

# 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.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: CS/SB 1938

SPONSOR: Commerce and Consumer Services Committee and Senators Sebesta and Saunders

SUBJECT: Aerospace

DATE: April 13, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrett</u>	<u>Cooper</u>	<u>CM</u>	<b>Fav/CS</b>
2.	_____	_____	<u>GE</u>	_____
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute exempts from ad valorem taxation certain tangible personal property used to transport or store cargo used for a space laboratory.

This committee substitute also creates the Florida Aerospace Infrastructure Act to:

- Create the Florida Aerospace Infrastructure Program, to be funded by sales taxes collected at Kennedy Space Center and Cape Canaveral Air Force Station, to support the growth of the aerospace industry;
- Create the Independent Investment Committee to review and recommend how the fund proceeds should be invested;
- Authorize the Florida Aerospace Finance Corporation to administer the program, and grant the corporation tax-exempt status; and
- Provide reporting and auditing requirements of the corporation.

This committee substitute also provides a severability clause and an appropriation from the trust fund to fund the program.

This committee substitute creates the sections 196.1999, 331.501, 331.502, 331.503, 331.504, 331.505, 331.506, and 331.507, and repeals section 196.1994 of the Florida Statutes.

## II. Present Situation:

### Property Taxation in Florida

Ad valorem tax or “property tax” continues to be a major source of revenue for local governments in Florida. In FY 2001-02 (the last year for which fiscal information is available) property taxes constituted 30 percent of county governmental revenue (\$5.7 billion)<sup>1</sup>, and 24 percent of municipal governmental revenue (\$2.1 billion), making it by far the largest single source of tax or general revenue for general purpose governments in Florida. In addition, the property tax is the primary local revenue source for School Districts. In FY 2000-01, school districts levied \$7.6 billion in property taxes for K-12 education.<sup>2</sup>

The property tax is important not only because of the revenue it generates, but because it is the only taxing authority not preempted by the Florida Constitution to the state.<sup>3</sup> However, the property tax is not an unlimited source of revenue. The Florida Constitution caps the millage rates assessed against the value of the property.<sup>4</sup> In addition, the Florida Constitution grants property tax relief in the form of valuation differentials,<sup>5</sup> assessment limitations,<sup>6</sup> and exemptions,<sup>7</sup> including homestead exemptions.<sup>8</sup>

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.<sup>9</sup> The courts have further ruled that this immunity extends to property of school districts<sup>10</sup> and certain special districts.<sup>11</sup>

In tax year 2002, the combination of these forms of property tax relief effectively reduced the taxable value of property in this state by 28 percent.<sup>12</sup> Any additional reduction in the property tax base will result in a corresponding shift in property tax burden to other property tax owners.<sup>13</sup>

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<sup>1</sup> Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database at <http://fcn.state.fl.us/lcir/cntyfiscal/corevprofsw.xls>.

<sup>2</sup> See 2004 FLORIDA TAX HANDBOOK, p. 137. The state and federal governments contributed approximately \$9 billion in the same year.

<sup>3</sup> See Art. VII, s. 1, Fla. Const.

<sup>4</sup> See Art. VII, s. 9 of the Florida Constitution.

<sup>5</sup> Article VII, s. 4 of the Florida Constitution.

<sup>6</sup> Article VII, s. 4(c) of the Florida Constitution.

<sup>7</sup> Article VII, s. 3 of the Florida Constitution, provides authority for the property tax exemptions, to include property used predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law.

<sup>8</sup> Article VII, s. 6 of the Florida Constitution.

<sup>9</sup> See *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utils. Comm'n v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969); and *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

<sup>10</sup> See *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

<sup>11</sup> See *Sarasota-Manatee Airport Auth. v. Mikos*, 605 So. 2d 132 (Fla. 2d DCA 1992). Cf. *Canaveral Port Auth. V. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996).

<sup>12</sup> Out of \$1,236 billion in just (or market) value, \$347 billion was not taxed. See LCIR database at <http://fcn.state.fl.us/lcir/dataAto?Z.html>.

