SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL:	CS/SB 1482
SPONSOR:	Commerce and Economic Opportunities Committee and Senator Bronson
SUBJECT:	Sales Tax/Spaceport Infrastructure
DATE:	April 6, 2001 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Birnholz	Maclure	CM	Favorable/CS
2.			FT	
3.				
4.				
5.				
6.				

I. Summary:

This committee substitute requires dealers doing business under contract with NASA at the Kennedy Space Center or the Cape Canaveral Air Station to collect taxes from sales and admissions and remit the proceeds to the Department of Revenue for subsequent distribution to the Spaceport Florida Authority and the Florida Commercial Space Financing Corporation. The tax proceeds are to be used solely for aerospace infrastructure funding purposes.

This committee substitute substantially amends section 212.20, Florida Statutes.

II. Present Situation:

Presently, dealers conducting business at the Kennedy Space Center and/or at the Cape Canaveral Air Station collect and remit to the Department of Revenue sales tax on the sale of tangible personal property and admissions. Sales tax collected by such dealers is presently credited to the General Revenue Fund, pursuant to s. 212.20, F.S.

Spaceport Florida Authority[1]

The Spaceport Florida Authority (Spaceport Florida) was created as a state government space agency in 1989. (*See* ch. 331, part II, F.S.) Spaceport Florida's mission is to retain, expand, and diversify the state's space-related industry.

[1] *See* "Profile No. 6130," *Florida Government Accountability Report*, Florida Legislature's Office of Program Policy Analysis and Government Accountability, http://www.oppaga.state.fl.us/profiles/6130/, January 19, 2001.

Chapter 331, F.S., gives Spaceport Florida governmental powers similar to other types of transportation authorities (airport, seaport, etc.) to support and regulate the state's space transportation industry. With regard to spaceport development and operations, Spaceport Florida is broadly empowered to own, operate, construct, finance, acquire, extend, equip, and improve the following types of spaceport infrastructure: launch pads, landing areas, ranges, space flight hardware, payloads, payload assembly buildings, payload processing facilities, laboratories, and space business incubators. In addition to these specific types of infrastructure, Spaceport Florida is empowered to support facilities and equipment for the construction of payloads, space flight hardware, rockets and other launch vehicles, and other spaceport facilities and related systems (utility infrastructure, fire and police services, mosquito control, etc.).

Spaceport Florida has sponsored over $500 million in new space industry developments, including improvements to launch pads, hangars, payload facilities, control centers, storage facilities, and tourism facilities. Spaceport Florida recently financed the $300 million Atlas V EELV launch facilities at Cape Canaveral Air Force Station for Lockheed Martin; financed and constructed a $24 million state-financed Delta IV EELV Horizontal Integration Facility for Boeing; provided $28 million in financing for a Titan IV storage/processing facility; and provided over $25 million for NASA's Apollo/Saturn V Center at Kennedy Space Center. Using various financing mechanisms, Spaceport Florida is able to fund the construction of facilities and, while retaining ownership, lease the facilities to users who provide sufficient debt security.

Spaceport Florida is administered by a seven-member, Governor-appointed Board of Supervisors. There are also two ex officio nonvoting members on the board, one of whom is a state senator selected by the President of the Senate and one of whom is a state representative selected by the Speaker of the House of Representatives. Spaceport Florida's executive director reports to the board and provides day-to-day management of the agency. Functionally, Spaceport Florida reports to the Governor through the Office of Tourism, Trade, and Economic Development (OTTED). As the state's space agency, Spaceport Florida provides overall space policy advice to the Governor, Florida's congressional delegation, the Legislature, and other state-level elected officials.

As part of Spaceport Florida, the Spaceport Management Council (council) provides coordination and recommendations on projects and activities that will increase the operability and capabilities of Florida's space launch facilities, increase statewide space-related industry and opportunities, and promote space education and research within the state. (s. 331.367, F.S.) The council develops integrated facility and programmatic development plans to address commercial, state, and federal requirements and to identify appropriate private, state, and federal resources to implement these plans. The council also makes recommendations regarding:

- the development of a spaceport master plan;
- the projects and levels of commercial financing required from the Florida Commercial Space Financing Corporation (*see* description, below);
- development and expansion of space-related education and research programs within Florida, including recommendations to be provided to the State University System, the Division of Community Colleges, and the Department of Education;
- the regulation of spaceports and federal and state policy; and

- Florida's approach to the Federal Government regarding requests for funding of space development.

