

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1457                   **Advanced Clean Energy Development Tax Credit**

**SPONSOR(S):** Energy & Utilities Policy Committee, McBurney, and others

**TIED BILLS:** None.

**IDEN./SIM. BILLS:** SB 2578

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Energy & Utilities Policy Committee	9 Y, 0 N, As CS	Whittier	Collins
2) Economic Development Policy Committee			
3) Finance & Tax Council			
4)			
5)			

### SUMMARY ANALYSIS

Florida has been a leader in space exploration, and related technologies, since the late 1950s. After the successful Apollo program, NASA implemented the Space Shuttle program, which was designed to build and transport crew and supplies to the International Space Station and to service or repair the Hubble Space Telescope and other infrastructure. All (over 125) Space Shuttle launches have occurred at Kennedy Space Center in Florida. More than 40,000 jobs in the state are estimated to be attributable to the Kennedy Space Center's operations. The Space Shuttle program's retirement date of 2010 was announced several years ago, to be followed by the Constellation program, which was to initiate exploration of the "Moon, Mars, and Beyond." Last month, the federal government announced plans to eliminate the Constellation program and instead contract with commercial space launch companies to continue space research, transportation, and exploration activities. Much debate centers around the significant layoffs that will be required with the demise of the Space Shuttle program and the commercialization of the next program and how these two occurrences will negatively affect Florida's workforce, aerospace investments, and the state's economy, as a whole.

Significant efforts are being made to create and lure industries and space and related technology fields to the space coast. Several high-technology spinoffs are in the incubation stage and have made overtures to Florida indicating that if there are appealing tax incentives, they may be inclined to relocate to the state. Florida does not currently have an incentive program that specifically targets the "investigation of the latest processes and technologies to improve efficiency, reduce costs, and limit emissions from gas turbines during the production of energy."

The bill creates s. 220.194, F.S., regarding an advanced clean energy development corporate income tax credit. The bill provides that if a business is approved by Space Florida to receive an advanced clean energy tax credit pursuant to this section, it may apply the credit against the corporate income tax. "Advanced clean energy research and development" is defined as the "investigation of the latest processes and technologies designed to improve efficiency, reduce cost, and limit emissions from gas turbines during the production of energy." Space Florida may certify only one business to receive the credit. By December 1, 2010, the qualified applicant must execute and deliver a written agreement to Space Florida which includes a binding commitment to complete an advanced clean energy research and development project. Space Florida may revoke or modify its order certifying a business, and it may order the forfeiture of previously claimed tax credits or credits available to be taken.

To be eligible for certification, a business must meet five requirements:

- It must incur a liability of at least \$50 million to plan, design, and construct the facility.
- It must invest at least \$20 million on the facility by 2014.
- Expenditures for the project must be allotted to Florida vendors whenever feasible.
- The business must enter into a sponsored research and development agreement for the term of the project that qualifies for exclusion from the property factor under s. 220.15(2)(c), F.S. (sponsored research contracts conducted in conjunction with and through a Florida university and certified as such to the Department of Revenue).
- New full-time equivalent employees hired to work on the project must receive a median hourly wage that is at least double the federal minimum wage.

The bill affects the state's General Revenue Fund in the following way: the certified business is awarded a \$3 million tax credit annually for nine corporate tax years, plus an additional \$3 million credit in the year the application is approved and the agreement entered into, and an additional \$3 million credit in the year in which construction of the facility begins, totaling \$33 million in corporate tax credits over 9 years. Only \$6 million in credits may be claimed during any tax year.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Florida has been a leader in space exploration, and related technologies, since the late 1950s. After the successful Apollo program, NASA implemented the Space Shuttle program, which was designed to build and transport crew and supplies to the International Space Station and to service or repair the Hubble Space Telescope and other infrastructure. The Space Shuttle orbiters were the first U.S. spacecraft built to be reused and to return to Earth horizontally. On April 12, 1981, the first Space Shuttle orbiter to launch into lower earth's orbit was Columbia. Five orbiters capable of space flight were built: Atlantis, Challenger, Columbia, Discovery, and Endeavor. The Enterprise, a sixth orbiter, was built for suborbital test flights. With the tragic accidents destroying orbiters and crews of the Challenger in 1986 and the Columbia in 2003, there are only three orbiters still in commission. All (over 125) Space Shuttle launches have occurred at Kennedy Space Center.<sup>1</sup>

