation Tax Credit in the 1990s* (July 2005), National Science Foundation Report, available at <https://wayback.archive-it.org/5902/20150627200929/http://www.nsf.gov/statistics/infbrief/nsf05316/> (last visited on Jan. 28, 2022).

¹⁶ U.S. Department of the Treasury, Office of Tax Analysis, *Research and Experimentation (R&E) Credit*, available at <https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/RE-Credit.pdf> (last visited Jan. 28, 2022).

¹⁷ Internal Revenue Service, Office of the Chief Counsel, *Memorandum Relating to I.R.C. § 41 Research Credit Refund Claims (September 17, 2021)*, available at <https://www.irs.gov/pub/irs-lafa/20214101f.pdf> (last visited Jan. 28, 2022).

¹⁸ *Id.*

¹⁹ *Id.* at 2.

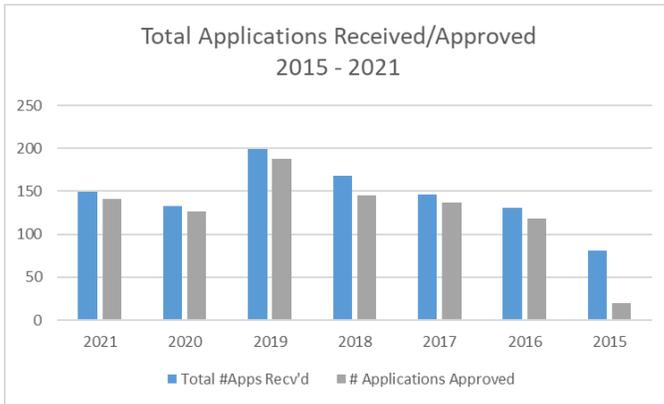


Figure 1: Data source: Florida Department of Revenue Annual Allocation Reports, available at: <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf>

Florida Tax Credit

Florida law authorizes a R&D tax credit against state corporate income taxes for certain businesses with qualified research expenses.²⁰ Under the federal definition, a qualified research expense includes in-house research expenses and contract research expenses, including any wages paid or incurred to employees, supplies used in the conduct of qualified research, and any amounts paid or incurred to another person for the right to use computers in the conduct of qualified

research.²¹

A business is eligible for the tax credit if it:

- Has qualified research expenses in Florida in the taxable year exceeding the base amount;²²
- Claims, and is allowed, a research credit for such qualified expenses under federal law for the same taxable year; and
- Is in a qualified target industry,²³ specifically manufacturing, life sciences, information technology, aviation and aerospace, homeland security and defense, cloud information technology, marine sciences, materials sciences, or nanotechnology.²⁴

The tax credit is 10 percent of the difference between the current tax year’s R&D expenditures in Florida and the average of R&D expenditures over the previous four tax years. However, if the business has existed for fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.²⁵ The state tax credit taken in any taxable year may not exceed 50 percent of the company’s remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied.²⁶ Any unused credits may be carried forward by the business for up to five years following the year in which the qualified research expenses were incurred.²⁷

Currently, the maximum amount of R&D credits that may be approved by the Department of Revenue (DOR) during any calendar year is \$9 million. Applications for the credit may be filed with the DOR on or after March 20 and before March 27 for qualified research expenses incurred

²⁰ Section 220.196. “Qualified research expenses” is defined as research expenses qualifying for the credit under federal law for in-house research expenses incurred in Florida or contract research expenses incurred in Florida.

²¹ See 26 U.S.C. §41(b). Credit for increasing qualified research; qualified research expenses.

²² “Base amount” means the average of the business’ qualified research expenses in Florida allowed under 26 U.S.C. s. 41 for the preceding 4 taxable years. Section 220.196(1)(a), F.S.

²³ The Department of Economic Opportunity (DEO) certifies whether a business is a qualified target industry business, pursuant to s. 220.196(2)(a)3., F.S.

²⁴ See s. 220.196(2)(a)3., F.S.

²⁵ See s. 220.196(2)(b), F.S.

