SEC. 914. COMMERCIAL SPACE LAUNCH COOPERATION.

(a) IN GENERAL.—Chapter 135 of title 10, United States Code, is amended by adding at the end the following new section:

"**§ 2275. Commercial space launch cooperation**

"(a) AUTHORITY.—The Secretary of Defense may, to assist the Secretary of Transportation in carrying out responsibilities set forth in titles 49 and 51 with respect to private sector involvement in commercial space activities and public-private partnerships pertaining to space transportation infrastructure, take such actions as the Secretary considers to be in the best interest of the Federal Government to do the following:

"(1) Maximize the use by the private sector in the United States of the capacity of the space transportation infrastructure of the Department of Defense.

"(2) Maximize the effectiveness and efficiency of the space transportation infrastructure of the Department of Defense.

"(3) Reduce the cost of services provided by the Department of Defense related to space transportation infrastructure at launch support facilities and space recovery support facilities.

"(4) Encourage commercial space activities by enabling investment by covered entities in the space transportation infrastructure of the Department of Defense.

"(5) Foster cooperation between the Department of Defense and covered entities.

"(b) AUTHORITY FOR CONTRACTS AND OTHER AGREEMENTS RELATING TO SPACE TRANSPORTATION INFRASTRUCTURE.—The Secretary of Defense—

"(1) may enter into a contract or other agreement with a covered entity to provide to the covered entity support and services related to the space transportation infrastructure

of the Department of Defense; and

"(2) upon the request of that covered entity, may include such support and services in the space launch and reentry range support requirements of the Department of Defense if—

"(A) the Secretary determines that the inclusion of such support and services in such requirements—

"(i) is in the best interest of the Federal Government;

"(ii) does not interfere with the requirements of the Department of Defense; and

"(iii) does not compete with the commercial space activities of other covered entities, unless that competition is in the national security interests of the United States; and

"(B) any commercial requirement included in that contract or other agreement has full non-Federal funding before the execution of the contract or other agreement.

"(c) CONTRIBUTIONS.—

"(1) IN GENERAL.—The Secretary of Defense may enter into contracts or other agreements with covered entities on a cooperative and voluntary basis to accept contributions of funds, services, and equipment to carry out this section.

"(2) USE OF CONTRIBUTIONS.—Any funds, services, or equipment accepted by the Secretary under this subsection—

"(A) may be used only for the objectives specified in this section in accordance with terms of use set forth in the contract or other agreement entered

into under this subsection; and

"(B) shall be managed by the Secretary in accordance with regulations of the Department of Defense.

"(3) REQUIREMENTS WITH RESPECT TO AGREEMENTS.—A contract or other agreement entered into under this subsection with a covered entity—

"(A) shall address the terms of use, ownership, and disposition of the funds, services, or equipment contributed pursuant to the contract or other agreement; and

"(B) shall include a provision that the covered entity will not recover the costs of its contribution through any other contract or agreement with the United States.

"(d) DEFENSE COOPERATION SPACE LAUNCH ACCOUNT.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a special account to be known as the 'Defense Cooperation Space Launch Account'.

"(2) CREDITING OF FUNDS.—Funds received by the Secretary of Defense under subsection (c) shall be credited to the Defense Cooperation Space Launch Account and shall be available until expended without further authorization or appropriation only for the objectives specified in this section.

"(e) ANNUAL REPORT.—Not later than January 31 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the funds, services, and equipment accepted and used by the Secretary under this section during the previous fiscal year.

"(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

"(g) DEFINITIONS.—In this section:

"(1) COVERED ENTITY.—The term 'covered entity' means a non-Federal entity that—

"(A) is organized under the laws of the United States or of any jurisdiction within the United States; and

"(B) is engaged in commercial space activities.

"(2) LAUNCH SUPPORT FACILITIES.—The term 'launch support facilities' has the meaning given that term in section 50501(7) of title 51.

"(3) SPACE RECOVERY SUPPORT FACILITIES.—The term 'space recovery support facilities' has the meaning given that term in section 50501(11) of title 51.

"(4) SPACE TRANSPORTATION INFRASTRUCTURE.—The term 'space transportation infrastructure' has the meaning given that term in section 50501(12) of title 51.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2275. Commercial space launch cooperation.''.

Section-by-Section Analysis

This proposal would provide a mechanism for the Department of Defense (DoD) to support commercial space activities by providing greater access to launch property and services to the private sector, and allow DoD to accept funding from the private sector to develop, enhance, or maintain the U.S. Government's launch, range instrumentation, and reentry sites. This proposal would authorize DoD to accept non-federal funding only under strict implementation guidelines, which would be narrowly applied to space launch and base support services only.