More than 40,000 jobs in the state are estimated to be attributable to the Kennedy Space Center's (KSC) operations.<sup>2</sup> The Space Shuttle program's retirement date of 2010 was announced several years ago, to be followed by the Constellation program, which was to initiate exploration of the "Moon, Mars, and Beyond." Last month, the federal government announced plans to eliminate the Constellation program and instead contract with commercial space launch companies to continue space research, transportation, and exploration activities. Much debate centers around the significant layoffs that will be required with the demise of the Space Shuttle program and the commercialization of the next program and how these two occurrences will negatively affect Florida's workforce, aerospace investments, and the state's economy, as a whole.

According to NASA's *Economic Impact of NASA In Florida, FY 2008*, "the money that NASA spends in Florida to support its space missions and other research activities represents an enormous injection into the economies of Brevard County, the larger Central Florida region and the State of Florida. These injections come in the form of wages to local residents and the purchase of goods and services from local businesses and organizations. In FY 2008, KSC and other NASA Centers injected \$1.93 billion into the Florida economy and \$1.80 billion into the Brevard County economy to support space program

<sup>1</sup> NASA's website: [http://www.nasa.gov/mission\\_pages/shuttle/main/index.html](http://www.nasa.gov/mission_pages/shuttle/main/index.html).

<sup>2</sup> 2010 Senate Memorial 944, p. 1.

launch and landing operations at KSC.”<sup>3</sup> Total direct spending in Brevard County was \$1.82 billion. Direct spending in other Central Florida counties and other counties in Florida totaled \$83 million and \$45 million, respectively.<sup>4</sup>

According to the Brevard Workforce Development Board, the Space Shuttle Program “employs a prime, sub-tier and related base support workforce level of approximately 2,000 civil servants and 9,160 shuttle-related employees” in the state. The majority of this workforce is located at or near the Kennedy Space Center. However, the total economic impact of the space shuttle program is statewide, and it has a specific shuttle-related supplier base of some 1,046 companies throughout the state.<sup>5</sup>

Space Florida has established ten industry clusters where they will focus their efforts for business development. Space Florida asserts that there are many ways to attract businesses to Florida and these efforts are being channeled to those industries that have the ability to use the skills of the aerospace workforce. Space Florida states that the “state’s best economic tool for attracting much of these future work opportunities is the strength and quality of its aerospace, shuttle-related workforce. With an aggressive range of economic development activities, Florida may be able to retain a significant share of the workers currently supporting the Shuttle program and stimulate new jobs in expanded business opportunities for the state.”<sup>6</sup>

Space Florida, is an “independent special district, a body politic and corporate, and a subdivision of the state,” whose mission is to foster the growth and development of a sustainable and world-leading aerospace industry in the state. Space Florida must promote aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs. In carrying out its duties and responsibilities, Space Florida must advise, coordinate, cooperate, and, when necessary, enter into memoranda of agreement with municipalities, counties, regional authorities, state agencies and organizations, appropriate federal agencies and organizations, and other interested persons and groups.<sup>7</sup>

Significant efforts are being made to create and lure industries and space and related technology fields to the space coast. Several high-technology spinoffs are in the incubation stage and have made overtures to Florida indicating that if there are appealing tax incentives, they may be inclined to relocate to the state. Florida does not currently have an incentive program that specifically targets the “investigation of the latest processes and technologies to improve efficiency, reduce costs, and limit emissions from gas turbines during the production of energy.”