<sup>13</sup> Generally, local governments respond to reductions in the property tax base in one of three ways: decrease their budgets, replace the lost revenue with other sources of revenue, or increase the millage rate on the remaining taxable property.

## **Overview of Florida's Space Industry**

Since its establishment 50 years ago, the space industry has developed a statewide presence, with half of the space-related businesses located outside of Brevard County. While launch operations remain the state's primary space-related activity, the industry has expanded to include additional capabilities and services. The space industry has also contributed significantly to the growth of Florida's research, technology development, and tourism sectors.

Florida currently ranks 4th among states in aerospace employment. The majority of aerospace employees are highly trained engineers, scientists, and technicians that command relatively high salaries. According to the Florida Aviation Aerospace Alliance the annual average wage of aerospace workers is approximately \$52,000.<sup>14</sup> More than 86 percent of the 15,000 Kennedy Space Center (KSC) based employees work for prime contractors or their sub-contractors. The remainder are generally federal civil service workers employed directly by NASA. Based on NASA's 2003 estimate of its economic impact in Florida, each direct job at KSC multiplied into 2.4 indirect jobs, and each dollar of income was multiplied into \$1.81 of total income.<sup>15</sup>

The primary space industry segment within Florida remains launch operations. This includes products and services related to payload support and processing, spaceport operations, and ground operations equipment and support. Within the spaceport, most activities revolve around three major programs: the Space Shuttle; the International Space Station; and expendable launch vehicles. The Space Shuttle Program, which is managed by United Space Alliance (a joint venture between Boeing Company and Lockheed Martin Corporation), constitutes the largest expenditure and employment category at KSC. Almost 10,000 employees currently work on the Space Shuttle Program.

Efforts to diversify Florida's space industry beyond launch-related operations have achieved some results. The recently completed Space Life Sciences Laboratory (previously known as the Space Experiment Research and Processing Laboratory or SERPL) serves as the primary gateway to the International Space Station for science experiments and a home to ground-based investigations in biological science. This facility will anchor the 400-acre International Space Research Park at KSC. This research park is intended to serve as a magnet for new space research and technology development initiatives.

## **State Support for Space Enterprise**

During the 1980's the state significantly strengthened its support of space enterprise through the creation of the Governor's Commission on Space and the Spaceport Florida Authority, the nation's first state space agency. Since that time, the state has continued to facilitate the expansion of space-related commerce through a variety of economic development and education initiatives.

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<sup>14</sup> The Florida Aviation Aerospace Alliance, *2003 Aviation/Aerospace Assessment*, October 2003.

<sup>15</sup> W. Warren McHone, Transportation Economics Research Institute, *The Economic Impact of NASA in Florida – 2003*, March 2004.

*Governor's Commission on Space* – In response to the changing landscape of space commerce, Governor Bob Martinez created the Governor's Commission on Space in 1987. Creation of the commission was prompted by changes in federal space policies, increased global competition for space-related services, and the commercialization of the space industry. The commission's final report was published in 1988 and included an analysis of Florida's competitive position in attracting space commerce. The report pointed to the following as significant areas of concern: Florida's public educational system; the shortage of skilled labor; the state's overall business climate; and the lack of suppliers for space goods and services.<sup>16</sup>

*Florida Space Authority* – In 1989, the Legislature realized a key commission recommendation through the creation of a permanent state space office – the Spaceport Florida Authority.<sup>17</sup> As authorized under s. 331.302, F.S., the authority constitutes the state's space transportation and economic development agency and is charged with retaining, expanding, and diversifying the state's space-related industry. The authority fosters space-related research and education by providing access to facilities, technology, and partnerships. Finally, the authority is responsible for space transportation planning and the coordination of state space policy. The authority is funded through a combination of state appropriations and revenues generated through the authority's activities.

*Florida Space Research Institute* – In 1999, the Legislature created the Florida Space Research Institute (FSRI) to develop opportunities for Florida's academic institutions to support space technology programs. FSRI leverages state resources with those of NASA, the military, and industry, to expand and diversify Florida's space-related enterprise. For example, FSRI is responsible for co-management (with NASA) of the new Space Life Sciences Laboratory and to assist Florida-based companies and universities with a variety of space-related research projects. FSRI also sponsors a range of workforce initiatives, including space-oriented instruction for K-12 teachers, and training for future aerospace technicians. State funding for FSRI is provided through the Office of Tourism, Trade and Economic Development.