Additionally, under this proposal, DoD may include, with up-front commercial funding, commercial launch/base support requirements in DoD contracts. For example if a commercial launch provider could add its requirements and funding to existing DoD infrastructure support contracts, the government's purchasing power would be enhanced through the increase in the economies of scale, as well as the benefit from receiving the additional up-front funding from the commercial launch provider prior to contracting. Thus, this change would ensure our contracts

are “right-sized” and no longer offered to commercial launch providers just on an “excess” capacity basis, which would result in synergistic operations and eliminate administrative impediments and bureaucracy. For example, DoD has a range instrumentation requirement to be able to launch within 48 hours, including a current contract to support this capability. However, if DoD could add a commercial launch provider’s requirements, along with upfront funding from non-federal sources, to pay for this additional capability, the Department could launch within 24 hours, which would benefit both DoD and commercial providers. Additionally, three processing facilities are currently under-utilized, while one commercial provider has a backlog, resulting in processing delays. Commercial use of any/all DoD processing facilities to process both commercial and DoD payloads would result in efficiencies, better mission assurance, and cost savings for users.

Section 2273(c) of title 10, United States Code, directs the Secretary of Defense to pursue the attainment of the capabilities necessary to launch and insert United States national security payloads into space. Meanwhile, DoD launch and space recovery support facilities and ranges are challenged by escalating costs, eroding capabilities, and bureaucratic processes. These conditions not only impair DoD launch programs (including the capabilities necessary to launch and insert United States national security payloads into space), but also impair DoD’s ability to support commercial space to the level of Congressional/Presidential intent. This legislative change would increase DoD’s abilities to meet this intent by allowing DoD and the commercial space sector to combine their requirements and funding within DoD contracts and allowing the DoD to purchase facilities and equipment that can be shared and maintained on an equitable basis -- making the services and facilities available to each with the cost and availability efficiencies shared by all.

Budget Implications: The Department of Defense (DoD) expects this proposal to be covered by existing DoD staff administrative labor in fiscal years (FYs) 2012-2016, specifically within the plans and programs functions at each of the space wings. The work involved would be an extension of the administration, liaison, consultation, and planning functions these offices already perform in conjunction with commercial and state entities doing business with the space wings. The cost of this DoD labor in general, not specific to this proposal, is approximately $500,000 per year for 3-4 man years’ worth of effort. The DoD cost is part of the FY 2013-2017 budget baseline and does not require additional funding from Congress. There would be no budgetary tradeoff to fund this proposal. Rather, the associated workload would be added to and compete with other assigned tasks for performance by appropriate personnel as space wing priorities dictate. The Air Force comptroller agrees that this workload is included in the budget and funded.

RESOURCES ($MILLION) ASSOCIATED WITH PROPOSAL INCLUDED IN PRESIDENT’S BUDGET								
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
O&M, AF	.5	.5	.5	.5	.5	O&M, AF	01	110

Total	.5	.5	.5	.5	.5	-	-	-

	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**
Army	0	0	0	0	0			
Navy	0	0	0	0	0			
Marine Corp	0	0	0	0	0			
Air Force	3-4	3-4	3-4	3-4	3-4	O&M, AF	01	110
Total	3-4	3-4	3-4	3-4	3-4			

The primary budget implication of this proposal is that it would permit DoD to accept contributions of funds, property, and services from non-federal entities to enable federal/non-federal partnerships that benefit national security, access to space, and the development and vitality of the commercial space industry. It would not increase the DoD launch, range, or facility budget, but it could pave the way for cost savings or cost avoidance opportunities. The proposal would allow DoD and the commercial industry to share requirements and costs on a case-by-case basis, thereby creating quantity efficiencies for all. It does not mandate additional costs or generate guaranteed, measurable savings. It is an "enabling" authority for DoD launch and space recovery support facilities and ranges to enter into cooperative agreements with the commercial space industry, to save resources and add capability for all parties, but only when in the best interests of DoD.

This carryover proposal from FY 2012 includes one substantive change to address HASC/SASC conferees direction to "submit legislation that does not have mandatory scoring associated with the acceptance of funds by private entities and consider other processes or authorities in statute to accomplish this objective." Specifically this change adds language in subsection (c)(3) that agreements between DoD and covered entities "…shall include a provision that the covered entity will not recover the costs of its contribution through any other contract or agreement with the United States."

Changes to Existing Law: This proposal would add a new section 2275 title 10, United States Code, shown in the legislative text above.