The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 1526

INTRODUCER: Commerce Committee and Senators Haridopolos and Baker

SUBJECT: Corporate income tax

DATE: April 14, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/CS**
2.			FT	
3.			WPSC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The retirement of the Space Shuttle in 2010 is projected to leave in its wake the loss of at least 3,500 Florida jobs directly associated with the program. State and regional economic development and workforce training agencies are developing strategies to address the job loss, ranging from the recruitment of new companies to offering retraining in related fields. Space Florida, the state's aerospace policy and economic development entity, is working to recruit the fledgling commercial spaceflight industry, both in the U.S. and internationally, to this state. Currently, aerospace companies can utilize, depending on their location and investment, 13 business incentives and at least 4 business sales-tax exemptions.

CS/SB 1526 creates four corporate income tax credits, available for tax years beginning on or after January 1, 2013, for certified commercial spaceflight businesses that meet job creation and investment levels, and participate in a successful launch within the 3 previous years. These incentives are:

- A non-transferrable tax credit equal to 50 percent of the net corporate income tax liability in a given tax year.

- A transferable corporate income tax credit based on a certified commercial spaceflight business' net operating losses, and which can be sold to any other Florida corporate income taxpayer for at least 75 percent of its face value.
- A jobs tax credit equal to 10 percent of each new employee's annual wages, and capped at $7,500 per worker.
- A tax credit computed at 7.5 percent of machinery and equipment purchased for use in a commercial spaceflight project. The business must purchase at least $500,000 in machinery and equipment to qualify for a claim against 50 percent of its tax liability in a given year.

A certified commercial spaceflight business may claim only one of these tax credits per year, but may carry them forward in years where they have insufficient tax liability. Under no circumstance will a certified commercial spaceflight business be allowed to claim a tax credit in excess of its tax liability. Also, a certified commercial spaceflight business cannot claim tax credits if it decides to file a consolidated tax return .

CS/SB 1526 directs the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to implement a process to certify commercial spaceflight businesses for these tax credits, based on certain documentation filed with an application. Space Florida will assist OTTED in the certification process.

OTTED will notify the state Department of Revenue (DOR) within 10 days of certifying a commercial spaceflight business for the newly created tax credits. It is the responsibility of the certified commercial spaceflight business, or taxpayers who purchase the transferred credits, to prove to OTTED and DOR that they are eligible for the credits.

CS/SB 1526 also creates several definitions; a number of provisions related to revocation and recapture of credits, repayment of credits, and auditing; and a requirement for an annual report. Additionally, OTTED and DOR are given authority to promulgate rules to implement this credit program.

CS/SB 1526 creates s. 220.194, F.S., and amends ss.14.2015, 213.053, 220.02, 220.13, 220.16, and 220.194, F.S.

II. Present Situation:

Background on the Commercial Space Launch Industry[1]

Space transportation is the movement of, or means of moving, objects such as communications and observation satellites, to, from, or in space. In recent years, commercial launches have comprised at least 25 percent of all launches conducted worldwide. Commercial space transportation is carried out by vehicles owned and operated by private companies or organizations. The majority of such launches carry satellites and other payloads owned by private companies and procured through a competitive bidding process, although government payloads are occasionally launched commercially.

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[1] Summarized from information posted at website of FAA's Office of Commercial Space Transportation. See: http://ast.faa.gov./about/office_org/headquarters_offices/ast/industry/.

Commercial launches today are provided by expendable launch vehicles, which are used only once. But many companies and entrepreneurs are working to develop reusable launch vehicles, which could be used multiple times at a costs savings.

Another growing part of the commercial space transportation industry in the United States is the development of private or state-operated launch, re-entry, and processing sites known as "spaceports." Florida, Virginia, New Mexico and Texas are among the states developing commercial spaceports. These spaceports can provide space transportation service providers and their customers with an alternative to the traditional U.S. federal launch sites and ranges operated by either the U.S. Air Force or the National Aeronautics and Space Administration (NASA).

Prior to the early 1980s, there was no commercial space transportation industry. Only the United States launched commercial satellites, and these were launched on vehicles owned by the government, including the Space Shuttle. The first commercial U.S. launch occurred on March 29, 1989, when a Starfire orbital vehicle carrying the CONSORT 1 payload of materials for anti-gravity experiments developed by the University of Alabama blasted off from the White Sands Missile Range in New Mexico. [2]

But the commercial launch industry has grown dramatically, in part due to the development of the European commercial launch services organization Arianespace[3] and the ban of commercial payloads from flying aboard the Space Shuttle after the *Challenger* disaster. By the year 2006, U.S. commercial space transportation accounted for more than $139 billion in total economic activity, more than double the amount in 1999.[4]

Internationally, revenues from commercial launches are increasing. Estimated revenues from the 28 commercial launches worldwide were $1.97 billion, with $700 million in revenues generated by European launches, $581 million from Russian launches, $215 million from U.S. launches, and $475 million from other international sites.[5] The number of commercial launches varies each year, depending on the demand for launch services and other factors.