*Florida Aerospace Finance Corporation* – The same 1999 legislation that created FSRI also established the Commercial Space Financing Corporation.<sup>18</sup> The mission of the corporation is to support the development of commercial aerospace products, activities, services, and facilities. To achieve these goals the corporation is authorized to provide information, technical assistance, and financial assistance to aerospace businesses. Pursuant to s. 331.407, F.S., the corporation has a range of financial services available to assist businesses, including loan facilitations, equity facilitations, loan guarantees, and creative leases.

*Other Space-Related Entities and Incentives* – In addition to the entities previously discussed, Florida has a host of other organizations that support and promote space-related enterprise. Similarly, the state has created a number of business incentives to retain and recruit space-related firms. The following briefly summarizes some of these organizations and business incentives.

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<sup>16</sup> *Steps to the Stars*, Governor's Commission on Space, 1988.

<sup>17</sup> Chapter 2002-183, L.O.F., revised the name of the authority to the Florida Space Authority.

<sup>18</sup> Chapter 2003-286, L.O.F., changed the name of the corporation to the Florida Aerospace Finance Corporation. This change was intended to eliminate confusion surrounding its mission and allow the corporation to service aviation-related projects.

- The Technological Research and Development Authority, established by the Legislature in 1987, focuses on the cost-effective transfer of new technologies to schools and small businesses in Florida.
- The Florida Space Institute is a consortium of state academic institutions responsible for expanding Florida's space industry through applied research, developing and transferring technology, and providing education and training for individuals in space-related fields.
- Spaceport Management Council was created by the Legislature to provide coordination and recommendations on projects and activities that will increase the capabilities of Florida's space industry.
- Enterprise Florida, Inc., is the public-private partnership responsible for leading Florida's statewide economic development efforts. Enterprise Florida, Inc., has designated aerospace as a target sector of Florida's economy.

### **Tax Exemptions for Space-Related Enterprises**

Section 212.08, F.S., provides a sales tax exemption for certain equipment and machinery used to expand the productive output of a spaceport activity. Similarly, s. 212.031, F.S., provides the lease of real property used for space flight business is exempt from Florida sales tax.

Until its repeal in 2004, s. 196.1994, F.S., provided for an ad valorem tax exemption for certain space laboratories and cargo carriers, which were "deemed to carry out a scientific purpose." This exempt property included:

"...modules, pallets, racks, lockers, and their necessary associated hardware and subsystems owned by any person and intended for use as space laboratories launched into space aboard the space shuttle for the primary purpose of conducting scientific research in space or as cargo carriers launched into space aboard the space shuttle for the primary purpose of transporting or storing cargo..."

It appears that the constitutional basis for this exemption is found in Article VII, s. (3)(a), of the State Constitution, which provides that "...such portions of property as are used predominantly for ...scientific...purposes may be exempted by general law from taxation."

### **Ad Valorem Exemptions: Scientific Purposes**

Chapter 196, F.S., currently requires property to meet three criteria to qualify for a scientific ad valorem tax exemption. First, the property must be "owned and used" by the exempt entity for a scientific purpose.<sup>19</sup> An exempt entity is an entity that owns property that is put to an exempt use.

Second, the property must exclusively or predominantly be used for a scientific purpose.<sup>20</sup> "Predominant use of property" is defined as the use of property for exempt purposes in excess of 50 percent but less than exclusive, which is 100 percent.<sup>21</sup> The courts have clarified that unless

<sup>19</sup> Section 196.192(2), F.S. The State Constitution does not require ownership as a condition for the exemption.

<sup>20</sup> Section 196.192(2), F.S., consistent with the "predominant use" requirement in Art. VII, s. 3(a) of the State Constitution.