The council consists of an executive board and a Space Industry Committee. The following individuals (or their designees) serve on the executive board: the executive director of the Spaceport Florida Authority, the director of the John F. Kennedy Space Center, the Commander of the United States Air Force 45th Space Wing, the Commander of the Naval Ordnance Test Unit, the Secretary of Transportation, the president of Enterprise Florida, Inc., (as an ex officio nonvoting member), and the director of OTTED (as an ex officio nonvoting member). The Space Industry Committee is composed of representatives of Florida's space industry.

For FY 2000-01, Spaceport Florida was appropriated $3,510,000 from the General Revenue Fund. Spaceport Florida also receives funding from other sources, and, thus, the total revenues reported in its financial statements for the year ending September 30, 2000, totaled $6,922,691.

Florida Commercial Space Financing Corporation

In 1999, the Legislature made substantial changes to statutes governing the state's involvement in promoting commercial space flight. Among other things, ch. 99-256, L.O.F., (codified at part III, ch. 331, F.S.) created the Florida Commercial Space Financing Corporation (corporation), a not-for-profit corporation established to expand employment and income opportunities for residents of this state by providing businesses domiciled in this state with information, technical assistance, and financial assistance to support space-related transactions, in order to increase the development within the state of commercial aerospace products, activities, services, and facilities. [s. 331.407(1), F.S.] Specifically, s. 331.407, F.S., authorizes the corporation to:

- coordinate efforts with the United States Air Force, the National Aeronautics and Space Administration (NASA), the Export-Import Bank, the International Trade Administration of the United States Department of Commerce, the Foreign Credit Insurance Association, Enterprise Florida, Inc., and other public and private programs and organizations, domestic and foreign;
- establish contacts among public and private organizations in industry, both foreign and domestic, which provide information, technical assistance, and financial support to the aerospace industry;
- compile and disseminate information on financing opportunities and techniques of financing in the aerospace industry;
- organize and participate in seminars regarding aerospace financing;
- insure, coinsure, lend, guarantee loans, and originate for sale direct space-related loans;
- capitalize, underwrite, and secure funding for aerospace infrastructure, satellites, launch vehicles, and any service which supports aerospace launches;
- construct, lease, or sell aerospace infrastructure, satellites, launch vehicles, and related services and activities;
- acquire and dispose of property; and
- make and exercise any and all contracts necessary to exercise its powers.

The corporation plans to use the following financing tools to serve its customers:[2]

- *Creative Leases.* This category of financing tools includes a "synthetic lease," an instrument that gives a lessee of mortgaged property certain benefits of ownership, such as depreciation for income tax purposes, while allowing the company to keep the property off its financial statements. A "lease back" is another type of creative lease that allows an individual or company to sell property and then lease the same property from the new owner.
- *Direct Loans.* Florida law authorizes the corporation to make direct loans to Florida's space-related firms. [s. 331.407(2)(e), F.S.] However, a direct loan cannot exceed 90 percent of the cost of a project. [s. 331.409(3), F.S.] A borrower must demonstrate the capacity to repay the loan.
- *Loan Guarantees and/or Enhancement.* The corporation's draft credit/lending policies and procedures provide for a loan guarantee of up to 90 percent of a loan from any United States bank or financing institution. A borrower must demonstrate that it could not qualify for the loan without the guarantee.

The total amount of loans, loan guarantees, and other instruments cannot be more than five times the balance of the corporation's account. [s. 331.409(2), F.S.] The corporation may charge fees to help defray its operating expenses. [s. 331.409(1), F.S.] As of February 2001, the corporation had not yet issued such loans, and, thus, no fees had been generated to date.

The corporation's governing board consists of seven voting members and two non-voting members.[3] (s. 311.411, F.S.) Voting members include a representative appointed by each of the following entities: the board of supervisors of Spaceport Florida, the board of directors of the Florida Export Finance Corporation, the director of OTTED, the board of directors of Enterprise Florida, Inc., and the Secretary of the Department of Transportation. The Governor appoints two additional voting members. Non-voting members include a member of the Senate selected by the President of the Senate and a member of the House of Representatives selected by the Speaker of the House of Representatives.

