

REVENUE ESTIMATING CONFERENCE

Tax: Corporate Income Tax and Sales and Use Tax

Issue: Capital Investment Tax Credit for Intellectual Property

Bill Number(s): CS/CS/SB1390

Entire Bill

Partial Bill: Section 2

Sponsor(s): Senator Gruters

Month/Year Impact Begins: July 1, 2021

Date of Analysis: April 15, 2021

Section 1: Narrative

a. Current Law: The Capital Investment Tax Credit (CITC) is a credit against corporate income or insurance premium tax, for up to 20 years of a qualifying project. Qualifying project includes one or more of the following criteria:

- New or expanding facility which creates at least 100 new jobs in the state and is in a high-impact sector (aviation, automotive, aerospace and silicon) (high impact waived for Disproportionally Affected Counties).
- New or expanded facility in a target industry that creates at least 1,000 jobs in the state or which 100 are new and pay at least 130 percent average private wage AND make a cumulative capital investment of at least \$100 million.
- New or expanded headquarters located in an enterprise zone and brownfield area and creates at least 1,500 jobs which pay at least 200 percent of average private wage AND make a cumulative capital investment of at least \$250 million.

Eligible capital costs (excludes cost of any property previously owned or leased by the qualifying business):

- Acquisition, construction, installation, equipping and development and development of a qualifying project including obligations for labor, contractors and builders.
- Cost of acquiring land or rights to land.
- Costs of architectural and engineering services.
- Costs of installation of fixtures and equipment; surveys, site test and inspections, and various site work.

Credits:

5% of eligible capital costs generated by qualifying project beginning at commencement, not exceeding 20 years against the business's corporate income tax (CIT) or insurance premium tax (IPT) liability, up to 100% of the eligible capital costs.

- 100% for qualifying project with cumulative capital investment of at least \$100 million.
- 75% for qualifying project with cumulative capital investment of at least \$50 million but less than \$100 million.
- 50% for qualifying project with cumulative capital investment of at least \$25 million but less than \$50 million.

Since the CITC program's inception, fifty-six projects have applied, been approved, and are active CITC projects. Of the 56 projects, 22 have confirmed capital investment of at least the \$25 million threshold, with a total confirmed capital investment over the life of the program of over \$4.1 billion. According to the FY 2019-20 report, there were 16 projects expected to have been able to utilize the credit within the review period based on potential job and capital investment milestones. Only twelve of the sixteen businesses had taken the credit since its inception. Of the over \$1.84 billion in potential credits that could have been taken by qualifying businesses to date, only \$269,074,090 has been taken, or 14.6 percent of the total potential. That is, there are still approximately \$1.57 billion in outstanding credits that could be claimed in future years

The Florida Entertainment Industry Financial Incentive Program began July 1, 2010, and expired June 30, 2016. The program offered tax credits for qualified expenditures related to film and digital media production (motion pictures, commercials, music videos, industrial or educational films, infomercials, documentary films, television series, and digital media projects) in Florida. The program was administered by the Office of Film and Entertainment (OFE). The program was allocated \$296 million in credits over its entire existence, which could be taken against sales and use tax or corporate income tax. Qualified expenditures included production expenditures for goods or services purchased or leased from Florida vendors and salary and wages paid to Florida residents (up to a maximum of \$400,000). Eligible production goods and services included:

- Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;
- Entertainment-related rental equipment, including cameras and grip or electrical equipment;
- Newly purchased computer software and hardware, up to \$300,000; and
- Meals, travel, and accommodations.

Up to 30% of the qualified purchases were eligible for a tax credit. The credits were allocated on first-come, first-serve basis.

b. Proposed Change: Allows projects that create intellectual property to qualify for the Capital Investment Tax Credit (CITC). "Intellectual property" means a copyrightable project for which the eligible capital costs are principally paid directly or indirectly for the creation of the project. The term "copyrightable project" includes, but is not limited to:

- A copyrightable software or multimedia application and its expansion content made available to an end user;
- Internal development platforms that support the production of multiple applications:

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- Cloud-based services that support the functionality of multiple applications; and
- Copyrightable projects which include digital visualization and sound synchronization technologies

For intellectual property projects, the eligible capital costs means all expenses incurred 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. It includes wages, salaries, employer-paid taxes and benefits or other compensation paid to legal residents of Florida, including amounts paid to a loan-out company, employee leasing company or a payroll service company and the direct productions costs paid to any business authorized to do business in Florida.