### **Effects of Proposed Changes**

The bill creates s. 220.194, F.S., regarding an advanced clean energy development corporate income tax credit. The bill provides that if a business is approved by Space Florida to receive an advanced clean energy tax credit pursuant to this section, it may apply the credit against the corporate income tax. The bill provides the following definitions for the section:

- **“Advanced clean energy research and development”** means the “investigation of the latest processes and technologies designed to improve efficiency, reduce cost, and limit emissions from gas turbines during the production of energy.”
- **“Advanced clean energy research and development project” or “the project”** means the “combination of facilities, equipment, technology, personnel, and partnerships brought together

<sup>3</sup> Economic Impact of NASA In Florida, FY 2008, NASA, p. 6., found on the following NASA website:

[http://www.nasa.gov/centers/kennedy/pdf/318131main\\_economic-impact08.pdf](http://www.nasa.gov/centers/kennedy/pdf/318131main_economic-impact08.pdf).

<sup>4</sup> Ibid., p. 7.

<sup>5</sup> Aerospace Workforce Outlook Report, Brevard Workforce Development Board, Executive Summary, August 2007.

<sup>6</sup> Aerospace Workforce Outlook Report – Phase III, Brevard Workforce Development Board, January 2010, p. 29.

<sup>7</sup> Section 301.302, F.S.

to conduct advanced clean energy research and development so as to qualify a business to claim the tax credit provided under this section. A facility consists of a single building or structure, or a group of buildings or structures, which are under common ownership or control and located within the territory of the John F. Kennedy Space Center."

- "**Business**" has the same meaning as provided in s. 220.03, F.S. ("Business" or "business firm" means any business entity authorized to do business in this state as defined in paragraph (e), and any bank or savings and loan association as defined in s. 220.62, F.S., subject to the tax imposed by the provisions of this chapter.)<sup>8</sup> The term also includes an affiliated group of corporations that file a consolidated return in this state.
- "**Space Florida**" means the entity created under s. 331.302, F.S., to foster the growth and development of a sustainable and world-leading aerospace industry in this state.

Space Florida must make application forms and guidelines available by August 1, 2010, and must establish the application due date, which may not be later than September 1, 2010. A business may submit only one application and Space Florida may certify only one business to receive the credit. Applications must be reviewed in the order they are received, and one qualifying application shall be approved within 15 days after receipt. By December 1, 2010, the qualified applicant must execute and deliver a written agreement to Space Florida which includes a binding commitment to complete an advanced clean energy research and development project.

To be eligible for certification, a business must meet five requirements:

- It must incur a liability of at least \$50 million to plan, design, and construct the facility.
- It must invest at least \$20 million on the facility by 2014.
- Expenditures for the project must be allotted to Florida vendors whenever feasible.
- The business must enter into a sponsored research and development agreement for the term of the project that qualifies for exclusion from the property factor under s. 220.15(2)(c), F.S. (sponsored research contracts conducted in conjunction with and through a Florida university and certified as such to the Department of Revenue).
- New full-time equivalent employees hired to work on the project must receive a median hourly wage that is at least double the federal minimum wage.

The credit consists of three components:

- Upon approval of an application and the execution of a written agreement with Space Florida, including a binding commitment to complete an advanced clean energy research and development project, the certified business is awarded \$27 million in credits over a period of nine years which can be claimed \$3 million per year beginning with the year in which the agreement is executed.

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<sup>8</sup> Section 220.03(1)(e), F.S., provides that, "Corporation" includes all domestic corporations; foreign corporations qualified to do business in this state or actually doing business in this state; joint-stock companies; limited liability companies, under chapter 608; common-law declarations of trust, under chapter 609; corporations not for profit, under chapter 617; agricultural cooperative marketing associations, under chapter 618; professional service corporations, under chapter 621; foreign unincorporated associations, under chapter 622; private school corporations, under chapter 623; foreign corporations not for profit which are carrying on their activities in this state; and all other organizations, associations, legal entities, and artificial persons which are created by or pursuant to the statutes of this state, the United States, or any other state, territory, possession, or jurisdiction. The term "corporation" does not include proprietorships, even if using a fictitious name; partnerships of any type, as such; limited liability companies that are taxable as partnerships for federal income tax purposes; state or public fairs or expositions, under chapter 616; estates of decedents or incompetents; testamentary trusts; or private trusts.