In FY 1999-2000, the Legislature appropriated $1 million to implement the corporation's statutory responsibilities and $500,000 for corporate operations. The Legislature also appropriated $300,000 for corporate operations in FY 2000-01. As of November 30, 2000, the balance in the corporation's account was $1,162,974.

In February 2001, the Office of Program Policy Analysis and Government Accountability (OPPAGA) published a review of the corporation.[4] Although OPPAGA found that the corporation had yet to complete any financings, corporation stakeholders were reported to be generally satisfied with the corporation's progress. OPPAGA recommended that the corporation improve its performance measurement system and "develop a strategic business plan to guide future activities." In response to these recommendations, the corporation wrote:

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[2] Office of Program Policy Analysis and Government Accountability, *Space Financing Corporation is Still Gearing Up and Needs to Develop a Business Plan*, Report No. 01-11, February 2001, p. 2-3.

[3] *Id*., p. 2.

[4] *Id*.

> Over the past few months we have been working with several clients that need our financial services. We are currently working with six clients on their financing needs and those projects are in various stages. We have a signed agreement with one, and are working on agreements with the other clients at this time. The current status of our business plan is that we have contracted with the Volpe National Transportation Systems Center and with Capitol Alliance Group to design and develop our business plan. Our contract with them requires completion no later than March 31, 2001.[5]

Tax on Sales, Use, and Other Transactions

Chapter 212, F.S., provides for a 6 percent tax on sales, use, and other transactions. Section 212.05, F.S., provides that every person who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under ch. 212, F.S., or who stores for use or consumption any item or article of tangible personal property and who leases or rents such property is exercising a taxable privilege. Section 212.05(1)(a)1.a., F.S., provides for a 6 percent tax rate on the retail price of each item or article of tangible personal property when sold at retail in Florida. Section 212.05(1)(b), F.S., provides for a 6 percent tax on the cost price of any item of tangible personal property that is not sold but used in Florida. Section 212.04(1)(a), F.S., provides that every person is exercising a taxable privilege who sells or receives anything of value by way of admissions. Section 212.04(1)(b), F.S., levies a 6 percent tax of sales price, or the actual value received from admissions.

Additionally, local governments are authorized to levy one or more of six types of Local Discretionary Sales Surtaxes, ranging from 0.5 percent to 1.0 percent each, with a maximum of 1.5 percent. Pursuant to ss. 212.054 and 212.055, F.S., the local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions. The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of taxable sale. The sales amount is not subject to the surtax if the property or service is delivered within a county that does not impose a surtax.

III. Effect of Proposed Changes:

This committee substitute requires dealers doing business under contract with NASA at the Kennedy Space Center or the Cape Canaveral Air Station to collect taxes from sales and admissions and remit the proceeds to the Department of Revenue for subsequent distribution to the Spaceport Florida Authority and the Florida Commercial Space Financing Corporation. The tax proceeds are to be used solely for aerospace infrastructure funding purposes. The following is a section-by-section analysis of this committee substitute.

Section 1. This section provides that this act may be cited as the “Aerospace Infrastructure Reinvestment Act.”

[5] *Id*., p. 6.

Section 2. This section sets forth a statement of legislative intent providing that promotion of growth of the space industry in Florida is a vital part of the state's overall economic plan and that facilitating additions to aerospace infrastructure will make the state more competitive and promote the retention and growth of space business in the state. The statement further calls for the reinvestment of certain sales tax receipts, generated by the presence of the space industry in the state, as a means of providing for that infrastructure growth.

Section 3. Section 212.20, F.S., governs the distribution by the Department of Revenue (department) of funds collected under the provisions of ch. 212, F.S. If the amendments to s. 212.20, F.S., made by ch. 2000-260, L.O.F., are not repealed, that section will also govern distributions of the taxes collected under the new telecommunications tax statutes enacted in 2000. Section 2 of this committee substitute amends s. 212.20(6)(e), F.S., as it will read if the telecommunications tax amendments are repealed.

