

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 221 Recovery of Spaceflight Assets

**SPONSOR(S):** Criminal Justice & Public Safety Subcommittee, Sirois and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N, As CS	Walsh	Hall
2) Tourism, Infrastructure & Energy Subcommittee	16 Y, 0 N	Willson	Keating
3) Judiciary Committee			

### SUMMARY ANALYSIS

Private spaceflight entities place an emphasis on reusability, turning to technological advances to aid in rocket and spacecraft recovery. Spaceflight entities recover hardware to safeguard intellectual property, evaluate performance after missions, protect public safety, and reuse materials for future flights.

Law enforcement and a finder of lost or abandoned property on public property must follow the specific procedures outlined in ch. 705, F.S. A finder of lost or abandoned property on public property must report the property to law enforcement. Law enforcement is required to:

- Make a reasonable attempt to ascertain the owner of lost or abandoned property found on public property;
- Take custody of the property if it can be easily removed, or place a notice on property that cannot be easily removed;
- Follow the notice provisions outlined in ch. 705, F.S., prior to the final disposition of lost or abandoned property found on public property.

Lost or abandoned property found on private property is not covered by Florida statute and is subject to the principles of the common law of property. Florida provides no statutory obligation for local law enforcement to participate in the removal, transportation, or storage of personal property found on private property.

The bill affirms that a spaceflight entity retains ownership of a spaceflight asset following launch or reentry, unless the spaceflight entity expressly indicates its intent to abandon the asset.

Under the bill, any person who finds an item that is reasonably identifiable as a spaceflight asset is required to report the description and location of the spaceflight asset to a law enforcement agency. The bill requires a law enforcement agency that receives a report of a spaceflight asset to make a reasonable effort to identify and promptly notify the owner, and permits a law enforcement officer to authorize the owner of a spaceflight asset to enter private property to recover a spaceflight asset under certain circumstances.

The bill prohibits a person from knowingly appropriating an item reasonably identifiable as a spaceflight asset to his or her own use, or to the use of any other person not entitled to the asset, or refusing to surrender a spaceflight asset to a law enforcement officer or the owner of the asset. The bill makes misappropriation of a spaceflight asset a first degree misdemeanor.

The bill updates the definitions of “participant” and “spaceflight activities” found in s. 331.501, F.S.

The bill may have a positive insignificant impact on county jail beds by creating the new misdemeanor offense of misappropriation of a spaceflight asset.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Space Flight

Ch. 331, Part II, F.S., otherwise known as the Space Florida Act,<sup>1</sup> declares that the aerospace industry is an integral part of diversifying the state's economy and affirms Florida's commitment to facilitating a world class aerospace industry.<sup>2</sup> Florida's space industry is booming, with commercial space launches driving the Space Coast economy.<sup>3</sup> According to the Space Coast Office of Tourism, 31 launches took off from Cape Canaveral in 2020, and one U.S. Space Force official estimates there could be as many as 53 launches in 2021.<sup>4</sup> This surge in space development brings new operations and technological advances to Florida, specifically rocket and spacecraft recovery operations.

In the past, officials have faced setbacks when attempting to recover spaceflight assets. Debris fell across eastern Texas and western Louisiana when the Space Shuttle Columbia tragically broke apart while re-entering the Earth's atmosphere in 2003.<sup>5</sup> Within hours of the Columbia disaster, debris from the shuttle was listed for sale on eBay.<sup>6</sup> Similarly, members of the public attempted to sell debris from the Challenger after it exploded off the coast of Cape Canaveral.<sup>7</sup>

Private spaceflight entities place an emphasis on reusability, utilizing technological advances to aid in rocket and spacecraft recovery. As a necessary step in rocket and spacecraft recovery, launch vehicle and spaceflight assets are safely jettisoned in flight (e.g., deploying parachutes for a crew capsule) over water during both the trip to orbit and the return flight back. Past difficulties faced in the recovery of spaceflight assets may continue to occur. Spaceflight entities recover their hardware to safeguard intellectual property, evaluate performance after missions, protect public safety, and reuse materials for future flights.

