

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 Military Affairs, Space, and Domestic Security Committee

BILL: SB 1224

INTRODUCER: Altman

SUBJECT: Corporate Tax Credits for Spaceflight Projects

DATE: March 16, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates two corporate income tax credits, available for tax years beginning on or after October 1, 2014, for certified spaceflight businesses that meet specified job-creation and investment levels. These incentives are:

- A non-transferrable tax credit equal to 50 percent of the net corporate income tax liability in a given tax year. Total tax credits available will be capped at \$10 million per state fiscal year, with individual businesses eligible for a maximum \$1 million each year.
- A transferable corporate income tax credit based on a certified spaceflight business' net operating losses, and which can be sold to any other Florida corporate income taxpayer. Total tax credits available will be \$25 million per state fiscal year, with individual businesses eligible for a maximum \$2.5 million each year.

This bill directs the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to implement a process to certify spaceflight businesses for these tax credits, based on certain documentation filed with an application. Space Florida will assist OTTED in the certification process. OTTED also will notify the Department of Revenue (DOR) of the eligible taxpayers and the amount of tax credits available to them.

The Revenue Estimating Conference reviewed this proposed legislation and on March 11, 2011, adopted annualized negative impacts of \$10 million for the non-transferable credit and \$25 million for the transferable credit. The Conference determined that the cash impact would be zero for FYs 2011-12 through 2013-14.

This bill creates s. 220.194, F.S., and amends ss. 14.2015, 213.053, 220.02, 220.13, and 220.16, F.S.

II. Present Situation:

*Background on the Commercial Space Launch Industry*¹

The retirement of the Space Shuttle later this year, and the cancellation of its successor Constellation program, is projected to leave in its wake the loss of as many as 9,000 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 state business incentives and at least four business sales-tax exemptions specified in statute.

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.

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

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/.

² See <http://www.ncbi.nlm.nih.gov/pubmed/11537544>.

But the commercial launch industry has grown dramatically, in part due to the development of the European commercial launch services organization Arianespace³ and the ban on commercial payloads flying aboard the Space Shuttle after the *Challenger* disaster. By 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. companies. In general, the FAA does not license launches by U.S. government organizations and certain classes of small rockets.

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 that no military approval is 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 efforts 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 Space Launch Complex 36 (SLC-36). Space Florida plans to renovate SLC-36 into a multi-use launch facility, using \$14.5 million in state funds appropriated in FY 2008-2009.⁷
- Helping facilitate the Air Force's assignment of Space Launch Complex 40 (SLC-40) to the privately owned company SpaceX prior to its demolition. SpaceX received SLC-40 with its

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.

⁶ Excerpt from Space Florida White Paper: Perception vs. Reality. On file with Space Florida.

⁷ Space Florida has spent approximately \$3.7 million for improvements to SLC-36 and is seeking legislative permission to use some of the remaining \$10.8 million on other projects according to conversations with Space Florida staff. More information is available in the analysis for CS/SB 1776, available at <http://www.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s1776.cm.pdf>.

more than \$250 million in existing infrastructure and buildings, won bid contracts from NASA in excess of \$1.6 billion, and has 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.

Additionally, in January 2010, Cecil Field near Jacksonville received a launch operator’s license from the Federal Aviation Administration, allowing it to support horizontal space launches from its runways.⁸ Cecil Field’s license makes it the nation’s seventh commercial spaceport. It will allow horizontal launches of vehicles, such as Virgin Galactic’s prototype SpaceShipTwo tourist space vehicle, to take off and land like planes at the site’s 12,500-foot runway.

In a move to put Florida in the forefront of the embryonic “space tourist” business, the Legislature passed the Spaceflight Informed Consent Act in 2008.⁹ 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.

A 2009 report on how the 50 states are supporting commercial space activities indicated that Florida and Virginia have the most attractive incentives.¹⁰

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 Refund¹¹ program in 1993 in response to the state’s concerns that reductions in federal defense spending could result in losses

⁸ General information about Cecil Field is available at <http://www.jaa.aero/AirSys/CF.aspx>. Spaceport information is available at many sites, including <http://www.cecilfieldspaceport.com/>. Both sites last visited March 16, 2011.

⁹ Chapter 2008-180, L.O.F. (Section 331.501, F.S.)

¹⁰ State Support for Commercial Space Activities. Published by the FAA in 2009. Available at http://www.faa.gov/about/office_org/headquarters_offices/ast/media/State%20Support%20for%20Commercial%20Space%20Activities.pdf. Last visited March 16, 2011.

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.