- During the year in which the application for the project is approved and the written agreement with Space Florida is executed, the business may claim an additional tax credit of \$3 million.
- During the year in which construction of the project begins, the business may claim an additional tax credit of \$3 million.

No more than \$6 million in credit may be claimed in any tax year. Unused credit amounts are carried forward for up to 10 years. After 10 years from the time the credit became available for use, any unused credit expires.

Space Florida shall notify the Department of Revenue (DOR) of the taxpayer certified to receive this credit and shall provide annual recertifications of the taxpayer to the DOR. The certified business must attach Space Florida's most recent certification order to its corporate income tax return to claim the credit. A business that files on a consolidated basis under s. 220.131(1), F.S., may claim the credit on a consolidated return basis, up to the amount of tax imposed on the consolidated group.

Space Florida may revoke or modify its order certifying a business, and it may order the forfeiture of previously claimed tax credits or credits available to be taken. Space Florida must notify the DOR if this occurs. A business that is liable for unpaid taxes shall file an amended corporate income tax return and pay the tax and interest due within 60 days after Space Florida notifies the business that its credit has been forfeited or modified. Interest is imposed from the date the tax should have been paid had the credit not been claimed. A business that fails to pay the taxes or interest by the due date is subject to the penalties provided in s. 220.803, F.S. (negligence or fraud). The DOR may issue a notice of deficiency at any time within 3 years after the business claims a credit or receives a final order revoking or modifying the credits.

In addition to existing audit authority, the DOR may perform any financial or technical review or investigation, including examining the accounts, books, and records of the business, which is necessary to verify the proper application of credits taken and to ensure compliance with Chapter 220, F.S.

Space Florida and the DOR may adopt rules to administer s. 220.194, F.S., including rules for:

- Forms and procedures; and
- Requirements and basis for establishing entitlement to a credit and examination and audit procedures.

#### B. SECTION DIRECTORY:

**Section 1.** Creates s. 220.194, F.S., relating to an advanced clean energy development tax credit.

**Section 2.** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill affects the state's General Revenue Fund in the following way: the certified business is awarded a \$3 million tax credit annually for 9 corporate tax years, plus an additional \$3 million credit in the year the application is approved and the agreement entered into, and an additional \$3 million credit in the year in which construction of the facility begins, totaling \$33 million in corporate tax credits over 9 years. The maximum tax credit amount that may be claimed during any tax year is \$6 million. Unused credit amounts are carried forward for up to 10 years. After 10 years from the time the credit became available for use, any unused credit expires.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector impact of a tax credit for a business to promote research and development of gas turbine technology has not been determined. The bill does provide that in order to qualify for the tax credit, the applying business must guarantee that new F.T.E. employees hired to work on the project will receive a medial hourly wage that is at least 200% of the federal minimum wage and that expenditures for the project will be "allotted to Florida vendors whenever feasible."

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to Space Florida and the Department of Revenue to administer s. 220.194, F.S., including rules for:

- Forms and procedures; and
- Requirements and basis for establishing entitlement to a credit and examination and audit procedures.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue has indicated a concern about the following:

- Section 220.02(8), F.S., provides for the order in which credits are to be claimed, relative to other credits for which a taxpayer is eligible, and needs to be amended to reflect the order in which this credit is to be claimed relative to all other corporate income tax credits.

- When there is a credit provision in Chapter 220, F.S., there is generally a corresponding addition in s. 220.13, F.S., which prevents a taxpayer from receiving both a deduction and a credit for the same item. This bill does not provide for an addition that corresponds to the amount of the credit allowed, which will allow eligible taxpayers to receive a credit on their Florida return and a deduction on their Florida return for the same expenditures. Thus, a taxpayer can receive a tax benefit greater than the amount of credit provided.
- The Department may need authority to share information concerning this credit with Space Florida.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2010, the Energy & Utilities Policy Committee adopted an amendment to require a business to enter into a sponsored research and development agreement for the term of the project that qualifies for exclusion from the property factor under s. 220.15(2)(c), F.S.