The annual average wage of project jobs must be at least 150 percent of the average private sector wage in the area. For intellectual property projects, the qualifying project may be made up of one or more projects with different start and completion dates.

Also creates a strategic priority project that means a qualifying project (creates intellectual property with an annual average wage of at least 150% of average private sector wage) that demonstrates the potential for value to the state such as marketing the state improved infrastructure and technology skills.

A credit against corporate income tax and/or sales and use tax will be granted when the cumulative capital investment for multiple projects total 1.) at least \$50 million per year over three years, 2.) \$150 million cumulatively over three years or 3.) the aggregate of \$500 million over a three year period.

The amount of the tax credit for 1 and 2 is equal to 20 percent of a qualified project's eligible capital costs. For 3, the tax credit must be granted in an amount equal to 26% of 1.) eligible wages, salaries, employer paid taxes and benefits or other compensation paid to any individual including through an employee leasing company and 2.) direct production costs paid to any business, regardless of location, generated by the qualifying project. Direct production costs means direct expenses related to the preproduction, development or filming and postproduction of intellectual property. Does not include marketing and distribution.

Creates an annual credit against sales and corporate income tax or a combination of the two that incurs production infrastructure costs in Florida that exceed \$100 million over, at most, ten years. The sum of all tax credits may not exceed 100% of eligible production infrastructure costs of the project. Any unused credits can be used after the 10th year after the commencement of operations of the project and ending the 20th year. Production infrastructure costs are costs of property intended to be used for the development of multiple intellectual property projects. Includes buildings, facilities, studios, soundstages, ancillary machinery and equipment used to develop intellectual property, affixed or not. Doesn't include direct productions costs related to a specific intellectual property project.

Creates a credit against sales and corporate or a combination of the two to a qualifying business that establishes a strategic priority project as defined in (1)(i) for which eligible capital costs are at least \$75 million. Tax credit must be equal to 20% of the eligible capital costs generated by the qualifying project. Must be transferred within a year and can only be taken in the year received.

Section 2: Description of Data and Sources

USASpending.com (Federal Contracts)

Average salary from BLS 2019

Film data from OFE for Film Tax Credit

Return on Investment for Select State Economic Development Incentive Programs 2020 Report EDR

Section 3: Methodology (Include Assumptions and Attach Details)

Bill expands the time frame that is used to calculate the cumulative capital investment and eligible capital costs in connection with all CITC projects, not just intellectual property projects. This expansion could lead to additional costs before the construction of the project commences or after the commencement of operations and could have a negative impact. Can projects that have started before the effective date qualify? Would theme park expansions qualify?

The Department of Revenue bill analysis addresses additional implementation issues:

- Unclear if all projects of "one or more" projects must pay 150% of the average wage.

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- If eligible costs of \$50 million for one or more projects per year for 3 years is for one whole qualifying project of all qualifying projects.
- Unclear how credit would be calculated and when it would be calculated for different multiple projects with different start dates
- If a business has more than one qualifying project, is business allowed to claim a credit for each qualifying project? Can a business with two qualifying projects claim 40%?
- How do you measure “value to the state” and who measures it?
- It’s unclear if the sum of the tax credits granted is equal to 20% of eligible capital costs and how long the credit can be granted.
- Section 220.191(1)(c)2.e. (Lines 73-80): Language does not specify if the wages and salaries included are limited to wages and salaries of the project jobs.

