

FINAL BILL ANALYSIS

BILL #: SB 652

FINAL HOUSE FLOOR ACTION:

115 Y's 0 N's

SPONSOR: Sen. Simmons (Rep. Goodson)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/HB 703

SUMMARY ANALYSIS

SB 652 was passed by the House on May 4, 2011. The bill was approved by the Governor on June 17, 2011, chapter 2011-153, Laws of Florida, and becomes effective July 1, 2011. Some states offer liability protection for commercial human spaceflights as an incentive measure to attract or retain commercial spaceflight activity in their state. Florida law provides liability protection to spaceflight entities in the event of an injury to or death of a participant engaging in spaceflight activities provided the required warning is given to and signed by the participant. Unless reenacted by the Legislature, the law will sunset on October 2, 2018. The bill repeals the sunset date of October 2, 2018, and extends liability protection to certain space-related manufacturers and suppliers, which may have the effect of encouraging private sector economic activity.

The bill does not appear to have a fiscal impact on state or local government.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Issue Background

In order to encourage growth in the commercial spaceflight industry, Congress enacted the Commercial Space Launch Amendments Act of 2004 (“the Act”).¹ The Act establishes a licensing process for spaceflight entities.² The Act also establishes informed consent requirements for commercial human spaceflight and provides certain protections to licensed entities that engage in commercial human spaceflight.

The provisions of the Act include a “fly at your own risk” clause that allows a licensed entity to carry spaceflight participants only if the licensed entity informs participants in writing about the risks of the launch and reentry, including the safety record of the launch or reentry vehicle.³ After being fully informed, participants must provide written consent.⁴ The Act does not require spaceflight participants to waive liability for any non-governmental entity.

The Act also includes licensed entities in a temporary indemnification and insurance arrangement that requires the licensed entity to purchase insurance, but provides government indemnification up to \$1.5 billion beyond the insurance cap.⁵ This has the effect of shielding licensed entities from high insurance costs due to the risk of a catastrophic event.

In general, states offer liability protection for commercial human spaceflights as an incentive measure to attract or retain commercial spaceflight activity in their state. In addition to Florida, Virginia and New Mexico provide liability protection for entities engaging in commercial human spaceflight.⁶ Last year, the Virginia General Assembly repealed the sunset date of the Virginia law.⁷ The New Mexico law provides a sunset date of July 1, 2018.

Florida Liability Protection

Section 331.501, F.S., provides that a spaceflight entity⁸ is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight activities⁹ provided the required warning is given to and signed by the participant. A participant or participant's representative may not recover damages from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities. The limitation on liability is in addition to any other limitation of legal liability that might

¹ 49 U.S.C. ss. 70101-70305.

² See generally 49 U.S.C. s. 70105

³ 49 U.S.C. s. 70105(b)(5).

⁴ 49 U.S.C. s. 70105(b)(5)(C).

⁵ 49 U.S.C. ss. 70112-13. \$500 million in coverage for third party claims. \$100 million for property damage claims by the United States.

⁶ Va. Code ss. 8.01-227.8 through 8.01-227.10. NMSA 1978, ss. 41-14-1 through 41-14-4.

⁷ HB 21 repealed the sunset date of July 1, 2013.

⁸ Section 331.501(1)(c), F.S. defines “spaceflight entity” as a public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for spaceflight activities.

⁹ As defined in s. 331.501(1)(b), F.S., the term “spaceflight activities” means launch services or reentry services as those terms are defined in 49 U.S.C. s. 70102.

otherwise be provided by law. Further, immunity provided under current law does not apply if the injury was proximately caused by the spaceflight entity and the spaceflight entity:¹⁰

- commits gross negligence or willful or wanton disregard for the safety of the participant;
- has actual knowledge or reasonably should have known of a dangerous condition; or
- intentionally injures the participant.

To receive the immunity provided under current law, the spaceflight entity must have each participant sign a required warning statement.¹¹ The warning must contain, at a minimum, the following statement:

WARNING: Under Florida law, there is no liability for an injury to or death of a participant in a spaceflight activity provided by a spaceflight entity if such injury or death results from the inherent risks of the spaceflight activity. Injuries caused by inherent risks of spaceflight activities may include, among others, injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity.¹²

Unless reenacted by the Legislature, the provisions of this section will sunset on October 2, 2018.¹³

Effect of the Bill:

The bill amends s. 331.501, F.S., by repealing the sunset date of October 2, 2018. The bill also amends the definition of "spaceflight entity" to include any manufacturer or supplier of components, services, or vehicles that have been reviewed by the Federal Aviation Administration as part of the licensing process. If the bill becomes law, existing liability protections will be extended to include certain space-related manufacturers or suppliers. This bill provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁰ Section 331.501(2)(b), F.S.

¹¹ Section 331.501(3)(a), F.S.

¹² Section 331.501(3)(b), F.S.

¹³ Section 331.501(4), F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By removing the sunset provision, the bill may have the effect of encouraging private sector economic activity.

D. FISCAL COMMENTS:

None.