##### Lost or Abandoned Property

###### *Public Property*

Chapter 705, F.S., relating to lost or abandoned property, provides specific procedures for reporting, disposing of, and ascertaining ownership of lost or abandoned property. The procedures outlined in s. 705.103, F.S., apply only to lost and abandoned property found on public property and, in some cases, places open to the public.<sup>8</sup> Finders of lost or abandoned property and law enforcement are subject to procedures outlined in ch. 705, F.S., when attempting to ascertain the property's rightful owner. If the rightful owner does not come forward, the finder of the lost or abandoned property may claim the property so long as they follow the procedures outlined in ch. 705, F.S.

Any person who finds lost or abandoned property on public property has a duty to report the description and location of the property to a law enforcement officer.<sup>9</sup> If the law enforcement officer taking a report

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<sup>1</sup> Ss. 331.301–331.371, F.S.

<sup>2</sup> S. 331.3011, F.S.

<sup>3</sup> Steven Walker, *The sky's the limit: Space Coast expects another strong year of launches in 2021*, Orlando Sentinel (Jan. 20, 2021), <http://www.orlandosentinel.com/space/os-bz-space-coast-launches-future-20210120-dhet5rllz5fnvoajklcwftbm2m-story.html> (last visited Mar. 4, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> Federal Bureau of Investigation, *Recovering the Space Shuttle Columbia*, <https://www.fbi.gov/news/stories/15th-anniversary-of-space-shuttle-columbia-disaster> (last visited Mar. 3, 2021).

<sup>6</sup> Lee Dembart, *Columbia memorabilia up for bids on auction site*, International Herald Tribune, (Feb. 3, 2003) <https://www.nytimes.com/2003/02/03/news/columbia-memorabilia-up-for-bids-on-auction-site.html> (last visited Mar. 4, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> 93-30 Fla. Op. Att'y Gen. (1993).

<sup>9</sup> S. 705.102(1), F.S.

cannot identify or locate the rightful owner of reported lost or abandoned property, the law enforcement officer must ascertain whether the person reporting the property wishes to make a claim to the property.<sup>10</sup> If so, that person must pay the law enforcement agency a reasonable sum of money to cover the agency's costs for transportation, storage, and publication of notice.<sup>11</sup> If the rightful owner of the property comes forward, this sum is reimbursed to the finder of the property by the rightful owner reclaiming the property.<sup>12</sup>

A law enforcement officer who ascertains that lost or abandoned property is present on public property has a duty to make a reasonable attempt to ascertain the rightful owner and take such property into custody if the property is of such a nature that it can easily be removed.<sup>13</sup> If lost or abandoned property is of such a nature that it cannot be easily removed, the law enforcement officer places a notice on the item, which must comply with the requirements set forth in s. 705.103, F.S.<sup>14</sup> If the owner or any person interested in the lost or abandoned property has not removed the property within five days of the notice being posted, or shown reasonable cause as to why they have not done so, law enforcement:

- May retain any or all of the abandoned property for its own use or for use by the state or a local government, trade such property to another unit of local government or a state agency, donate the property to a charitable organization, sell the property, or notify the appropriate removal service.<sup>15</sup>
- Has a duty to take custody of the lost property, retain custody of such property for 90 days, and publish notice of the intended disposition of the property during the first 45 days of the 90-day timeline.<sup>16</sup>

The rightful owner of lost or abandoned property recovered from public property is liable to the law enforcement agency for costs of transportation and storage of such property and the law enforcement agency's cost for publication of notice.<sup>17</sup> If the rightful owner does not pay such costs within 30 days of making a claim to the property, title to the property vests in the law enforcement agency.<sup>18</sup>

### *Private Property*

Lost or abandoned property found on private property is not covered by s. 705.103, F.S., and is subject to the principles of the common law of property.<sup>19</sup> Under common law, both the rightful owner and the finder of lost property have a protectable and enforceable interest in the property.<sup>20</sup> The finder of personal property may protect his or her interest in the property and may defend the property against all others, other than the true owner of the property.<sup>21</sup>

Section 78.01, F.S., provides for the right of replevin, whereby "[a]ny person whose personal property is wrongfully detained by any other person or officer may have a writ of replevin to recover said personal property and any damages sustained by reason of the wrongful taking or detention as herein provided."<sup>22</sup>

Absent any statutory obligation to follow specific procedures to ascertain the rightful owner, a person who finds personal property on private property has few obligations under the common law.<sup>23</sup> Further, Florida provides no statutory obligation for local law enforcement to participate in the removal,

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<sup>10</sup> S. 705.102(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> S. 705.103(1), F.S.

