

By the Committee on General Government Appropriations; and  
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 enter into a sponsored research and development  
169 agreement for the term of the project which qualifies for  
170 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.