

By Senator Altman

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

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30 Florida to notify the Department of Revenue of any
31 order affecting a previously authorized tax credit;
32 authorizing the Department of Revenue to issue a
33 notice of deficiency to the certified business under
34 certain circumstances; authorizing the Department of
35 Revenue and Space Florida to adopt rules relating to
36 the tax credit; providing an effective date.
37

38 Be It Enacted by the Legislature of the State of Florida:
39

40 Section 1. Section 220.194, Florida Statutes, is created to
41 read:

42 220.194 Advanced clean energy development tax credit.-

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

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

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

57 (c) "Business" has the same meaning as provided in s.
58 220.03. The term also includes an affiliated group of

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59 corporations that file a consolidated return in this state.

60 (d) "Space Florida" means the entity created under s.
61 331.302 to foster the growth and development of a sustainable
62 and world-leading aerospace industry in this state.

63 (2) TAX CREDIT.—

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

67 (b) The credit consists of three components.

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

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

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

84 (c) The maximum tax credit amount that may be claimed by
85 the approved business during any tax year is \$6 million. If the
86 business does not claim all of the credits for which it is
87 eligible in any tax year, the unused amount may be carried

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

95 (d) A business that files a consolidated return in this
96 state as a member of an affiliated group pursuant to s.
97 220.131(1) may claim the credit on a consolidated return basis
98 up to the amount of tax imposed on the consolidated group.

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

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

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117 (b) An application must contain:

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

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

124 3. An affidavit certifying that the information contained
125 in the application is correct.

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

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

141 (e) Space Florida shall ensure that the amount of corporate
142 income tax credits granted in this section does not exceed the
143 limits provided in this section.

144 (4) ELIGIBILITY REQUIREMENTS.—

145 (a) The credit authorized by this section is reserved for a

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146 business that creates an advanced clean energy research and
147 development project, has entered into a written agreement with
148 Space Florida, and is certified to be eligible for tax credits
149 by Space Florida.

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

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

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

166 3. That expenditures for the project will be allotted to
167 Florida vendors whenever feasible.

168 4. To make its best efforts to enter into a sponsored
169 research and development agreement for the term of the project
170 which qualifies for certification pursuant to s. 220.15(2)(c).

171 5. That new full-time equivalent employees hired to work on
172 the project will receive a median hourly wage that is at least
173 200 percent of the federal minimum wage.

174 (5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.-

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

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

193 (c) Space Florida may, by order, revoke or modify its order
194 certifying a business as eligible for a tax credit under this
195 section, and may also order the forfeiture of previously claimed
196 tax credits or credits available to be taken, if Space Florida
197 determines that the business has not incurred liabilities in the
198 amounts or within the period specified in paragraph (4) (b). If
199 actual expenditures are not made in the amounts or in the period
200 specified in paragraph (4) (b), Space Florida may allow the
201 business to provide adequate assurance that qualifying
202 expenditures will be made within a reasonable time. Such
203 adequate assurances require the business to provide proof of

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204 financial security to ensure repayment of any previously claimed
205 tax credit. Until the qualifying expenditures are made, the
206 business may not claim any tax credits under this section. The
207 amount of any tax credits forfeited under this paragraph shall
208 be an amount equal to such proportion as the required investment
209 bears to the actual investment.

210 (d) Space Florida must immediately notify the Department of
211 Revenue of any order affecting a previously authorized tax
212 credit. A business that is liable for unpaid taxes shall file
213 with the Department of Revenue an amended return or such other
214 report as the Department of Revenue prescribes by rule. The
215 business shall pay any required tax and interest within 60 days
216 after Space Florida notifies the business that previously
217 approved credits have been forfeited or modified. If the
218 forfeiture or modification order is contested, the business
219 shall file an amended return or other report within 30 days
220 after the order revoking or forfeiting tax credits becomes
221 final. A business that is liable for taxes avoided must pay the
222 tax due plus interest at the rate established under s. 220.807,
223 computed from the date that tax would have been due if the
224 credit had not been taken. The taxes and interest are due at the
225 time the amended return is filed. A business that fails to pay
226 the taxes and interest by the due date is subject to the
227 penalties provided in s. 220.803.

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

232 (6) RULES.—Space Florida and the department may adopt rules

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233 to administer this section, including rules relating to:

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

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

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