<sup>14</sup> This notice shall be in substantially the same form as the template provided in s. 705.103, F.S., requiring that the property be removed within 5 days. S. 705.103(2), F.S.

<sup>15</sup> S. 705.103(2)(a), F.S.

<sup>16</sup> S. 705.103(2)(b), F.S.

<sup>17</sup> S. 705.103(7), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> 93-30 Fla. Op. Att'y Gen. (1993).

<sup>20</sup> 76-101 Fla. Op. Att'y Gen. (1976).

<sup>21</sup> *Id.*

<sup>22</sup> S. 78.01, F.S.

<sup>23</sup> 93-30 Fla. Op. Att'y Gen. (1993).

transportation, or storage of personal property found on private property, leaving the decision to engage in such matters up to municipalities and local law enforcement agencies.<sup>24</sup>

### Property Theft

A person who unlawfully appropriates lost or abandoned property for his or her own use or refuses to deliver such property when required to do so commits theft.<sup>25</sup> A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property<sup>26</sup>; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>27</sup>

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender’s prior history of theft convictions or the type of property stolen. The offense levels for theft crimes based on property value thresholds are classified as follows:

	Property Value	Offense Level
Grand Theft	≥ \$100,000	First Degree Felony <sup>28</sup>
	≥ \$20,000, but < \$100,000	Second Degree Felony <sup>29</sup>
	≥ \$10,000, but < \$20,000	Third Degree Felony <sup>30</sup>
	≥ \$5,000, but < \$10,000	Third Degree Felony
	≥ \$750, but < \$5,000	Third Degree Felony
	≥ \$100, but < \$750 if taken from a dwelling or unenclosed curtilage <sup>31</sup> of a dwelling	Third Degree Felony
Petit Theft	≥ \$100, but < \$750	First Degree Misdemeanor <sup>32</sup>
	< \$100	Second Degree Misdemeanor <sup>33</sup>

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior theft convictions. Petit theft committed by a person with a previous theft conviction is a first degree misdemeanor.<sup>34</sup> Petit theft committed by a person with two or more previous theft convictions is a third degree felony.<sup>35</sup>

### Spaceflight – Informed Consent

<sup>24</sup> *Id.*

<sup>25</sup> S. 705.102(4), F.S.

<sup>26</sup> S. 812.014(1)(a), F.S.

<sup>27</sup> S. 812.014(1)(b), F.S.

<sup>28</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>29</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. *Id.*

<sup>30</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. *Id.*

<sup>31</sup> “Unenclosed curtilage of a dwelling” means the unenclosed land or grounds, or any outbuildings, directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.

<sup>32</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>33</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

<sup>34</sup> S. 812.014(3)(b), F.S.

<sup>35</sup> S. 812.014(3)(c), F.S.

Section 331.501, F.S., provides an exemption from liability for a spaceflight entity<sup>36</sup> conducting launch or reentry services from the death or injury of a spaceflight participant<sup>37</sup> resulting from the risks inherent with space travel. Subsequent to the creation of s. 331.501, F.S., in 2008, the federal law which the statute references was amended to exclude a “government astronaut” from the definition of “space flight participant,” and moved from 49 U.S.C. § 70102 to 51 U.S.C. § 50902.

### **Effect of the Proposed Changes**

CS/HB 221 affirms that a spaceflight entity retains ownership of a spaceflight asset following launch or reentry, regardless of the physical condition or location of the asset, unless the spaceflight entity expressly indicates its intent to abandon the asset. Thus, under the bill, a spaceflight entity retains ownership of a detached spaceflight asset, regardless of whether it lands on public or private property.

The bill defines a spaceflight asset as “any item, or any part of an item, owned by a spaceflight entity which is used in spaceflight activities, including crewed and uncrewed spacecraft, satellites, launch vehicles, parachutes and other landing aids, and any ancillary equipment that was attached to the launch vehicle during launch, orbit, reentry, or recovery.”

Under the bill, any person who finds an item reasonably identifiable as a spaceflight asset is required to report the description and location of the asset to a law enforcement agency with jurisdiction over that location, regardless of whether the asset is found on public or private property. The bill requires any law enforcement agency that receives a report of a spaceflight asset to make a reasonable effort to identify the owner of the asset and promptly notify the owner of any information relevant to the recovery of the asset.