Since its inception, 41 QDSC applications have been received, and 30 have been approved. There are nine active or complete QDSC projects, which have committed to create or retain 2,244 jobs over the years with a committed average wage of nearly \$62,000. These nine companies have received a total of \$9.48 million in tax refunds.¹² According to the 2009 state incentives report prepared by Enterprise Florida, Inc., two QDSC projects were approved in FY 2008-2009, with a total committed investment of \$26.3 million; 612 in committed new or retained jobs; and a committed average wage of \$40,284.¹³

¹¹ Section 288.1045, F.S.

¹² 2009 Incentives Report, prepared by EFI. Information on page 18. Available at http://www.eflorida.com/uploadedFiles/Florida_Knowledge_Center/My_eFlorida_EFI_and_Partners/Floridas_Economic_Perspective/2009%20Incentives%20Report.pdf. Free registration required. Site last visited March 16, 2011.

¹³ Ibid. Page 17.

The other space-centric incentives are two related sales-tax exemptions:

- One is for 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 2010-2011, this exemption is expected to have an estimated negative impact on state general revenue of \$1.9 million;¹⁴ there is no breakout specific to space-related manufacturers.
- The second incentive is found in s. 212.08(5)(b)1. and 2., F.S., and is for 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 \$45 million.¹⁵ There is no available breakout specifying that portion of the total credits claimed 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;
- Economic Development Transportation Fund, or the “road fund;” and
- Urban High-Crime Area Job Tax Credit Program.

Florida also offers at least two general sales tax exemptions for manufacturing industries that could apply to aerospace activities.

Space workforce and economic impact issues

The Brevard Workforce Development Board, Inc., (BWDB) estimates that Space Shuttle-related activity in Florida supports a workforce level of approximately 9,000 employees (6,340 United Space Alliance employees and 2,895 sub-tier and related support contractor employees). 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 there is a specific shuttle-related supplier base of some 1,046 companies throughout the state.

¹⁴ 2010 Florida Tax Handbook, Page 151. Available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2010.pdf>. Last visited March 16, 2011.

¹⁵ Ibid.

The most recent information compiled by the BWDB¹⁶ indicates that most of the 9,000 Space Shuttle employees will likely be impacted by shuttle's retirement and the proposed cancellation by the of the shuttle's successor, Constellation.

NASA's operations in Florida are a major economic driver.¹⁷ The total amount of NASA spending (so-called "outside money") for KSC-related activities was \$1.96 billion, including \$1.1 billion in wages in FY 2007-2008. Counting indirect spending, the total economic impact of NASA to Florida was estimated at \$4.1 billion in production output, \$2.1 billion in household income, 40,802 jobs, and \$103 million in state and local tax revenues. The study also found that 98 percent of the output impact and 99 percent of the jobs and wage impacts occur in the seven-county Central Florida region¹⁸ around KSC.

III. Effect of Proposed Changes:

This bill creates two corporate income tax credits intended to attract spaceflight businesses to Florida or to encourage Florida companies performing similar work to expand or diversify into aerospace-related goods and services. It also creates an application and certification process to determine these businesses' eligibility for the credits; an annual report to the Governor and the Legislature; and enforcement mechanisms.

Section 1 amends s. 14.2015, F.S., to add the administration of the spaceflight business tax credit program to OTTED's responsibilities.

Section 2 amends s. 213.053, F.S., to allow DOR to be able to share confidential tax data about certified spaceflight businesses to OTTED or Space Florida.

Section 3 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 4 amends s. 220.13, F.S., to account for the tax credits as an adjustment to taxpayer's reported income.

Section 5 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 6 creates s. 220.194, F.S., establishing two tax credits, definitions for terms used in the bill, the credit approval and certification process for spaceflight businesses and the tax credit administration and enforcement process.

Terms used in the legislation are defined. Two key definitions are that of "spaceflight business" and "spaceflight project."

¹⁶ On file with the Senate Commerce Committee.

¹⁷ Information in the paragraph was obtained from the report, "Economic Impact of NASA in Florida, FY 2008." Available at http://www.nasa.gov/centers/kennedy/pdf/318131main_economic-impact08.pdf. Last visited March 16, 2011.

¹⁸ The report lists those seven counties as Brevard, Flagler, Lake, Orange, Osceola, Seminole, and Volusia.

“Spaceflight business” is defined as a business that:

- Is registered with the Secretary of State to do business in Florida; and
- Is currently engaged in a spaceflight project.

“Spaceflight project” means any of the following activities performed in Florida:

- Designing, manufacturing, testing, or assembling a space vehicle or components thereof;
- Providing a launch service, payload processing service, or reentry service; or
- Providing the payload for a launch vehicle or reentry space vehicle, administrative support, and tourism activities related to these activities.

