



242202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2010	.	
	.	
	.	
	.	

The Committee on Finance and Tax (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 333 - 608
and insert:

(g) "New employee" means a Florida resident who begins full-time employment in Florida with a commercial space flight business after January 1, 2011, and who has not been previously employed on a full-time basis in this state within the preceding 12 months on a commercial space flight project, by a commercial space flight business seeking certification, or a successor business or affiliate. The term does not include a person who is a partner, majority stockholder, or owner of the business or a



242202

13 person who is employed in a temporary construction job or
14 principally involved with the construction of real property.

15 (h) "New job" means the full-time employment of a new
16 employee, as defined in paragraph (g), by a commercial space
17 flight business in activities occurring in this state directly
18 associated with a commercial space flight project. The term
19 shall be defined in a manner that is consistent with terms used
20 by the Agency for Workforce Innovation and the United States
21 Department of Labor for purposes of unemployment compensation
22 tax administration and employment estimation. To meet the
23 requirement for certification specified in subsection (5), a new
24 job must:

25 1. Have paid new employees at least 115 percent of the
26 statewide or countywide average annual private-sector wage for
27 the three taxable years immediately preceding filing an
28 application to be certified to take a credit under this section.

29 2. Have required that the new employee perform duties on a
30 regular full-time basis in this state for an average of at least
31 36 hours per week each month for the 3 taxable years immediately
32 preceding filing an application to be certified to take a credit
33 under this section.

34 3. Not be held by a person who has previously been included
35 as a new employee on any application for any credit authorized
36 by this section.

37 (i) "Created new jobs" means the number by which new jobs,
38 as defined in paragraph (h), on the application for
39 certification is greater than the total number of full-time jobs
40 located in this state as stated on an application for approval
41 to earn credits.



242202

42 (j) "Office" means the Office of Tourism, Trade, and
43 Economic Development within the Executive Office of the
44 Governor.

45 (k) "Outer space" means an altitude of at least 50 miles
46 above the Earth's surface.

47 (l) "Payload" means an object built or assembled in this
48 state that a commercial spaceflight business has prepared to
49 place in outer space by means of a launch vehicle or reentry
50 vehicle, including components, built or assembled in this state,
51 of the vehicle specifically designed or adapted for the object
52 and built or assembled in this state.

53 (m) "Reentry" means to return or attempt to return a
54 reentry vehicle and any payload from Earth orbit, or from outer
55 space, to a commercial launch zone in this state.

56 (n) "Reentry service" means an activity conducted in this
57 state related to the preparation of a reentry vehicle and any
58 payload for reentry and conduct of the reentry.

59 (o) "Spaceport territory" has the same meaning as provided
60 in s. 331.303.

61 (p) "Space vehicle" means any spacecraft, satellite, upper-
62 stage, or launch vehicle system.

63 (q) "Successful launch" means a launch from a commercial
64 launch zone in this state that successfully places a launch
65 vehicle or reentry vehicle and payload from Earth into a
66 suborbital trajectory, into Earth orbit in outer space, or
67 otherwise into outer space.

68 (r) "Taxpayer" has the same meaning as defined in s.
69 220.03.

70 (s) "Total nontransferable tax credits that may be approved



242202

71 for any state fiscal year” means, for any state fiscal year, the
72 sum of the tax credits approved for taxpayers whose taxable year
73 begins on or after January 1 of the calendar year preceding the
74 start of the applicable state fiscal.

75 (3) TAX CREDITS.—The following credits, having been
76 approved and certified pursuant to subsection (5), may be taken
77 on a final return for a taxable year beginning on or after
78 January 1, 2014:

79 (a) Nontransferable corporate income tax credit.—A
80 certified commercial spaceflight business may take an approved
81 tax credit not to exceed 50 percent of the business’s tax
82 liability under this chapter for the taxable year in which the
83 credit is taken. The maximum tax credit amount that may be
84 approved for a business for a taxable year is \$1 million. The
85 total nontransferable tax credits that may be approved for any
86 state fiscal year pursuant to this paragraph year may not exceed
87 \$10 million.

