

**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 Committee on Commerce and Tourism

BILL: CS/SB 1394

INTRODUCER: Commerce and Tourism and Senator Hukill

SUBJECT: Motorsports Entertainment Complexes

DATE: April 9, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Fav/CS
2.			AFT	
3.			AP	
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 1394 creates three programs to provide refunds or distributions of state sales taxes to owners or master developers of motorsports entertainment complexes.

The bill provides the owner of a motorsports entertainment complex with a sales tax exemption on building materials used in or that become component parts in the construction, reconstruction, expansion, or renovation of a motorsports entertainment complex.

The bill allows a motorsports entertainment complex to receive monthly sales tax distribution payments of \$166,667 for up to 30 years.

The bill creates an increment-based sales tax refund program for the master developer of a complex. "Master developer" is defined to mean "the primary developer of a motorsports entertainment complex."

The bill creates ss. 212.094, 212.0943, and 212.0944, F.S.

The bill substantially amends s. 212.20, F.S.

**II. Present Situation:**

**Motorsports in Florida**

Automobile racing in Florida has a long and storied history stretching back more than 100 years. In April 1902, the first “tests of speed” began on the 12-mile stretch of beach between Ormond and Daytona.<sup>1</sup>

In late 1947, a group of racing promoters gathered in Daytona Beach to create an organization which would unify automobile racers and build back interest in the sport following World War II. This meeting was the impetus for the incorporation of the National Association of Stock Car Auto Racing (NASCAR) in 1948.<sup>2</sup>

Today, NASCAR is automobile racing’s largest sanctioning body for stock cars. Currently, NASCAR has 28 sanctioned tracks. Additionally, Florida is one of only three states that have two NASCAR-sanctioned tracks. These tracks are the Daytona International Speedway and the Homestead-Miami Speedway.<sup>3</sup> Information on the tracks is below:

	Daytona International Speedway <sup>4</sup>	Homestead Miami Speedway <sup>5</sup>
Major Races	Daytona 500, Coke Zero 400	Ford EcoBoost 400, Ford EcoBoost 300
Year Opened	1959	1995
Grandstand Seating Capacity	147,000	65,000
County	Volusia	Miami-Dade
Owner	International Speedway Corporation	International Speedway Corporation

The Daytona 500 is the opening race of the NASCAR Spring Cup Series, and is considered the race that “sets the tone for the entire season to follow.”<sup>6</sup> The Ford EcoBoost 400 is the NASCAR Spring Cup Series’ final race.

Aside from the two NASCAR-sanctioned tracks, Florida is home to an additional 50 automobile racing tracks. These tracks are located throughout the state, and provide local amateur racers and enthusiasts the opportunity to be involved with the sport.<sup>7</sup>

<sup>1</sup> Randall L. Hall, *Automobile Racing in the South*, The Journal of Southern History, (August 2002).

<sup>2</sup> *Id.*

<sup>3</sup> NASCAR Tracks, available at: [www.nascar.com/races/tracks/](http://www.nascar.com/races/tracks/), (last visited on March 15, 2013).

<sup>4</sup> ESPN, *NASCAR Track Guide: Daytona International Speedway*, (June 27, 2011), available at: <http://espn.go.com/espn/thelife/news/story?id=2346804>, (last visited on March 15, 2013).

<sup>5</sup> Homestead Miami Speedway website, *The History of Homestead-Miami Speedway*, available at: <http://www.homesteadmiamispeedway.com/About/Track-History.aspx>, (last visited on March 15, 2013).

<sup>6</sup> *Supra* note 6.

<sup>7</sup> Florida Race Track Directory of Asphalt & Dirt Tracks & Drag Strips, available at: <http://www.racingin.com/track/florida.aspx>, (last visited March 15, 2013).

## Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services. The statutes currently provide for more than 200 different exemptions.