<sup>21</sup> Section 196.012, F.S.

the entire property “is used at least predominantly for an exempt use, no portion of it qualifies for an exemption.”<sup>22</sup> After the property meets the “predominant use” test, the exemption is restricted to “only those portions of property used predominantly for charitable” purposes.

Third, the property cannot be “used for profit-making purposes.”<sup>23</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 196.1999, F.S., to exempt from ad valorem taxation storage components used to transport or store cargo used for a space laboratory, which is used for scientific purposes. This exemption is similar to the exemption in s. 196.1994, F.S., which expired in 2004.

Specifically the committee substitute provides that:

“Notwithstanding any other provisions of this chapter, a module, pallet, rack, locker, and any necessary associated hardware and subsystem, owned by any person and intended to be used to transport or store cargo used for a space laboratory for the primary purpose of conducting scientific research in space, is deemed to carry out a scientific purpose and is exempt from ad valorem taxation.”

**Section 2** repeals s. 196.1994, F.S., the expired exemption that section 1 of this committee substitute replaces.

**Section 3** creates ss. 331.501 – 331.507, F.S., which may be called the “Florida Aerospace Infrastructure Act,” as provided in new s. 331.501, F.S.

Section 331.502, F.S., is created to state legislative findings that there is a need for capital assistance to the aerospace industry and to express legislative intent to create a program to invest in projects that would support the growth of Florida’s aerospace industry.

Section 331.503, F.S., is created to provide definitions of terms used in the act. This section defines the following terms: aerospace industry, board, committee, corporation, dealer, and program.

Section 331.504, F.S., creates the Florida Aerospace Infrastructure Program (program) within the Florida Aerospace Finance Corporation (corporation). The purpose of the program is to finance projects that support the growth of the aerospace industry. The program will be funded by grants from the Florida Aerospace Infrastructure Investment Trust Fund, if the trust fund is established by law (See CS/SB 2078). The Department of Revenue (DOR) must transfer from General Revenue to the trust fund those sales taxes on tangible personal property, admissions, tours, and leases or licenses of real property generated by dealers conducting business at Kennedy Space Center and Cape Canaveral Air Force Station. This section also requires dealers to file monthly returns with DOR, including segregated tax information.

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<sup>22</sup> *North Shore Medical Center, Inc. v. Bystrom*, 461 So.2d 167 (Fla. App. 3 Dist. 1984).

<sup>23</sup> Section 196.196(3), F.S.

This section provides that the program will be administered by the corporation. The corporation is required to ensure that:

- Recommendations of the Independent Investment Committee are implemented;
- An investment reserve account is established to receive deposits from OTTED; and
- The portfolio of the trust fund is monitored and a quarterly report is produced.

The corporation is also specifically authorized to:

- Provide loans, grants, and other investment participation to ensure the success of total financing undertaken;
- Seek co-investors in any investment transaction it makes;
- Ensure that investment proposals are not made for operating expenses, but for the development of the aerospace industry;
- Leverage the investment pool through use of loan guarantee capabilities of the Small Business Administration and other state and federal loan guarantee sources;
- Adopt policies and procedures to carry out its responsibilities as provided in this act;
- Develop an application and review process for investment proposals submitted to the Independent Investment Committee; and
- Ensure the program is open to both aerospace entities currently located and planning to locate in Florida.

The corporation may not commit more than 20 percent of the funds to any single investment. The corporation is prohibited from pledging that it is authorized to pledge the full faith and credit of the state.

Section 331.505, F.S., creates the Independent Investment Committee (committee) within the corporation for administrative purposes. The committee must receive proposals from businesses wishing to receive funding from the Florida Aerospace Infrastructure Investment Trust Fund. The committee is responsible for establishing application and evaluation criteria, and will review and recommend investments to be made from the fund by the corporation. Membership of the committee includes up to five voting members as follows:

- One representative appointed by each of the following:
  - The board of supervisors of the Florida Space Authority;
  - The board of directors of Enterprise Florida, Inc.; and
  - The board of directors of the Florida Aerospace Finance Corporation.
- Two representatives of the aerospace industry appointed by the Governor.