88 (b) Transferable net operating loss tax credit.—

89 1. A certified commercial spaceflight business may be
90 approved to transfer, in whole or in part, its Florida net
91 operating loss that would otherwise be available to be taken on
92 a return filed pursuant to this chapter. The maximum tax credit
93 amount that may be approved for transfer by a business for a
94 taxable year is \$2.5 million. The total transferable tax credits
95 that may be approved for any state fiscal year pursuant to this
96 paragraph may not exceed \$25 million. However, any outstanding
97 credit that is carried forward by a transferee may not be
98 considered in calculating this annual limit. To transfer the
99 transferable credit, the business must:



242202

100 a. Have been approved to transfer a transferrable tax
101 credit for the taxable year in which it is transferred;

102 b. Have incurred a qualifying net operating loss on
103 activity in this state directly associated with one or more
104 commercial space flight projects in any of its 3 previous
105 taxable years;

106 c. Not be 50 percent or more owned or controlled, directly
107 or indirectly, by another corporation that has demonstrated
108 positive net income in any of the 3 previous taxable years of
109 ongoing operations; and

110 d. Not be part of a consolidated group of affiliated
111 corporations, as filed for federal income tax purposes, which in
112 the aggregate in any of the 3 previous taxable years
113 demonstrated positive net income.

114 2. The amount that may be claimed and transferred by a
115 business is equal to:

116 a. One hundred percent of the net operating loss that would
117 otherwise be available to be claimed on a return filed pursuant
118 to this chapter during its first full year of operations in this
119 state.

120 b. One hundred percent of the net operating loss that would
121 otherwise be available to be claimed on a return filed pursuant
122 to this chapter during its second full year of operations in
123 this state.

124 c. One hundred percent of the net operating loss that would
125 otherwise be available to be claimed on a return filed pursuant
126 to this chapter during its third full year of operations in this
127 state.

128 (c) Machinery and equipment credit.—A certified commercial



242202

129 spaceflight business may take an approved tax credit if it
130 invests at least \$500,000 in machinery and equipment over a
131 period not to exceed three taxable years if such machinery has
132 been purchased in this state and exclusively used in this state
133 for one or more commercial spaceflight projects in this state.

134 1. An investment in machinery and equipment may be claimed
135 only one time by a commercial spaceflight business for the
136 corporate income tax credit authorized by this paragraph.
137 However, the purchase of the machinery and equipment may also be
138 exempt from the sales and use tax under the exemption in s.
139 212.08(5)(b).

140 2. The amount of the credit is equal to 7.5 percent of the
141 sales price of the machinery and equipment.

142 3. The business may take a credit for no more than 50
143 percent of its corporate income tax liability in the taxable
144 year in which the credit is taken, up to a maximum of \$5
145 million. If credit granted under this paragraph is not fully
146 used in any one taxable year because of insufficient tax
147 liability, the unused amount may be carried forward for up to 5
148 taxable years.

149 4. The total credits that may be approved for any state
150 fiscal year pursuant to this paragraph may not exceed \$20
151 million.

152 (4) ADMINISTRATION.—

153 (a) Unless transferred pursuant to this section, credits
154 awarded under this section may be granted only against the
155 corporate income tax liability generated by or arising out of a
156 commercial spaceflight project in this state, as documented in
157 the certified commercial spaceflight business's annual audit



242202

158 prepared by a certified public accountant licensed to do
159 business in this state and as verified by the office.

160 (b) A certified spaceflight business may not file a
161 consolidated return for the purposes of claiming the tax
162 incentives described in paragraphs (3) (a) and (c).

163 (c) It is the responsibility of the certified commercial
164 spaceflight business or transferee to demonstrate to the
165 satisfaction of the office and the department that it is
166 eligible to take the credits approved under this section.

167 (5) APPLICATION AND CERTIFICATION.—

168 (a) To claim a tax credit pursuant to this section, a
169 commercial spaceflight business must first submit an application
170 to the office for approval to earn credits. The application must
171 be filed by the date established by the office. The application
172 must include such information as is required by the office. In
173 addition to any other information that the office may require,
174 any corporation wishing to be approved for a tax credit
175 available under this section must provide a complete description
176 of the activity in this state that demonstrates to the office
177 the applicant's likelihood to be certified to take or transfer a
178 credit. The applicant must also provide a description of the
179 total amount and type of credits for which approval is sought.
180 The office is authorized to consult with Space Florida regarding
181 the qualifications of any applicant. The applicant shall provide
182 an affidavit certifying that all information contained in the
183 application is true and correct. Approval of the credits under
184 this section shall otherwise be accomplished on a first-come,
185 first-served basis, based upon the date complete applications
186 are received by the office. A taxpayer may not submit more than