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

For the purposes of applying for and claiming either of the tax incentives created in this act, a spaceflight business must first file an application requesting to be approved to earn a credit. After demonstrating that it has met the statutory requirements, the business must then be certified by OTTED before taking a credit. To be certified, the business must have:

- Created, filled and retained at least 35 new jobs in Florida for Florida residents directly associated with an individual spaceflight project within the 3 years prior to claiming a credit; and
- Invested a total of at least \$15 million in an individual spaceflight project in Florida during the 3 years prior to claiming the credit; and

The application also must include certain information about the business; the total amount and types of credits sought; whether it intends to transfer the credits based on its net operating loss; a copy of an audit prepared by a Florida-licensed certified public accountant that identifies the portion of the business’s activities related to spaceflight activities in Florida; and any other documentation deemed necessary by OTTED.

All certified spaceflight businesses also must file an annual report with OTTED about the progress of its project(s).

Also defined in the bill are:

- “New employee” means a Florida resident who begins or maintains full-time employment in Florida with a spaceflight business on or after October 1, 2011. The term does not include a person who is a partner, majority stockholder, or owner of the business or a person who is employed in a temporary construction job or principally involved with the construction of real property.
- “New job” means the full-time employment of an employee in a manner that is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation. To meet the requirement for certification specified in subsection (5)(b) of the bill, a new job must:
 1. Pay new employees at least 115 percent of the statewide or countywide average annual private-sector wage for the three taxable years immediately preceding filing an application for certification;

2. Require a new employee to perform duties on a regular full-time basis in this state for an average of at least 36 hours per week each month for the 3 taxable years immediately preceding filing an application for certification; and
3. Not be held by a person who has previously been included as a new employee on an application for any credit authorized by this section.

The corporate income tax credits created in this section are available to be approved upon application and thereafter taken by a certified business for taxable years beginning on or after January 1 of the calendar year preceding the start of the applicable state fiscal year, commencing October 1, 2014. The tax credits are:

- A non-transferrable corporate income tax credit equal to 50 percent of a spaceflight business's corporate income tax liability. The per-business cap is \$1 million and \$10 million in total for any state fiscal year.
- A transferrable corporate income tax credit based on a spaceflight business's net operating losses.¹⁹ The amount of this transferrable tax credit is 100 percent of the certified spaceflight business' net operating losses that would otherwise be available to be taken on a Florida return. This credit may be transferred in exchange for monetary compensation to one or more other ch. 220, F.S., taxpayers. This tax credit is capped at \$2.5 million per business per tax, and OTTED may not approve more than \$25 million of these credits during a single state fiscal year.

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

Also, a certified spaceflight business cannot claim these tax credits if it decides to file a consolidated tax return. This prevents a parent or affiliated company with a larger corporate income tax liability from taking advantage of the spaceflight business's tax credit.

To claim the tax credits, a spaceflight company must apply to OTTED for certification, and pay a \$250 non-refundable application fee. The applications must include documentation that the applicant is in the spaceflight business; documentation that the applicant has engaged in a qualifying spaceflight project; the total amount and types of credits sought; a copy of the company audits prepared by a Florida-registered certified public accountant which identifies that a portion of the business's activities in this state are related to spaceflight projects in Florida; and other documentation as required.

OTTED will review the applications for approval to earn a credit initially, and rule within 60 days of receipt of the application. It may consult with Space Florida prior to ruling. After conducting activities demonstrating that the approved credit has been earned, the business shall seek certification to take the credit and OTTED will forward a recommendation for approval or denial to OTTED. OTTED's executive director has 30 days after receiving the recommendation to either approve or deny the application, and 10 days after that decision to notify DOR of the

¹⁹ For this second tax credit, the spaceflight business must meet two additional criteria: it must have incurred operating losses 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.

approvals. OTTED also must provide a letter of certification to the successful applicant, and inform an unsuccessful applicant of the reasons for denial.

Also created in this section are a number of technical provisions related to DOR's ability to audit the certified 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, must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, beginning November 30, 2014, about the activities of the spaceflight business incentives program.

Section 7 provides that this act will take effect upon becoming law, except that the credits created by the legislation may not be claimed prior to October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference reviewed this proposed legislation and on March 11, 2011, adopted annualized negative impacts of \$10 million for the non-transferable credit

and \$25 million for the transferable credit. The Conference determined that the cash impact would be zero for FYs 2011-12 through 2013-14.

B. Private Sector Impact:

Indeterminate, but positive. The tax credits in this bill are likely to be attractive to spaceflight businesses that may be interested in relocating to Florida or in expanding their existing facilities or markets.

C. Government Sector Impact:

Indeterminate. This bill 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.)

None.

B. Amendments:

None.