The Office of Commercial Space Transportation within the Federal Aviation Administration (FAA) is the U.S. government organization responsible for regulating and facilitating the safe operations and international competitiveness of the U.S. commercial space transportation industry. The FAA's launch regulations and licensing procedures apply to all commercial launches taking place within U.S. territory, and for launches being conducted abroad by U.S. Entities. In general, the FAA does not license launches by U.S. government organizations and certain classes of small rockets.

[2] See http://www.ncbi.nlm.nih.gov/pubmed/11537544.
[3] More information is available at: http://www.arianespace.com/index/index.asp.
[4] The Economic Impact of Commercial Space Transportation on the U.S. Economy. April 2008. Available at: http://ast.faa.gov./news/updates/media/EcoImpactReport2008.pdf.
[5] Commercial Space Transportation Year in Review: 2008. Published by the FAA. Information found on page 9. Available at http://www.faa.gov/about/office_org/headquarters_offices/ast/media/2008%20Year%20in%20Review.pdf.

Florida's attempts to attract more commercial space business

According to Space Florida's research,[6] the state is losing commercial launches to international competitors because of two factors: lower costs and greater assurance of launch dates. Some of the factors Space Florida cites that make it less expensive to launch overseas include no military approvals needed, lower safety standards, lower labor costs, and availability of missiles to launch the payloads. Similarly, foreign nations offer commercial satellite companies a firm launch date, which is important to their business plans. With commercial satellites generating revenue soon after launch, any delay in a launch date can have significant effects on a business' financial bottom line.

Space Florida's activities to make the state more attractive to commercial launch companies include:

- Entering into an agreement with the U.S. Air Force 45th Space Wing to lease Launch Complex 36 (LC-36). Space Florida plans to renovate LC-36 into a multi-use launch facility, using $14.5 million in state funds appropriated in FY 2008-2009.
- Helping facilitate the Air Force's assignment of Launch Complex 40 (LC-40) to private company SpaceX prior to its demolition. SpaceX received LC-40 with its more than $250 million in existing infrastructure and buildings, won bid contracts from NASA in excess of $1.6 billion, and received more than $2 million in cash and in-kind support from Space Florida.
- Marketing state-owned space infrastructure, which includes LC-46; the 50,000-square-foot Reusable Launch Vehicle (RLV) hangar; and the $30 million Space Life Sciences Lab, home to International Space Station research, and associated life sciences and biological research.
- Developing plans for "Exploration Park," planned as a mixed-use, multi-tenant technology and commerce park supporting both government and commercial space activities. Space Florida recently selected a general contractor to design and build the complex in phases. It will be located near the existing Space Life Sciences Lab, and on non-restricted property within Kennedy Space Center.

These facilities are within Florida's main "spaceport" property at Kennedy Space Center and Cape Canaveral. Certain designated areas in Gulf, Okaloosa, Santa Rosa, and Walton counties also are considered "spaceport territory," pursuant to s. 331.304, F.S. Space Florida also has the authority, pursuant to s. 331.329, F.S., to annex land for spaceport purposes.

In a move to put Florida in the forefront of the embryonic "space tourist" business, the Legislature passed the Spaceflight Informed Consent Act in 2008.[7] Mirrored after a Virginia law, this legislation provides immunity from litigation for a spaceflight entity if one of its passengers is injured or dies during a flight, so long as a required warning is given to and signed by the passenger. The immunity does not apply if the spaceflight entity commits gross negligence or willful or wanton disregard for the safety of the passenger; has actual knowledge or reasonably should have known of a dangerous condition; or intentionally injures the passenger.

[6] Excerpted from http://www.spaceflorida.gov/docs/Perception_vs_Reality_white_paper.pdf.

[7] Chapter 2008-180, L.O.F. (section 331.501, F.S.)

A recent report on how the 50 states are supporting commercial space activities indicated that Florida and Virginia have the most attractive incentives.[8]

Florida's current aerospace incentives

The state of Florida offers three aerospace-specific financial incentives, along with a number of general business incentives, of which aerospace companies can take advantage, depending on their location and investment.

