

# 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 2078

SPONSOR: Commerce and Consumer Services Committee and Senator Sebesta

SUBJECT: Trust Funds

DATE: April 14, 2005

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

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

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## I. Summary:

This committee substitute creates the Florida Aerospace Infrastructure Investment Trust Fund, which be administered by the Office of Tourism, Trade, and Economic Development (OTTED). The purpose of the trust fund is to facilitate the finance of infrastructure projects under the Florida Aerospace Infrastructure program, which is created by CS/SB 1938, and whose goal is to promote the growth of the aerospace industry. The trust fund will be funded by sales tax collections from businesses located at Kennedy Space Center and Cape Canaveral Air Force Station as specified in CS/SB 1938. The trust fund will terminate July 1, 2009, unless terminated sooner.

This committee substitute create an un-numbered section of the Florida Statutes.

## II. Present Situation:

### Creation and Operation of Trust Funds

A trust fund consists of monies received by the state which, under law or under trust agreement, are segregated for a purpose authorized by law (s. 215.32(2)(b)1., F.S.). Section 19(f), Art. III of the State Constitution, governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the membership of each house of the Legislature.<sup>1</sup> This provision further specifies that a trust fund must be created in a separate committee substitute for that purpose only.

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<sup>1</sup> Section 19(f)(1), Art. III of the State Constitution.

In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund (s. 215.3207, F.S.).

The Chief Financial Officer is directed to invest all the trust funds and all agency funds of each state agency (s. 17.61, F.S.). Under current law, any balance of an appropriation for any given fiscal year that is remaining after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for reappropriation (s. 216.301(1)(b), F.S.). Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act (s. 216.301(1)(c), F.S.).

### **Termination of Trust Funds**

Section 19(f)(2), Art. III of the State Constitution, specifies that trust funds created after November 4, 1992, with certain exceptions, shall terminate not more than 4 years after the effective date of the act authorizing the creation of the trust fund, unless the Legislature by law sets a shorter time period. Accordingly, a committee substitute that creates a trust fund should specify the trust fund's date of termination, or, if the trust fund is exempt from the automatic 4-year termination requirement, the committee substitute should declare that the trust fund is exempt from this requirement.<sup>2</sup>

The Legislature established a schedule and process for reviewing trust funds (ss. 215.3206 and 215.3208, F.S.). Before the regular session of the Legislature immediately before the scheduled termination date of an executive branch trust fund (or an earlier date if specified by the Legislature), the agency responsible for administration of the trust fund and the Governor must recommend to the Legislature whether the trust fund should be allowed to terminate or should be re-created (s. 215.3206(1), F.S.). Each recommendation is based on a review of the trust fund's purpose, use, and necessity. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.

If the trust fund is terminated and not immediately re-created, all cash balances and income of the trust fund are deposited into the General Revenue Fund (s. 215.3206(2), F.S.). The agency must pay any outstanding debts of the trust fund as soon as practicable, and the Chief Financial Officer closes out and removes the trust fund from the various state accounting systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities.

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<sup>2</sup> See Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

## **Sales Taxes**

Pursuant to chapter 212, F. S., the State of Florida levies a 6 percent sales and use tax on most sales of tangible personal property and a limited number of services. Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by this chapter.

Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Under the provisions of s. 212.054, 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 transaction” by chapter 212, F.S. and on communications services by chapter 202, F.S. In addition, the surtax does not apply to any sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. As of March, 2005, 58 counties levied at least one discretionary sales surtax, and 10 counties levying two.

### **III. Effect of Proposed Changes:**

**Section 1** creates the Florida Aerospace Infrastructure Investment Trust Fund.

The trust fund will be administered by the Office of Tourism, Trade and Economic Development. The purpose of the trust fund is to facilitate the finance of infrastructure projects under the Florida Aerospace Infrastructure program, which is created by CS/SB 1938, and whose goal is to promote the growth of the aerospace industry. The Department of Revenue (DOR) must transfer from General Revenue those sales taxes specified in SB 1938 to the trust fund. (The sales taxes specified in CS/SB 1938 are those collected from businesses located at Kennedy Space Center and Cape Canaveral Air Force Station) The trust fund will terminate July 1, 2009, unless terminated sooner.

**Section 2** provides that this act shall take effect July 1, 2005, if enacted by a 3/5 vote of the Legislature and if CS/SB 1938 is also enacted.

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

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

None.

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

None.

#### **C. Trust Funds Restrictions:**

SB 2078, creating a new trust fund, must pass by a three-fifths vote of the membership of each house to become law pursuant to section 19(f)(1), Article III, Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

This committee substitute creates the Florida Aerospace Infrastructure Investment Trust Fund. CS/SB 1938 provides that 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:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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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