In addition to the state sales tax of 6 percent, ss. 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax; only those surtaxes specifically designated in s. 212.055, F.S., may be levied.<sup>8</sup> The maximum discretionary sales surtax that any county may levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S., and ranges between 1.5 percent and 3.5 percent. The maximum any county currently levies is 1.5 percent. As of January 2013, 55 counties levied at least one discretionary sales surtax and 14 counties levied at least two.<sup>9</sup>

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold and is levied in addition to the state taxes. The surtax applies to all transactions occurring in a county that are "subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions" and on communications services, defined in ch. 202, F.S. The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections received by DOR are returned monthly to the county imposing the tax.<sup>10</sup>

## Local Government Half-cent Sales Tax Program

The Local Government Half-cent Sales Tax Program (program) is the largest source of revenue received by local governments among the state's shared revenue sources. The program primarily serves to provide ad valorem and utility tax relief, in addition to providing eligible local governments revenues for local programs.<sup>11</sup> A local government may also pledge funds from the program for payment of principal and interest on any capital project.<sup>12</sup>

Moneys for the program are collected pursuant to the provisions of ch. 212, F.S. The program distributes funds to eligible local governments through three distributions of sales tax revenues remitted by a sales tax dealer within the eligible participating county.<sup>13</sup> The *ordinary* distribution operates by a transfer of 8.814 percent of net sales tax proceeds remitted by a sales tax dealer in the eligible local government's jurisdiction to the Local Government Half-cent Sales Tax

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<sup>8</sup> These include: charter county and regional transportation system surtax, local government infrastructure surtax, small county surtax, county public hospital surtax, school capital outlay surtax, indigent care and trauma center surtax, voter-approved indigent care surtax, and emergency fire rescue services and facilities surtax.

<sup>9</sup> Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2013*, available at: <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf>, (last visited on January 11, 2013).

<sup>10</sup> Section 212.054, F.S.

<sup>11</sup> Office of Economic and Demographic Research, *2012 Local Government Financial Information Handbook*, (October 2012), available at: <http://edr.state.fl.us/Content/local-government/reports/lghih12.pdf>, (last visited on March 8, 2013).

<sup>12</sup> Section 218.64, F.S.

<sup>13</sup> Section 218.63, F.S., defines eligibility requirements. In order to participate in the program, a local government must meet the revenue sharing eligibility requirements specified in s. 218.23, F.S.

Clearing Trust Fund (trust fund).<sup>14</sup> The *emergency* and *supplemental* distributions operate by a transfer of 0.095 percent of net sales tax proceeds to the trust fund, and are available only to those counties that meet certain fiscal eligibility requirements, or have an inmate population of greater than 7 percent of the total county population.<sup>15, 16</sup> An additional, separate distribution from the trust fund is available to qualifying fiscally constrained counties.<sup>17</sup>

Funds remitted by sales tax dealers within a local government's jurisdiction and transferred to the trust fund are earmarked and distributed monthly to the governing bodies of participating eligible local governments.<sup>18</sup> Program funds are distributed to participating county and municipal governments based on a distribution formula.<sup>19</sup>

If a majority of the governing body of a county government and a majority of the members of the governing authority of municipalities representing at least 50 percent of the county's municipal population adopt an ordinance, up to \$2 million annually of the program funds allocated to that county may be used for the following purposes:<sup>20, 21</sup>

- Funding a facility certified as a new or retained professional sports franchise under s. 288.1162, F.S., or a facility certified as a spring training franchise under s. 288.11621, F.S.
- Funding an applicant certified as a "motorsports entertainment complex" under s. 288.1171, F.S.

### **Motorsports Entertainment Complex Certification**

Section 288.1171, F.S., provides the procedure by which a local government may receive certification for a motorsport entertainment complex in order to use \$2 million of Local Government Half-cent Sales Tax Program funds to pay for certain costs associated with the complex. As of March 7, 2013, no local government has received certification for a motorsport entertainment complex to use such funds.<sup>22</sup> A motorsport entertainment complex is defined as a closed-course racing facility.

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants to allow them to use program funds. Applicants must be either a unit of local government that owns a motorsport entertainment complex or owns the land on which a complex is located.

Before certifying an applicant as a motorsport entertainment complex, DEO must first verify that:

<sup>14</sup> Section 212.20(6)(d)2., F.S.