The Legislature created the Qualified Defense Contractor Tax Refund [9]program in 1993 in response to the state's concerns that reductions in federal defense spending could result in losses of high-wage, high-technology jobs in Florida. The program has been amended several times in the intervening years, most recently in 2008, when it was extended to eligible space flight businesses participating in aerospace activities. It is now called the Qualified Defense Contract and Spaceflight Business (QDSC) Refund Program It sunsets June 30, 2014.

QDSC's basic incentive is a tax refund based on $3,000 per retained or created job, which pays an annual wage of at least 115 percent of the area's average annual wage and meets other conditions of the business' agreement with OTTED. The per-job tax credit increases to $6,000 if the business is located within a rural county or an enterprise zone, with a $1,000 per job bonus if the job pays an annual average wage at least equal to 150 percent of the area's private-sector wage and a $2,000 per job bonus if the average annual wage is at least 200 percent of the area's average private-sector wage.

No qualified business may receive more than $2.5 million in tax refunds in any one tax year, or $7.5 million total.

This tax incentive targets the following types of projects: consolidation of certain Department of Defense (DoD) contracts; conversion of DoD production jobs to non-defense production jobs; and projects involving the reuse of defense-related facilities for specific activities; the manufacturing, processing, and assembly of space flight vehicles; and a number of other activities related to space flight.

A qualified defense contract or spaceflight business may claim refunds from one or more of the following taxes paid:

- Sales and use taxes;
- Documentary stamp taxes;
- Emergency excise taxes;
- Ad valorem taxes;
- Corporate income taxes;
- Insurance premium taxes;
- Intangible personal property taxes; and
- Certain state communications taxes under ch. 202, F.S.

[8] State Support for Commercial Space Activities. Published by the FAA. Available at http://www.faa.gov/about/office_org/headquarters_offices/ast/media/State%20Support%20for%20Commercial%20Space%20Activities.pdf.

[9] Section 288.1045, F.S.

Since its inception, 38 QDSC applications have been received, and 28 have been approved. There are eight active or complete QDSC projects, which have created or retained 1,697 jobs over the years with an average wage of nearly $69,000. These 8 companies have received a total of $7.4 million in tax refunds. According to the 2008 state incentives report prepared by Enterprise Florida, Inc., no new applications for the incentive were received in FY 2008.[10]

The other space-centric incentives are two related <u>sales-tax exemptions:</u>

- One is for heavy machinery and equipment used in aerospace, defense, and semiconductor facilities, in s. 212.08(5)(j), F.S. Eligible machinery and equipment must be used to design, manufacture, assemble, process, compound, or produce technology products for sale. Such products, for aerospace, include space launch or space flight vehicles, missiles, satellites, payloads, avionics and control systems. In FY 2008-2009, this exemption is expected to have an estimated negative impact on state revenue of $2.3 million,[11] but there is no breakout on what portion of that is attributable to aerospace companies.
- The second one, in s. 212.08(5)(b)1. and 2., F.S., is for heavy machinery and equipment used in spaceport activities, defined as activities directed or sponsored by Space Florida on spaceport property, or by new businesses anywhere in the state that manufacture tangible personal property. This refund is approved by DOR. In FY 2008-2009, this exemption is expected to have an estimated negative impact on state revenue of nearly $89 million,[12] but again, there is no breakout on what portion of that is attributable to aerospace activities on spaceport property.

As mentioned above, aerospace or spaceflight businesses also could be eligible, based on their location, job creation, and investment, for the following general business incentives:

- Brownfield Redevelopment Bonus Refund Program;
- Capital Investment Tax Credit;
- Contaminated Site Rehabilitation Tax Credit;
- High Impact Performance Incentive Grant;
- Incumbent Worker Training Program;
- Innovation Incentive Program;
- Quick Action Closing Fund;
- Qualified Targeted Industry Tax Refund Program;
- Quick Response Training Program;
- Rural Job Tax Credit Program;
- the Transportation Projects “Road Fund”; and
- Urban High-Crime Area Job Tax Credit Program.

There also are at least two general sales tax exemptions for manufacturing industries that could be applicable to aerospace activities.

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[10] However, contracts were executed between two companies and OTTED based on previously approved applications.
[11] <u>2008 Florida Tax Handbook</u>. Page 124. On file with the Commerce Committee.
[12] Ibid.

III. Effect of Proposed Changes:

CS/SB 1526 creates four new corporate income tax exemptions intended to attract commercial spaceflight companies to Florida or to encourage Florida companies performing similar work to expand or diversify into aerospace-related goods and services. It creates an application and certification process to determine these companies' eligibility for the credits; an annual report to the Governor and the Legislature, and enforcement mechanisms.