The analysis assumes that the new credits can be taken as such:

Type	Paragraph	Project Cost	Time-period	Years	Credit for Capital Costs
Intellectual Property Investment s. 220.191(3)	1(a)	\$50,000,000	per year (consecutive)	3	20%
	1(b)	\$150,000,000	aggregate	3	20%
	1(c)	\$500,000,000	aggregate	3	26%
Production Infrastructure Costs s. 220.191(4)	n/a	\$100,000,000	total cost from start	up to 10	annual credit up to 100%
Strategic Priority Projects s. 220.191(5)	(a)	\$75,000,000	n/a	n/a	20%

Granted Against: Corporate income, sales, or combination of the two

Section 4: Proposed Fiscal Impact

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2021-22			0	(\$1,187.4)		
2022-23			(\$296.8)	(\$1,187.4)		
2023-24			(\$593.7)	(\$1,187.4)		
2024-25			(\$1,187.4)	(\$1,187.4)		
2025-26			(\$1,187.4)	(\$1,187.4)		

List of affected Trust Funds: State Taxes under 212 and Corporate Income Tax

Section 5: Consensus Estimate (Adopted: 04/16/2021): The Conference adopted the proposed estimate with half granted against corporate income tax and half against sales and use tax.

	GR		Trust		Revenue Sharing		Local Half Cent	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2021-22	0.0	(1,119.3)	0.0	(Insignificant)	0.0	(17.7)	0.0	(50.4)
2022-23	(262.7)	(1,119.3)	(Insignificant)	(Insignificant)	(8.8)	(17.7)	(25.2)	(50.4)
2023-24	(559.6)	(1,119.3)	(Insignificant)	(Insignificant)	(8.8)	(17.7)	(25.2)	(50.4)
2024-25	(1,119.3)	(1,119.3)	(Insignificant)	(Insignificant)	(17.7)	(17.7)	(50.4)	(50.4)
2025-26	(1,119.3)	(1,119.3)	(Insignificant)	(Insignificant)	(17.7)	(17.7)	(50.4)	(50.4)

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	Local Option		Total Local		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2021-22	0.0	(89.9)	0.0	(158.0)	0.0	(1,277.3)
2022-23	(44.9)	(89.9)	(79.0)	(158.0)	(341.7)	(1,277.3)
2023-24	(44.9)	(89.9)	(79.0)	(158.0)	(638.6)	(1,277.3)
2024-25	(89.9)	(89.9)	(158.0)	(158.0)	(1,277.3)	(1,277.3)
2025-26	(89.9)	(89.9)	(158.0)	(158.0)	(1,277.3)	(1,277.3)

Federal Contracts Assumptions
Federal Contracts to Florida Businesses
Federal Fiscal Years 2016-17 through 2019-20
 Source: USASpending.gov

Assume all wages meet threshold.

	NAICS
Custom Computer Programming Services	541511
Motion Picture And Video Production	512110

Excluded equipment repair/maintenance support, Administrative, etc.

Total of Potential Total Value of Award of Contracts over \$150 million for three years

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Average</u>
Total Value of Contracts	\$ 2,368,127,379	\$ 4,525,285,541	\$ 11,335,257,986	\$ 682,988,810	\$ 4,727,914,929
Number of businesses	9	12	10	8	9.75
Average Value per Contract	\$ 263,125,264	\$ 377,107,128	\$ 1,133,525,799	\$ 85,373,601	\$ 484,914,352

Number of contracts that exceed \$500,000,000

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Average</u>
Total Value of Contracts	\$ 1,984,821,096	\$ 3,423,543,114	\$ 10,694,718,839	\$ 14,793,496	\$ 4,029,469,136
Number of businesses	2	5	4	3	3.50
Average Value per Contract	\$ 992,410,548	\$ 684,708,623	\$ 2,673,679,710	\$ 4,931,165	\$ 1,151,276,896

Number of contracts that are \$150,000,000 but less than \$500,000,000

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Average</u>
Total Value of Contracts	\$ 383,306,283	\$ 1,101,742,426	\$ 640,539,147	\$ 668,195,314	\$ 698,445,793
Number of businesses	7	7	6	5	6.25
Average Value per Contract	\$ 54,758,040	\$ 157,391,775	\$ 106,756,525	\$ 133,639,063	\$ 111,751,327

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Average</u>
Credits for \$500+ mil Contracts	\$ 516,053,485	\$ 890,121,210	\$ 2,780,626,898	\$ 3,846,309	\$ 1,047,661,975
Credits for \$150 mil to \$500 mil Contracts	\$ 76,661,257	\$ 220,348,485	\$ 128,107,829	\$ 133,639,063	\$ 139,689,159
Total Credits	\$ 592,714,741	\$ 1,110,469,695	\$ 2,908,734,727	\$ 137,485,372	\$ 1,187,351,134