<sup>15</sup> Section 212.20(6)(d)3., F.S.

<sup>16</sup> *Supra* note 13 at page 55.

<sup>17</sup> Section 218.67, F.S.

<sup>18</sup> Section 218.61, F.S.

<sup>19</sup> Section 218.62, F.S.

<sup>20</sup> Section 218.64(3)(b), F.S.

<sup>21</sup> If a county and municipal government's governing body support using program funds to support funding of professional sports, spring training, or motorsports entertainment complexes, their distribution for general use is provided *after* funding is provided for these projects.

<sup>22</sup> Conversation with Katherine Morrison, Department of Economic Opportunity, (March 7, 2013).

- The local government holds title to the land on which the complex is located or holds title to the complex; and
- The local government in which the complex is located has certified by resolution after a public hearing that the application for certification serves a public purpose.

If DEO determines an applicant meets eligibility requirements, it must notify the applicant and Department of Revenue (DOR) of the applicant's certification through an official letter. If an applicant does not meet the requirements, DEO must notify the applicant within 10 days of such determination. An applicant may not receive more than one certification.

An applicant certified as a motorsport entertainment complex may only use funds provided from the Local Government Half-cent Sales Tax Program for the public purposes of paying for the construction, reconstruction, expansion, or renovation of a motorsport entertainment complex, including related transportation and other infrastructure improvements; paying debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds. Additional eligible uses include paying for advertising and promotional activities related to the motorsport entertainment complex or the municipality or county in which the complex is located, if such activities are designed to increase tourism or promote economic development of the municipality or county.

DOR may perform an audit to ensure the distributions are expended as required, and may pursue recovery of any funds not expended as required by law.

### III. **Effect of Proposed Changes:**

The bill creates three new programs to provide refunds or distributions from state sales tax revenues to owners or master developers of motorsports entertainment complexes.

**Section 1** creates s. 212.094, F.S. The bill creates a sales and use tax exemption for building materials used in or that become component parts in the construction, reconstruction, expansion, or renovation of a motorsports entertainment complex. The exemption is inured to the owner or master developer of a motorsports entertainment complex in the form of a one-time nontransferable refund of previously paid state sales and use tax.

#### Application

To receive a sales and use tax refund, the owner of a motorsports entertainment complex (complex), defined to mean "a complex that includes a closed-course racing facility with at least 50,000 fixed seats, together with any themed, ancillary business establishments and related mixed-used commercial development under common beneficial ownership as of the date of application..." must apply to the Department of Economic Opportunity (DEO) to receive approval for a project prior to beginning construction, reconstruction, expansion, or renovation on the complex. The project must have a total cost of at least \$250 million expended by the complex owner and must occur over a 48-month period. The owner must submit an application to DEO by a date to be determined by DEO. The application must include an affidavit certifying the information in the application is true and correct; copies of ordinances enacted by a majority of the members of the governing board of the county and the municipality where the complex is

located that commit to certain funding provisions;<sup>23</sup> and any additional information required by DEO. DEO has 60 days after receiving the application to issue a notice of intent to deny or approve the proposed project.

#### Refund Certification

Upon project completion, the owner of the complex must again apply to DEO for certification of a sales tax refund. The refund application must include the following information:

- The name and physical in-state address of the complex;
- A copy of the original application and approval for the project;
- The address and the applicable assessment roll parcel numbers for the complex;
- A copy of a valid building permit issued by the county or municipal building department authorizing the construction, reconstruction, expansion, or renovation of the complex;
- A sworn statement from the general contractor the owner of the complex has contracted with to construct, reconstruct, or renovate the complex, listing the building materials used in the project, the building materials' actual cost, and the amount of sales and use tax paid in Florida on the materials. If a general contractor is not used, the owner of the complex must make the sworn statement. Copies of invoices evidencing the purchase of building materials for the project and the payment of sales and use tax on such building materials must be attached to the sworn statement;
- A certification by the local building code inspector that the project is substantially complete; and
- A detailed accounting, attested to by a licensed certified public accountant, that at least \$250 million was spent towards the project during a 48-month period.