Section 1 creates s. 220.194, F.S., establishing the four tax credits, definitions for terms used in the bill, the certification process for commercial spaceflight businesses, and the tax credit administration and enforcement process.

Fifteen terms used in the legislation are defined. A key definition is that of a certified commercial spaceflight business," meaning a company that:

- Has been certified by OTTED;
- Is registered with the Secretary of State to do business in Florida; and
- Is currently undertaking in Florida, for nongovernmental purposes only, the following activities that will eventually result in a launch from a commercial launch zone:
  - Designing or manufacturing a launch vehicle, reentry vehicle, or components thereof;
  - Providing a launch service or reentry service; or
  - Providing the payload for a launch vehicle or reentry vehicle.

A certified commercial spaceflight business may participate in more than one commercial spaceflight project at a time.

For the purposes of applying for and claiming any of the four tax incentives created in this act, a certified commercial spaceflight business also must have:

- Created, filled and retained at least 35 net new jobs associated with an individual spaceflight project within the 3 calendar years prior to claiming the credit;
- Invested a total of at least $15 million in an individual spaceflight project in Florida during the 3 calendar years prior to claiming the credit; and
- Participated in a commercial spaceflight project that resulted in a successful launch from a commercial launch zone within the previous 3 years.

Also defined are:

- "Commercial spaceflight project," which means an activity performed by a certified commercial spaceflight business related to the launch or reentry of a launch vehicle or reentry vehicle for launches from a commercial launch zone. The term includes a launch service or reentry service, and any process that validates hardware or components to meet design and workmanship criteria for space launch vehicles under DoD and NASA guidelines.
- "New job" means a full-time equivalent position created and filled by a certified commercial spaceflight business on or after January 1, 2010, to work on a commercial spaceflight project. Jobs which do not count toward the 35 total are those filled by an owner, partner, or majority stockholder of the business, or by an administrative, clerical,

or janitorial employee. The same job shall not be counted more than once for the purposes of the incentives created by this act.
- "Successful launch" means a launch that successfully places a launch vehicle or reentry vehicle and any payload from Earth into a suborbital trajectory, into an orbit around Earth, or otherwise into outer space.

The four corporate income tax credits created in this section are available for tax years beginning on or after January 1, 2013, which means eligible businesses have 3 years from the effective date of this act to ramp up their operations. The tax credits are:
- A non-transferrable tax credit equal to 50 percent of the net corporate income tax liability in a given tax year.
- A transferable corporate income tax credit based on a certified commercial spaceflight business' net operating losses.[13] The amount of this transferrable tax credit is 100 percent of the certified commercial spaceflight business' net operating losses in the first 3 full years of operation. This credit is not intended for use by the spaceflight business, but to be transferred in exchange for monetary compensation to one or more other ch. 220, F.S., taxpayers. A transferrable tax credit can be sold for at least 75 percent of its face value, and the transferee can carryforward the unused credit for up to 5 years.
- A jobs tax credit equal to 10 percent of each new employee's annual wages that are subject to unemployment tax. This tax credit is capped at $7,500 per worker. Unused credits may be carried forward for up to 5 years.
- A tax credit computed at 7.5 percent of machinery and equipment purchased for use in a commercial spaceflight project. The business must purchase at least $500,000 in machinery and equipment to qualify for a claim, and can claim a particular purchase of machinery and equipment only once. The maximum claim against the business' corporate income tax liability is 50 percent, but the credit can be carried forward for up to 5 years.

A certified commercial spaceflight business may claim only one of these tax credits per year. Under no circumstance will a certified commercial spaceflight business be allowed to claim a tax credit in excess of its tax liability.

Also, a certified commercial spaceflight business cannot claim tax credits if it decides to file a consolidated tax return, which prevents a parent or affiliated companies from taking advantage of the spaceflight business' tax credit.

To claim the tax credits, a commercial spaceflight company must apply to OTTED for certification, and pay a $250 application fee. The applications must include such information as documentation that the applicant is in the commercial spaceflight documentation of its current spaceflight project; the total amount and types of credits sought; a copy of the company audits prepared by a Florida-registered certified public accountant that delineates, if applicable, that portion of the applicant's business operations that are aerospace-oriented; and any other documentation as required.

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[13] For this second tax credit, the spaceflight business must meet two additional criteria: it must have incurred operating losses in any of the 3 previous calendar years, and it must not be at least 50-percent owned or controlled by another company, or a consolidated group of affiliated corporations, that have shown positive net income in any of the 3 previous calendar years through ongoing operations.