242202

187 one complete application during a particular state fiscal year.
188 Incomplete placeholder applications will not be accepted and
189 will not secure a place in the first-come, first-served
190 application line. The office has 60 days after the receipt of an
191 application within which to issue a notice of intent to deny or
192 approve an application for credits. If a business does not
193 receive approval for a tax credit due to the exhaustion of the
194 annual tax credit authorizations, the business may reapply in
195 the following year for those credits that then may be available
196 to the business and the business shall have priority over other
197 applicants for an approved credit. The office shall make a
198 determination on the eligibility of an applicant for the credits
199 sought and shall approve the credits that the applicant may
200 later be certified to take. The office is responsible for
201 ensuring that the corporate income tax credits approved in each
202 fiscal year to all applicants do not exceed the limits provided
203 for in this section. The office is authorized to adopt the
204 guidelines, application materials, and rules necessary to
205 administer this section.

206 (b) At the time a business seeks to be certified to take,
207 and thereafter to transfer, if authorized, an approved credit,
208 it must submit an application to the office in order to be
209 certified to take such credit along with a \$250 nonrefundable
210 fee. The application must include:

211 1. The name and physical Florida address of the taxpayer.
212 2. Documentation demonstrating to the satisfaction of the
213 office that:

214 a. The taxpayer is a commercial spaceflight business.
215 b. The business has engaged in a qualifying commercial



242202

216 spaceflight project or projects before taking a credit under
217 this section.

218 3. In addition to any requirement specific to a credit,
219 documentation that the business has complied with all of the
220 following:

221 a. Created 35 new jobs, as defined in this section, located
222 in this state and directly associated with an individual
223 commercial spaceflight project, or projects during its
224 immediately preceding 3 taxable years;

225 b. Invested a total of at least \$15 million in this state
226 on a commercial spaceflight project or projects during its
227 immediately preceding 3 taxable years; and

228 c. Participated in a commercial spaceflight project that
229 resulted in a successful launch from a commercial launch zone in
230 this state during its immediately preceding 3 taxable years.

231 4. The total amount and types of credits sought.

232 5. An acknowledgment that a transfer of a tax credit shall
233 be accomplished pursuant to subsection (6).

234 6. A copy of an audit or audits of the preceding 3 taxable
235 years, prepared by a certified public accountant licensed to
236 practice in this state, that identifies that portion of the
237 business's activities in this state related to commercial
238 spaceflight projects in this state.

239 7. An acknowledgement that the business must file an annual
240 report on the project's progress with the office.

241 8. Any other information necessary to demonstrate that the
242 applicant meets the job creation, investment, and other
243 requirements of this section.

244 (b) Within 60 days after receipt of the application, the



242202

245 office shall evaluate the application for certification and
246 recommend the business for certification or denial. The
247 executive director of the office must approve or deny the
248 application within 30 days after receiving the recommendation
249 from the office. The office must provide a letter of
250 certification to the applicant, if approved, consistent with any
251 restrictions on the credit being certified. If the office denies
252 any part of the requested credit, the office must inform the
253 applicant of the grounds for the denial. A copy of the
254 certification shall be submitted to the department within 10
255 days after the executive director's decision.

256 (c) Each business may be approved for only one credit for
257 any state fiscal year and may not claim any credit more than one
258 time.

259 (6) TRANSFERABILITY OF CREDIT.—

260 (a) For certified credits transferrable pursuant to this
261 section, any corporation allowed to transfer a credit, in whole
262 or in part, to any taxpayer by written agreement may do so
263 without transferring any ownership interest in the property
264 generating the credit or any interest in the entity owning such
265 property. The transferee is entitled to apply the credits
266 against the tax with the same effect as if the transferee had
267 incurred the eligible costs.

268 (b) To perfect the transfer, the transferor shall provide
269 the department with a written transfer statement that has been
270 approved by the office notifying the department of the
271 transferor's intent to transfer the tax credits to the
272 transferee; the date that the transfer is effective; the
273 transferee's name, address, and federal taxpayer identification



242202

274 number; the tax period; and the amount of tax credits to be
275 transferred. The department shall, upon receipt of a transfer
276 statement conforming to the requirements of this section,
277 provide the transferee and the office with a certificate
278 reflecting the tax credit amounts transferred. A copy of the
279 certificate must be attached to each tax return for which the
280 transferee seeks to apply such tax credits.

281 (7) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.—

282 (a) In addition to its existing audit and investigative
283 authority, the department may perform any additional financial
284 and technical audits and investigations, including examining the
285 accounts, books, and financial records of the tax credit
286 applicant, which are necessary to verify the accuracy of the
287 return and to ensure compliance with this section. The office
288 and Space Florida shall provide technical assistance when
289 requested by the department on any technical audits or
290 examinations performed under this subsection.