Members must be Florida residents and have a background in investment, banking, or the aerospace industry. Members of the committee are appointed to serve 3-year terms. Initial terms will begin upon appointment and terminate on June 30, 2008. Subsequent terms will begin on July 1. Appointed members that are employed by an entity that applies for financial support from the fund must refrain from voting on such projects. Committee members will serve without compensation, but may be reimbursed for travel or per diem expenses.

Specifically, the committee is responsible for:

- Reviewing and recommending investment in projects that support growth of the aerospace industry and enhance aerospace infrastructure;
- Reviewing progress reports on approved projects;
- Assisting the corporation in carrying out its duties;
- Recommending criteria for investment proposals, evaluation of proposals, and guidelines for investments made from the fund;
- Ensuring that each proposed project be judged on merit, need, investment return, and overall benefit to the aerospace industry;
- Assessing whether investment returns or value and capital preservation objectives exist for each recommended investment; and
- Reviewing whether the appropriate investment and retention of the program's capital base or other benefits are realized through the investments of the program.

Section 331.506, F.S., is created to grant the Florida Aerospace Corporation tax-exempt status. The tax exemption applies to any project or property owned by the corporation, and any resulting income; any notes, mortgages, letters of credit, or any other debt obligation. The tax exemption does not apply to taxes imposed on interest, income, or profits on debt obligations owned by the corporation.

Section 331.507, F.S., is created to provide reporting and auditing requirements of the corporation. By September 30 of each year, the corporation is required to submit a report to the Governor and the Legislature that includes: an evaluation of activities, recommendations for change, the fund's impact on private sector participation in the corporation's financing programs, economic and social benefits to businesses in Florida, and the fund's assets and liabilities at the end of the most recent fiscal year.

**Section 4** provides a severability clause.

**Section 5** provides an appropriation of \$4.1 million from the Florida Aerospace Infrastructure Investment Trust Fund to fund the Florida Aerospace Infrastructure Program.

**Section 6** provides that except as otherwise provided, this act will take effect July 1, 2005.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority exists on February 1, 1989.

By exempting these space laboratories and cargo carriers from ad valorem taxes, the committee substitute reduces the municipalities' and counties' ad valorem tax base, thereby reducing their revenue-raising authority. In addition, this committee substitute diverts local sales tax revenue collected at Kennedy Space Center and Cape Canaveral Air Force Station.

On April 1, 2005, the Revenue Estimating Conference estimated that the property tax exemption created in this committee substitute would have a negative fiscal impact of \$0.1 million in 2005-2006 on local governments. On April 7, 2005, the Revenue Estimating Conference estimated that the diversion of local sales tax will have a fiscal impact of negative \$.7 million on local governments. The maximum combined fiscal impact of this committee substitute is \$.8 million. Due to its insignificant fiscal, the committee substitute is exempt from the constitutional restriction.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

On April 1, 2005, the Revenue Estimating Conference estimated that the ad valorem tax exemption created in this committee substitute would have a negative fiscal impact of \$0.1 million in 2005-2006.

This committee substitute provides that the Florida Aerospace Infrastructure Program will be funded by the Florida Aerospace Infrastructure Investment Trust Fund. This trust fund will be funded by all sales tax on tangible personal property, admissions, tours, leases, and licenses generated by dealers conducting business at Kennedy Space Center (KSC) and Cape Canaveral Air Force Station (CCAFS).

On April 5, 2005, the Revenue Estimating Conference estimated that the sales taxes collected on those items specified above by businesses at KSC and CCAFS would be \$4 million in 2005-2006.

**B. Private Sector Impact:**

Owners of the space laboratories and cargo carriers will benefit to the extent that their property is not subject to ad valorem taxation.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The Department of Revenue has identified the following technical deficiency:

The committee substitute grants a tax-exempt status to the Florida Aerospace Finance Corporation and provides that debt that is issued in conjunction with a project financed under its authority is free from taxation. Income on debt obligations *owned* by the Florida Aerospace Finance Corporation (corporation) remains subject to taxation, but debt obligations which are *issued* by the corporation are not subject to taxation.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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