

1 A bill to be entitled
2 An act relating to the advanced clean energy development
3 tax credit; creating s. 220.194, F.S.; defining terms;
4 authorizing a business to receive the advanced clean
5 energy development tax credit for a project to conduct
6 clean energy research and development within the territory
7 of the John F. Kennedy Space Center; specifying amounts of
8 the credit; requiring a business to apply to Space Florida
9 for eligibility to receive the tax credit; requiring the
10 applicant that is qualified to receive the credit to
11 execute and deliver a written agreement to Space Florida
12 which includes a binding commitment to complete an
13 advanced clean energy research and development project;
14 providing that only one business may receive the tax
15 credit; specifying requirements for the application to
16 Space Florida; providing for Space Florida to issue an
17 order certifying that the business is qualified to receive
18 the tax credit; specifying requirements that an
19 application must satisfy in order to qualify to enter into
20 an agreement with Space Florida to establish an advanced
21 clean energy research and development project; authorizing
22 the Department of Revenue to conduct reviews and
23 investigations to verify the proper application of credits
24 taken in a tax return; authorizing Space Florida to order
25 the forfeiture of all or part of any previously claimed
26 tax credits or credits available to be taken under certain
27 circumstances; requiring Space Florida to notify the
28 Department of Revenue of any order affecting a previously

29 authorized tax credit; authorizing the Department of
 30 Revenue to issue a notice of deficiency to the certified
 31 business under certain circumstances; authorizing the
 32 Department of Revenue and Space Florida to adopt rules
 33 relating to the tax credit; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. Section 220.194, Florida Statutes, is created
 38 to read:

39 220.194 Advanced clean energy development tax credit.-

40 (1) DEFINITIONS.-As used in this section, the term:

41 (a) "Advanced clean energy research and development" means
 42 the investigation of the latest processes and technologies
 43 designed to improve efficiency, reduce cost, and limit emissions
 44 from gas turbines during the production of energy.

45 (b) "Advanced clean energy research and development
 46 project" or "the project" means the combination of facilities,
 47 equipment, technology, personnel, and partnerships brought
 48 together to conduct advanced clean energy research and
 49 development so as to qualify a business to claim the tax credit
 50 provided under this section. A facility consists of a single
 51 building or structure, or a group of buildings or structures,
 52 which are under common ownership or control and located within
 53 the territory of the John F. Kennedy Space Center.

54 (c) "Business" has the same meaning as provided in s.
 55 220.03. The term also includes an affiliated group of
 56 corporations that file a consolidated return in this state.

57 (d) "Space Florida" means the entity created under s.
58 331.302 to foster the growth and development of a sustainable
59 and world-leading aerospace industry in this state.

60 (2) TAX CREDIT.—

61 (a) A business that is approved by Space Florida to
62 receive the advanced clean energy tax credit pursuant to this
63 section may apply the credit against the tax imposed by this
64 chapter.

65 (b) The credit consists of three components.

66 1. Upon approval of an application and the execution of a
67 written agreement with Space Florida, including a binding
68 commitment to complete an advanced clean energy research and
69 development project, the certified business is awarded a credit
70 in the amount of \$3 million annually, which may be claimed
71 beginning with the corporate tax year of the business in which
72 the agreement is executed and ending in the 8th corporate tax
73 year thereafter, for a total credit amount of \$27 million.

74 2. During the tax year of the business in which the
75 application for the project is approved and the written
76 agreement with Space Florida is executed, the business may claim
77 a tax credit in the amount of \$3 million.

78 3. During the tax year of the business in which
79 construction begins on the facility for the project within the
80 territory of the John F. Kennedy Space Center, the business may
81 claim a tax credit in the amount of \$3 million.

82 (c) The maximum tax credit amount that may be claimed by
83 the approved business during any tax year is \$6 million. If the
84 business does not claim all of the credits for which it is

85 eligible in any tax year, the unused amount may be carried
86 forward for a period not to exceed 10 years following the date
87 that the credit became available to be claimed, after which time
88 the credit amount expires and may not be used. The business may
89 claim the carryover credit in a subsequent year when the tax
90 imposed by this chapter exceeds the credit for such year after
91 applying any other credits and unused credit carryovers listed
92 in s. 220.02(8).

93 (d) A business that files a consolidated return in this
94 state as a member of an affiliated group pursuant to s.
95 220.131(1) may claim the credit on a consolidated return basis
96 up to the amount of tax imposed on the consolidated group.

97 (3) APPLICATION PROCESS.—A business seeking to be eligible
98 for the tax credit under this section must submit an application
99 to Space Florida by the date established by Space Florida, which
100 may not be later than September 1, 2010. Space Florida shall
101 make application forms and guidelines available to applicants by
102 August 1, 2010.

103 (a) Space Florida shall review applications in the order
104 applications are received to determine whether an applicant is
105 qualified to receive the credit and shall approve a qualifying
106 application within 15 days after receipt. By December 1, 2010,
107 the qualified applicant must execute and deliver a written
108 agreement to Space Florida which includes a binding commitment
109 to complete an advanced clean energy research and development
110 project consistent with the requirements of this section. A
111 business may submit only one complete application. Space Florida
112 may not accept an incomplete or placeholder application. Space

CS/HB 1457

2010

113 Florida may certify only one applicant as eligible for the tax
114 credits under this section.

115 (b) An application must contain:

116 1. Documentation determined necessary by the applicant or
117 Space Florida demonstrating the applicant's ability to meet the
118 requirements of paragraph (4) (b);

119 2. Any other information or documentation prescribed by
120 Space Florida affirmatively demonstrating that the applicant
121 qualifies for the credit; and

122 3. An affidavit certifying that the information contained
123 in the application is correct.