Under the bill, a law enforcement officer may authorize the owner of a spaceflight asset to enter private property to recover the asset when exigent circumstances exist to justify the entry, including when failure to timely recover the asset may result in:

- An immediate danger to public safety, or
- Damage to, or destruction of the spaceflight asset.<sup>38</sup>

The bill creates the crime of misappropriation of a spaceflight asset, a misdemeanor of the first degree. Under this provision, a person commits misappropriation of a spaceflight asset if he or she knowingly appropriates an item reasonably identifiable as a spaceflight asset to his or her own use, or to the use of any other person not entitled to the asset, or refuses to surrender a spaceflight asset to a law enforcement officer or the owner of the asset upon demand. The bill requires a court to order any person convicted of misappropriation of a spaceflight asset to pay full restitution to the owner of the asset if, as a result of the misappropriation, the asset is damaged or cannot be recovered.

The bill updates cross-references to the United States Code defining the terms “participant” and “spaceflight activities,” which moved from 49 U.S.C. § 70102 to 51 U.S.C. § 50902. Although the bill does not make substantive changes to s. 331.501, F.S., by updating the definition of “participant,” the bill excludes the potential death or injury suffered by a government astronaut from the immunity protections enjoyed by a spaceflight entity.

The bill provides an effective date of July 1, 2021.

## **B. SECTION DIRECTORY:**

**Section 1:** Creating s. 331.502, F.S., relating to recovery of spaceflight assets.

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<sup>36</sup> “Spaceflight entity” means any public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for spaceflight activities. The term also includes any manufacturer or supplier of components, services, or vehicles that have been reviewed by the United States Federal Aviation Administration as part of issuing such a license, permit, or authorization. S. 331.501(1)(c), F.S.

<sup>37</sup> “Participant” is defined in conjunction with the term “spaceflight participant” in 49 U.S.C. §70102, which means an individual, who is not crew, carried within a launch vehicle or reentry vehicle.

<sup>38</sup> The exigent circumstances doctrine is primarily used to overcome a warrant requirement and allow law enforcement onto or into private property in emergency or dangerous situations. See *Riggs v. State*, 918 So. 2d 274, 278 (Fla. 2005).

**Section 2:** Amending s. 331.501, F.S., relating to spaceflight; informed consent.

**Section 3:** Provides an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have a positive insignificant impact on county jail beds by creating the new misdemeanor offense of misappropriation of a spaceflight asset.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive fiscal impact on the private sector. The bill safeguards the property rights of spaceflight entities to spaceflight assets, ensuring the owner of the spaceflight asset can recover the asset to reuse it in future missions.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2021, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the original bill as it:

- Changed the term “space vehicle” to “spaceflight asset.”
- Provided a spaceflight entity retains ownership over a spaceflight asset following a launch or reentry unless the spaceflight entity expressly indicates its intent to abandon the asset.
- Limited the duty of a person to report the location of a spaceflight asset to law enforcement only if the object is reasonably identifiable as a spaceflight asset.
- Required a law enforcement agency that receives a report that a spaceflight asset has been located to make a reasonable effort to identify the owner.
- Changed the criminal penalty for appropriating a spaceflight asset to a person’s own use from theft to the newly created crime of misappropriation of a spaceflight asset, a first degree misdemeanor.
- Authorized a law enforcement officer or person authorized by a law enforcement officer to enter private property to recover a spaceflight asset if the law enforcement officer determines there are exigent circumstances that may result in an immediate danger to public safety or damage to, or destruction of, the spaceflight asset.
- Deleted provisions authorizing a law enforcement agency to take possession of a spaceflight asset.
- Deleted provisions prohibiting a person from obstructing a law enforcement officer in the course of recovering a spaceflight asset as a second degree misdemeanor.
- Deleted provisions granting civil and criminal immunity to a law enforcement officer or a person authorized by a law enforcement officer for good faith trespass on real property to recover a spaceflight asset.
- Deleted a provision requiring a spaceflight entity to reimburse a law enforcement agency for costs associated with storage and recovery of a spaceflight asset.

This analysis is drafted to the committee substituted as passed by the Criminal Justice & Public Safety Subcommittee.