291 (b) It is grounds for forfeiture of previously claimed tax
292 credits if the department determines, as a result of an audit or
293 examination, or from information received from the office, that
294 a certified commercial spaceflight business, or in the case of
295 transferred tax credits, a taxpayer received tax credits under
296 this section to which the certified commercial spaceflight
297 business or taxpayer was not entitled. The certified commercial
298 spaceflight business or transferee is responsible for filing an
299 amended return reflecting the disallowed credits and paying any
300 tax due as a result of the amendment.

301 (c) If the certified commercial spaceflight business's
302 Florida corporate income tax return is adjusted by amendment,



242202

303 recomputation, or redetermination such that any item entering
304 into the computation of a claimed credit has been changed the
305 taxpayer must notify the department by filing an amended return.
306 The amount of any credit award not supported by the amended
307 return shall be deemed a deficiency to be remitted with the
308 amended return and otherwise subject to s. 220.23. The certified
309 commercial spaceflight business is also liable for a penalty
310 equal to the amount of the credit claimed or transferred,
311 reduced in proportion to the amount of the net operating loss
312 certified for transfer over the amount of the certified net
313 operating loss disallowed. The applicant and its successors
314 shall maintain all records necessary to support the reported net
315 operating loss.

316 (d) The office may revoke or modify any certification
317 granting eligibility for tax credits under this section if it is
318 discovered that the certified commercial spaceflight business
319 made a false statement, or representation, in any application,
320 record, report, plan, or other document filed in an attempt to
321 receive tax credits under this section. The office shall
322 immediately notify the department of any revoked or modified
323 orders affecting previously granted tax credits. Additionally,
324 the certified commercial spaceflight business must notify the
325 department of any change in its tax credit claimed.

326 (e) The certified commercial spaceflight business must file
327 with the department an amended return or other report required
328 by the department by rule and must pay any required tax and
329 interest within 60 days after the certified commercial
330 spaceflight business receives notification from the office that
331 previously approved tax credits have been revoked or modified.



242202

332 If the revocation or modification order is contested, the
333 certified commercial spaceflight business must file an amended
334 return or other report as provided in this paragraph within 60
335 days after a final order is issued following proceedings.

336 (f) The department may assess an additional tax, penalty,
337 or interest pursuant to s. 95.091.

338 (8) RULES.—

339 (a) The office, in consultation with Space Florida, shall
340 adopt rules to administer this section, including rules relating
341 to the certification forms for commercial spaceflight businesses
342 to complete, and the application and certification procedures,
343 guidelines, and requirements necessary to administer this
344 section.

345 (b) The department may adopt rules to administer this
346 section, including rules relating to:

347 1. The forms required to claim a tax credit under this
348 section, the requirements and basis for establishing an
349 entitlement to a credit, and the examination and audit
350 procedures required to administer this section.

351 2. The implementation and administration of the provisions
352 allowing a transfer of a net operating loss as a tax credit,
353 including rules prescribing forms, reporting requirements, and
354 specific procedures, guidelines, and requirements necessary to
355 perform the transfer.

356 3. The minimum portion of the credit that is available for
357 transfer.

358 (9) ANNUAL REPORT.—The office, in cooperation with Space
359

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



361 And the title is amended as follows:
362 Delete lines 30 - 40
363 and insert:
364 to the satisfaction of the Office of Tourism, Trade,
365 and Economic Development and the Department of
366 Revenue; requiring a business to submit an application
367 to the Office of Tourism, Trade, and Economic
368 Development for approval to earn credits; specifying
369 the required contents of an application; requiring the
370 Office of Tourism, Trade, and Economic Development to
371 approve or deny an application within 60 days after
372 receipt; requiring business apply to be certified by
373 the Office of Tourism Trade and Economic Development
374 to take or transfer a credit; requiring the Office of
375 Tourism, Trade, and Economic Development to recommend
376 approval or denial of an application for certification
377 within 60 days after receipt; specifying the required
378 contents of an application for certification;
379 requiring the executive director of the Office of
380 Tourism, Trade, and Economic Development to approve or
381 deny the application for certification within 30 days
382 after receiving the recommendation for approval or
383 denial; requiring the Office of Tourism, Trade, and
384 Economic Development to submit a copy of a
385 certification for tax credits to the Department of
386 Revenue; providing procedures to transfer a tax
387 credit; authorizing