124 (c) Upon execution of the agreement, Space Florida shall
125 issue an order to the qualified applicant and the Department of
126 Revenue certifying that the applicant is qualified for the tax
127 credits under this section. Thereafter, Space Florida shall
128 issue an annual recertification order to the business and the
129 Department of Revenue. The certified business must attach Space
130 Florida's most recent order to the tax return on which the
131 credit is claimed.

132 (d) Upon execution of the agreement and for each year
133 during which the business claims a credit on a return, the
134 business shall submit documentation required by Space Florida
135 demonstrating activity consistent with the representations in
136 the application and the requirements set forth in paragraph
137 (4) (b). The documentation must include an affidavit certifying
138 that the documentation submitted is correct.

139 (e) Space Florida shall ensure that the amount of
140 corporate income tax credits granted in this section does not

141 exceed the limits provided in this section.

142 (4) ELIGIBILITY REQUIREMENTS.—

143 (a) The credit authorized by this section is reserved for
 144 a business that creates an advanced clean energy research and
 145 development project, has entered into a written agreement with
 146 Space Florida, and is certified to be eligible for tax credits
 147 by Space Florida.

148 (b) Space Florida may not certify a business as eligible
 149 to receive a tax credit under this section unless it determines
 150 that the business's application affirmatively demonstrates that
 151 the applicant agrees:

152 1. To incur a liability of at least \$50 million to plan,
 153 design, and construct the advanced clean energy research
 154 facility.

155 2. To invest at least \$20 million on the facility by 2014.
 156 This investment includes the hard and soft costs customarily
 157 associated with the use or acquisition of a site, site design
 158 and preparation, and improvements to identified real property
 159 located within the territory of the John F. Kennedy Space
 160 Center, as well as the customary hard and soft costs associated
 161 with the lease or purchase of depreciable machinery and
 162 equipment, including attendant design services that are directly
 163 related to the project.

164 3. That expenditures for the project will be allotted to
 165 Florida vendors whenever feasible.

166 4. To enter into a sponsored research and development
 167 agreement for the term of the project which qualifies for
 168 certification pursuant to s. 220.15(2)(c).

169 5. That new full-time equivalent employees hired to work
 170 on the project will receive a median hourly wage that is at
 171 least 200 percent of the federal minimum wage.

172 (5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF
 173 CREDITS.—

174 (a) In addition to its existing audit authority, the
 175 Department of Revenue may perform any financial or technical
 176 review or investigation, including examining the accounts,
 177 books, and records of the business, which is necessary to verify
 178 the proper application of credits taken in a tax return and to
 179 ensure compliance with this chapter.

180 (b) Space Florida may, by order, revoke or modify its
 181 order certifying a business as eligible for a tax credit under
 182 this section, and may also order the forfeiture of all or part
 183 of any previously claimed tax credits or credits available to be
 184 taken if, as the result of an audit, investigation, or
 185 examination, it is proven that information provided by the
 186 business in the application, or in a statement, representation,
 187 record, report, plan, or other document provided to Space
 188 Florida in an attempt to receive tax credits under this section,
 189 was false in a material respect at the time it was submitted and
 190 that a person acting on behalf of the business knew, or should
 191 have known, that the information submitted was false.

192 (c) Space Florida may, by order, revoke or modify its
 193 order certifying a business as eligible for a tax credit under
 194 this section, and may also order the forfeiture of previously
 195 claimed tax credits or credits available to be taken, if Space
 196 Florida determines that the business has not incurred

197 liabilities in the amounts or within the period specified in
198 paragraph (4) (b). If actual expenditures are not made in the
199 amounts or in the period specified in paragraph (4) (b), Space
200 Florida may allow the business to provide adequate assurance
201 that qualifying expenditures will be made within a reasonable
202 time. Such adequate assurances require the business to provide
203 proof of financial security to ensure repayment of any
204 previously claimed tax credit. Until the qualifying expenditures
205 are made, the business may not claim any tax credits under this
206 section. The amount of any tax credits forfeited under this
207 paragraph shall be an amount equal to such proportion as the
208 required investment bears to the actual investment.

209 (d) Space Florida must immediately notify the Department
210 of Revenue of any order affecting a previously authorized tax
211 credit. A business that is liable for unpaid taxes shall file
212 with the Department of Revenue an amended return or such other
213 report as the Department of Revenue prescribes by rule. The
214 business shall pay any required tax and interest within 60 days
215 after Space Florida notifies the business that previously
216 approved credits have been forfeited or modified. If the
217 forfeiture or modification order is contested, the business
218 shall file an amended return or other report within 30 days
219 after the order revoking or forfeiting tax credits becomes
220 final. A business that is liable for taxes avoided must pay the
221 tax due plus interest at the rate established under s. 220.807,
222 computed from the date that tax would have been due if the
223 credit had not been taken. The taxes and interest are due at the
224 time the amended return is filed. A business that fails to pay

CS/HB 1457

2010

225 the taxes and interest by the due date is subject to the
226 penalties provided in s. 220.803.

227 (e) The department may issue a notice of deficiency at any
228 time within 3 years after the business claims a credit or
229 receives a final order from Space Florida that previously
230 approved tax credits have been revoked or modified.

231 (6) RULES.—Space Florida and the department may adopt
232 rules to administer this section, including rules relating to:

233 (a) The forms and procedures required to apply for the
234 credit and to review applications.

235 (b) The forms required to claim a tax credit under this
236 section, the requirements and basis for establishing an
237 entitlement to a credit, and examination and audit procedures
238 required to administer this section.

239 Section 2. This act shall take effect July 1, 2010.