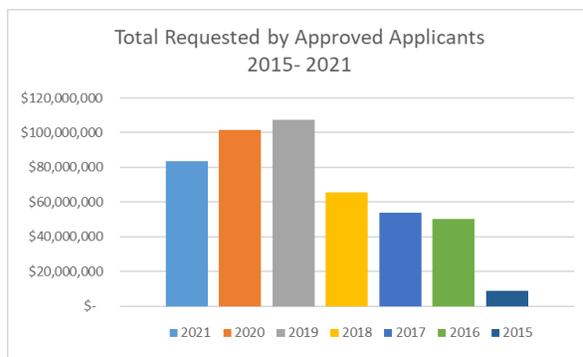
²⁶ See s. 220.196(2)(c), F.S.

²⁷ See s. 220.196(2)(d), F.S.

within the preceding calendar year. If the total amount of credits applied for exceeds the annual cap, credits are allocated on a prorated basis.²⁸ Eligible taxpayers are notified of the amount of credit allocated to them and the year for which the credit may be claimed. The chart above illustrates the number of applications received and approved by the DOR since program inception.²⁹

Since the program’s inception, funding requests have annually exceeded the amount of credit available to be allocated as the chart below illustrates. The statutory cap has been more than \$9 million twice: \$16.5 million during the 2017 calendar year and \$23 million in the first program year. Except for the initial year when funds were distributed on a first come, first served basis, all qualified applicants receive a pro-rated amount of their funding request if the application is approved.³⁰

Qualified Target Industry Businesses



The qualified target industry program is used to identify businesses that are eligible for tax refunds and which can create jobs with higher than average wages in industries that are expected to have a positive economic impact.³¹ A target industry business is defined in Florida law as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to criteria developed by DEO in consultation with Enterprise Florida, Inc. (EFI).³² The criteria

includes future growth, stability, high wage, market and resource independence, industrial base diversification and strengthening, and positive economic impact.³³ EFI lists the recognized qualified target industries as manufacturing, corporate headquarters, research and development, global logistics, cleantech, life sciences, financial and professional services, aviation and aerospace, homeland security and defense, infotech, emerging technologies, and other manufacturing.³⁴ In Fiscal Year 2019-2020, the DEO reported that 74 of its executed agreements were with businesses in qualified target industries. These agreements had a projected capital investment of approximately \$2.2 billion and an average contracted annual wage of \$65,176.³⁵

²⁸ See s. 220.196(2)(e), F.S.

²⁹ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax (2015-2021)*, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited Jan. 28, 2022).

³⁰ *Id.*

³¹ Florida Department of Economic Opportunity and Enterprise Florida, *2020 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 Jan. 28, 2022).

³² See s. 288.106(2)(n), F.S.

³³ See s. 288.106(2)(q), F.S.

³⁴ *Supra* note 31.

³⁵ Florida Department of Economic Opportunity and Enterprise Florida, *2020 Incentives Report*, p. 13, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Jan. 28, 2022).

III. Effect of Proposed Changes:

Section 1 amends s. 201.25, F.S., to exempt from the Documentary Stamp Tax, any federal loans relating to a state of emergency declared through either an executive order or a proclamation from the Governor pursuant to s. 252.36, F.S.

Section 2 amends s. 220.196, F.S., to increase the total amount of annual Research and Development Tax Credits available each calendar year from \$9 million to \$50 million and to remove obsolete language relating to the 2018 calendar year.

Section 3 provides that the amendment made to s. 220.196, F.S. in the bill first applies to the 2022 allocation of tax credits for expenses incurred in the 2021 calendar year.

Section 4 provides the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. This bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a shared state tax. Therefore, the provisions of Article VII, section 18 of the Florida 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 a state tax or fee. Therefore, the requirements of Art. VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference estimates that the portion of the bill that grants the exemption from Documentary Stamp Tax will reduce General Revenue Fund receipts by zero or an indeterminate amount beginning in Fiscal Year 2022-2023. The portions of the bill that increase the credits allowed for Research and Development Expenditures will reduce General Revenue Fund receipts by \$41 million dollars in Fiscal Year 2022-2023 and by \$41 million in future years.³⁶

B. Private Sector Impact:

For eligible taxpayers, the bill would provide tax savings.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 201.25 and 220.196, F.S.

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 Military and Veterans Affairs, Space, and Domestic Security on January 25, 2022:

The committee substitute changed the effective date of the bill from July 1, 2022, to upon becoming a law.

B. Amendments:

None.

³⁶ The Revenue Estimating Conference, *2022 Regular Session Revenue Estimating Conference: Impact Conference Results*, p. 273-274 (Jan. 28, 2022), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2022/_pdf/Impact0128.pdf (last visited Jan. 28, 2022).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