Space Florida will review the applications initially, and within 60 days of receipt forward a recommendation for approval or denial to OTTED. OTTED's executive director has 30 days after receiving Space Florida's recommendation to either approve or deny the application, and 10 days after that decision to notify DOR of the approvals. OTTED also shall provide a letter of certification to the successful applicant, and inform an unsuccessful applicant of the reasons for denial.

Certifications expire 10 years after the original certification by OTTED, or 10 years after the business' last successful launch of its commercial spaceflight project, whichever occurs later. A certified commercial spaceflight business whose eligibility expires may renew its eligibility upon a successful launch that results from a commercial spaceflight project.

Also created in this section are a number of technical provisions related to DOR's ability to audit the certified commercial spaceflight businesses; the procedures for revocation and recapture of tax credits; requirements for filing amended tax returns where warranted; and DOR's ability to assess additional taxes, penalties, and interest against taxpayers filing inaccurate or fraudulent tax returns.

OTTED, in consultation with Space Florida, is directed to adopt rules related to its administration of this program, including the application forms and the application and certification process. DOR is directed to adopt rules related to necessary forms, reporting requirements, transfer of credit requirements, and what constitutes the minimum portion of a credit that can be transferred.

Finally, OTTED, in cooperation with Space Florida and DOR, will submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, beginning November 30, 2013, about the activities of the commercial spaceflight business incentives program.

Section 2 amends s. 14.2015, F.S., to add the administration of the spaceflight business tax credit program to OTTED's responsibilities.

Section 3 amends s. 213.053, F.S., to allow DOR to be able to share confidential tax data about certified commercial spaceflight businesses to OTTED or Space Florida.

Section 4 amends s. 220.02, F.S., to add the spaceflight business tax credits last in the list of credits that may be taken against the Florida corporate income tax.

Section 5 amends s. 220.13, F.S., to account for the tax credits as an adjustment to taxpayer's reported income.

Section 6 amends s. 220.16, F.S., to adjust a taxpayer's non-business income to include payments received for selling tax credits pursuant to s. 220.194(3)(b), F.S.

Section 7 provides an effective date of July 1, 2010, except that the credits created by the legislation may be claimed prior to January 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate.The Revenue Estimating Conference (REC) has discussed the bill or the proposed committee substitute amendment three times, but has not adopted an official revenue impact.

At its April 10, 2009, meeting, the REC discussed preliminary estimates prepared by DOR staff that indicated the non-transferrable corporate income tax credit may result in a $13.1 million loss in state revenues; a $5.1 million loss in state revenues from the jobs tax credit; and $13.1 million loss in state revenues from the machinery and equipment tax credit. DOR staff described as “indeterminate” the impact of the transferrable tax credits based on a company’s net operating losses.

B. Private Sector Impact:

Indeterminate, but positive. The tax credits as drafted in CS/SB 1526 are likely to be attractive to commercial spaceflight businesses that may be interested in relocating to Florida or in expanding their existing facilities or markets.

C. Government Sector Impact:

Indeterminate. CS/SB 1526 increases the workload of OTTED and DOR, so it is possible these agencies may require additional FTEs and updated software.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Commerce Committee on April 14, 2009:

- Deletes, adds, or modifies definitions to be used in the new statute, including "certified commercial spaceflight contractor," to focus on the new commecial aerospace aspect of the incentives.
- Clarifies that a certified commercial spaceflight business can claim only one of the four new corporate incomet tax incentives in a given tax year.
- Specifies that under no circumstance shall a certified commercial spaceflight business claim a refund in excess of its corporate income tax liability.
- Makes consistent the basic requirements a commercial spaceflight business must meet in order to gain OTTED certification and be eligible to claim the four incentives.
- Modifies those basic eligibility requirements as follows: the creation, retention, and filling of 35 net, new jobs within the 3 prior calendar years; an investment of $15 million within the 3 prior calendar years; and participation in at least one successful launch from a Florida commercial launch zone within the 3 previous years.
- Narrows the first incentive, a non-transferrable corporate income tax credit, from a tax credit equal to 100 pecent of its eligible costs, to 50 percent of its corporate income tax liability if it meets the job-creation, investment, and other criteria.
- Prohibits certified commercial spaceflight businesses from filing consolidated returns, if they want to take advantage of these incentives.
- Specifies that none of the new incentives can be claimed until the tax year that begins January 1, 2013.
- Directs Space Florida to conduct an initial review of applications from commercial spaceflight businesses, and to recommend approval or denial to OTTED.
- Includes several technical changes at DOR's request to improve agency enforcement of the incentives.

B. Amendments:

None.