DEO has 90 working days from receipt of the application for refund certification to determine if the application meets all applicable requirements. The bill requires DEO to certify all applications that contain the required information and are otherwise found eligible for a refund.

If an applicant is certified by DEO to receive a refund, it must apply to the Department of Revenue (DOR) to receive a one-time, nontransferable refund of sales taxes paid for building materials used in the project. The applicant has 6 months to submit the application to DOR.

#### Reduction of Local Government Half-cent Sales Tax Distributions

The bill requires that no state sales tax refund may be awarded unless a majority of the members of the governing board of the county and municipality where the project is located adopt an ordinance committing to assist in the funding of the project through a reduction of local government half-cent sales tax distributions.

DOR is required to reduce the total amount of local government half-cent sales tax revenue available for distribution to local governments that adopt ordinances. The reduction in distributions is equal to 10 percent of the total refund granted to each certified applicant. Reductions are to be prorated over a 12-month period. A county's share of the reduction is equal to the county's share of the local government half-cent sales tax revenue. If there are multiple refunds, a county's local government half-cent sales tax distribution will not be reduced by the same amount refunded to the motorsports complex in that county.

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<sup>23</sup> The bill provides that the ordinance is "binding and irrevocable" upon enactment.

If a refund is issued to a certified applicant *on or before* June 30, distribution reductions begin in the first month of the local fiscal year that follows the refund issuance. If a refund is issued *after* June 30, distribution reductions begin in the first month of the *second* local fiscal year following the issuance of such refund.

The bill requires an amount equal to the local government distribution reductions to be transferred each month from the Local Government Half-cent Sales Tax Clearing Trust Fund to the General Revenue Fund.

DOR has 14 days after issuing a refund to provide written notice to each local government subject to reduced distributions, specifying the amount of the reductions and the timing of such reductions.

*Audits, Decertification, and Recapture of Refunds*

The bill permits DOR to perform additional audits and investigations necessary to verify the accuracy of a state sales tax refund request and to ensure compliance with the refund requirements. DEO must provide technical assistance for any technical audits or examinations if DOR requests such assistance.

If DOR finds that a refund was issued to an ineligible taxpayer as a result of an audit or examination or any information obtained from DEO, it may determine there are grounds for forfeiture of previously claimed refunds. DEO may revoke or modify any certification granting eligibility for a refund if it finds a taxpayer made a false statement or representation in any application, record, report, plan, or other document filed in an attempt to receive certification for a tax refund. DEO must notify DOR of any revoked or modified certifications affecting previously granted tax refunds.

**Section 2** creates s. 212.0943, F.S. The bill allows a motorsports complex to apply for a state sales tax distribution payment under s. 212.20(6)(d)6.b., F.S. Under current law, monthly distributions of \$166,667 are available to eight certified new or retained professional sports franchise facilities that serve franchises of the NBA, MLB, NFL, or NHL; and monthly distributions of \$41,667 to up to 10 certified spring training facilities serving MLB baseball franchises.

The bill requires any applicant certified under s. 212.094(4), F.S., created in Section 1 of the bill, to use sales tax distribution funds under s. 212.20(6)(d)6.b., F.S., for the public purposes of paying for the construction, reconstruction, expansion, or renovation of a complex, including related transportation or other infrastructure improvements; paying debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; reimbursement for such costs; or the refinancing of bonds issued for such purposes.

Further, funds may be used to pay for advertising and promotion activities associated with the complex or the municipality or county in which the complex is located. Such advertising and promotion programs must be designed to increase paid attendance at the complex or to increase tourism or promote economic development of the community in which the complex is located.

DOR may audit to verify distribution payments have been made in accordance with the program. If DOR determines payments have been used improperly, it may pursue recovery of such funds.

**Section 3** creates s. 212.0944, F.S. The bill creates an increment-based sales tax refund program for the master developer of a complex. “Master developer” is defined to mean “the primary developer of a motorsports entertainment complex.” A master developer is eligible for a refund of sales taxes imposed under ch. 212 on sales made within a certified motorsports complex. The refund is limited to 50 percent of the sales taxes remitted in a year over the base year amount (50 percent of the increment.)