This section adds sub-subparagraph 212.20(6)(e)7.e., F.S., to provide that every dealer conducting business at a fixed location at the Kennedy Space Center or Cape Canaveral Air Station and selling admissions to those facilities pursuant to a contract or sub-contract with NASA must file a return each month to the Department of Revenue (department). The return must segregate information regarding taxes collected on sales and admissions at the facilities. This section also requires dealers to remit all amounts due under ch. 212, F.S., with respect to such transactions to the department in a timely manner and file copies of their returns with the Florida Commercial Space Financing Corporation (corporation), the Spaceport Florida Authority (Spaceport Florida), and the director of the Office of Tourism, Trade, and Economic Development (OTTED). These returns and information therein shall be subject to the same confidentiality provisions as are applicable to returns and information filed with the department pursuant to s. 213.053, F.S.[6]

This section also directs the department to distribute, on a monthly basis, the proceeds collected and remitted to the department according to the returns.[7] One-half of the distributions will be made to the corporation while the other half will be made to Spaceport Florida.[8] This section amends s. 212.20(6)(b), F.S., to clarify that the proceeds distributed should include the proceeds from discretionary sales surtaxes generated by applicable dealers.

Funds distributed to the corporation must be used solely for "aerospace infrastructure." This section defines "aerospace infrastructure" as:

> land, buildings and other improvements, fixtures, machinery, equipment, instruments, and software that will improve the state's capability to

[6] Section 213.053, F.S., sets forth confidentiality and information sharing requirements for the Department of Revenue with regard to tax administration matters, including payment information related to ch. 212, F.S.

[7] This section provides that s. 212.20(6)(e)7.e., F.S., shall not be construed as affecting any dealer's liability for other taxes imposed by ch. 212, F.S.

[8] This section also provides that, in the event the department collects any additional amounts under this chapter with respect to any transactions for which a separate return is required by this new sub-subparagraph, the proceeds shall, within 30 days following collection, be distributed equally by the department to the corporation and Spaceport Florida for uses authorized by s. 212.20(6)(e)7.e., F.S.

> support, expand, or attract the launch, construction, processing, refurbishment, or manufacturing of rockets, missiles, capsules, spacecraft, satellites, satellite control facilities, ground support equipment and related tangible personal property, launch vehicles, modules, space stations or components destined for space station operation, and space flight research and development facilities, instruments, and equipment, together with any engineering, permitting, and other expenses directly related to such land, buildings, improvements, fixtures, machinery, equipment, instruments, or software.

Funds distributed to Spaceport Florida must be used solely for aerospace infrastructure funding purposes based on recommendations made by the director of OTTED. Proposals for funding infrastructure projects through Spaceport Florida must be submitted to the Space Industry Committee (s. 331.367, F.S.) which shall in-turn submit its recommendations to the director of OTTED on at least a quarterly basis. The director of OTTED must consider the Space Industry Committee's reports when recommending aerospace infrastructure projects.

Section 4. This section is identical to section 3 of this committee substitute except that section 4 amends s. 212.20(6)(e), F.S., as it will read if the telecommunications tax amendments are not repealed.

Section 5. This section provides the department with necessary rulemaking authority.

Section 6. This section provides that this act shall take effect on July 1, 2001, and be applicable to taxes due on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates the fiscal impact of this committee substitute to be a FY 2001-02 General Revenue loss of $2.6 million with an annualized first-year loss of $2.6 million and a FY 2001-02 local government loss of $300,000 with an annualized first-year loss of $300,000.

Fiscal Year 2001-2002								
	General Revenue		Trust		Local		Total	
Issue/Fund	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Spaceport Infrastructure Act	$ (2.6)	$ (2.6)	*	*	$ (0.3)	$ (0.3)	$ (2.9)	$ (2.9)

* Insignificant (less than $50,000)

B. Private Sector Impact:

More funds will be available for aerospace infrastructure projects. However, every dealer conducting business at a fixed location at the Kennedy Space Center or Cape Canaveral Air Station and selling admissions to those facilities pursuant to a contract or sub-contract with NASA will have to file monthly returns with the Department of Revenue (department), the Florida Commercial Space Financing Corporation, the Spaceport Florida Authority, and the director of the Office of Tourism, Trade, and Economic Development (OTTED).

C. Government Sector Impact:

The department will have to promulgate rules administering the provisions of this committee substitute. The department will also have to process the returns and distributions required by this committee substitute.

Proposals for funding infrastructure projects through Spaceport Florida must be submitted to the Space Industry Committee (s. 331.367, F.S.), which shall in turn submit its recommendations to the director of OTTED on at least a quarterly basis. The director of OTTED must consider the Space Industry Committee's reports when recommending aerospace infrastructure projects for funding by Spaceport Florida.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.