*Base Year Refund*

The “base year” is the 12 month period occurring *before* the master developer of the complex applies to DEO for approval under Section 1 of the bill to commence the construction, reconstruction, expansion, or renovation of a complex.

*Measurement Period*

The “measurement period” is a 12 month period starting with the 12 month period *following* submission of an application to DEO for approval under Section 1 of the bill to commence the construction, reconstruction, expansion, or renovation of a complex.

*Increment Sales Tax Refund*

Within 60 days after the end of the measurement period, the master developer of the complex must submit a refund request for the incremental amount of sales taxes collected by any business within the complex over the measurement period. The amount of sales taxes collected in the measurement period is compared to the amount of sales taxes collected during the base year. Fifty percent of the total sales taxes paid by any business located within the complex during the measurement period *in excess* of the amount of sales taxes paid during the base year would be eligible for the refund. Refunds are only available for payment to the master developer. The application for the refund must contain evidence of previously paid sales taxes by any business within the complex. The refund payment for this amount must be made within 60 days to the master developer. It appears that DEO must approve the refund.

The bill requires the increment sales tax refund program to continue for 30 years. Sales taxes collected and remitted during each subsequent period are also compared to the amount collected and remitted during the original base year.

The bill allows the complex’s master developer to require each tenant, lessee, or other third party operating within the complex to provide all documents, returns, or other information necessary to verify the amount of sales tax eligible for the increment sales tax refund program.

Funds provided by the increment sales tax refund program may only be used for the public purposes as defined in Section 2 of the bill, including paying for the construction, reconstruction, expansion, or renovation of a complex, including related transportation or other infrastructure improvements; paying debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; reimbursement for such costs; or the refinancing of bonds issued for such purposes.

DOR may audit to verify refund payments to the master developer are expended as required by the program. DOR may pursue recovery of funds if it finds payments have not been properly expended.

**Section 4** amends s. 212.20, F.S. The bill creates a monthly sales tax distribution payment of \$166,667 for applicants certified under s. 212.094, F.S., created by Section 1 of the bill. Distribution payments continue for up to 30 years. The bill requires that certified applicants may not receive more in sales tax distributions payments than the amount expended by the applicant for the public purposes of paying for the construction, reconstruction, expansion, or renovation of a complex, including transportation or other infrastructure improvements; paying debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; reimbursement for such costs; or the refinancing of bonds issued for such purposes.

**Section 5** provides for an effective date of July 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:

This bill has not been evaluated by the Revenue Estimating Conference.

If an applicant is certified as a motorsports entertainment complex under s. 212.094, F.S., created by Section 1 of the bill, it would be eligible to receive up to \$2 million per year for up to 30 years, for a total distribution payment amount of \$60 million.

B. Private Sector Impact:

The bill will allow the master developer or owner of a motorsport entertainment complex to receive funding to support renovations of such a complex.

C. Government Sector Impact:

The bill may impact the resource demands of the Department of Economic Opportunity.

The bill will have an insignificant operational impact on the Department of Revenue.<sup>24</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Revenue raised several issues in its analysis of the bill related to the implementation and administration of the new programs.<sup>25</sup>

The bill allows the Department of Economic Opportunity to adopt rules relating to application and certification for receipt of state sales tax refunds for building materials.

The bill allows the Department of Revenue to adopt rules relating to administering the state sales tax refund for building materials.

**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 Commerce and Tourism on April 8, 2013:**

The CS does the following:

- Clarifies that DOR and not DEO may audit distribution payments under s. 212.20, F.S. The CS also clarifies that DOR and not DEO may audit sales tax refund payments under the increment-based sales tax refund program.
- Creates a monthly distribution payment of \$166,667 under s. 212.20, F.S., for a motorsport complex certified under s. 212.094, F.S., created in Section 1 of the bill.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>24</sup> Department of Revenue, *Agency Bill Analysis: SB 1394*, (March 20, 2013), (on file with the Senate Commerce and Tourism Committee).

<sup>25</sup> *Id.*