

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: SJR 1292

SPONSOR: Senator Bennett

SUBJECT: Use of Public Funds/Sports Teams

DATE: April 12, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barrett	Cooper	CM	Unfavorable
2.	_____	_____	CA	_____
3.	_____	_____	GA	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Joint Resolution 1292 proposes to create of s. 19, Art. VII of the State Constitution, to prohibit the use of public funds to aid any professional sports team, pay for any facility used or intended to be used by any professional sports team, or pay for any professional sporting event, unless approved by electors of the state or affected local government. This resolution does not prohibit the use of funds for professional sports teams, facilities, and events already approved as of February 1, 2005.

This bill proposes the creation of s.19, Art. VII of the State Constitution.

II. Present Situation:

Constitutional Economic Development Incentives

Business Property Tax Exemptions

Section 3(c), Article VII of the State Constitution provides that

Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law.

However, the exemption is subject to referendum approval and renewal after ten years by referendum approval. In addition, the ad valorem exemption is limited to tangible personal

property and to improvements to real property made by or for the use of a new or expanding business. The amount, limits, or time limits of the exemption must be specified by general law.¹

Property Tax Breaks on Sports Facilities

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.² Consequently, sports stadiums owned by counties and leased to private interests³ are not taxed as real property, but rather as intangible personal property.⁴ However, municipal-owned facilities used for non-public purposes are subject to property taxation.⁵

Public Funds for Private Interests

Section 10, Art. VII of the State Constitution provides that

Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person...⁶

A plain reading of the text suggests that using government taxing power or credit for many forms of economic development would be prohibited. However, the courts have validated the use of public funds to support private interests, both for-profit and not-for-profit, if a “public purpose” is served for the expenditure or credit offered.⁷ Additionally, the courts have deferred to legislative determinations as to what constitutes a public purpose.⁸

¹ This provision is implemented in s. 196.1995, F.S.

² See *Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utils. Comm’n v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969); and *Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975). The State Constitution does not expressly address the tax immune status of government property. It is generally held that “...in the absence of any constitutional prohibition, the state may tax its own property, the presumption is always against an intention to do so, and such property is impliedly immune from taxation unless an intention to include it is clearly manifested...This immunity ...rests on public policy and the fundamental principles of government.: 84 C.J.S. Taxation ss. 200 (1954).

³ “Private interests” means used primarily for private profit and not for a public or governmental purpose. See *Volusia County v. Daytona Beach Racing and Recreational Facilities Dist.*, 341 So.2d 498 (Fla. 1976)

⁴ Pursuant to s. 199.023, F.S. The intangible personal property tax millage rate is 1 mill.

⁵ *Capital City Country Club, Inc. v. Tucker*, 613 So.2d 448 (Fla. 1993)

⁶ However, exceptions to these restrictions are authorized. The state and local governments may invest public funds. They may also issue revenue bonds to finance airport, port facilities, or industrial or manufacturing plants under certain conditions. Finally, local governments may become joint owners of electrical energy generating or transmission facilities and give, lend, or use its taxing power or credit toward the joint ownership of such facilities.

⁷ *O’Neill v. Burns*, 198 So.2d 1 (Fla. 1967), *Orange County Industrial Development Authority v. State*, 427 So.2d 174 (Fla. 1983), and more recently, *Poe II v. Hillsborough County*, 695 So. 2d 672. For a discussion of the development of the “public purpose” doctrine, see *Industrial Bond Financing and the Florida Public Purpose Doctrine*, U of Miami L Rev. 171 (1966), *Industrial Development Bonds*, FSU L. Rev. 35 (1984), and *Public Funding of Sports Stadiums and other Recreational Facilities; Can the Deal be “Too Sweet”?* Stetson Law Review, Winter (1998).

⁸ 25 FLA Jur, ss 28, p.S51. See also: *University of Miami v. Echarte*, 618 So.2d 189 (FLA. 1993), *State v. Orange County Industrial Development Authority*, 417 So.2d 959 (Fla. 1982), and *City of Boca Raton v. Gidman*, 440 So.2d 1277 (Fla. 1983). Also see *D.O.T. v. Fortune Federal Sav. & Loan*, 532 So.2d 1267 (Fla. 1988), at 1269

Statutory Economic Development Incentives

Several incentive programs are available to attract, recruit, and retain businesses in Florida. The majority of the programs are coordinated and administered by the Office of Tourism, Trade, and Economic Development (OTTED) and Enterprise Florida, Inc.

Incentives for Sports and Tourism Facilities

Chapter 212, F.S., governs taxes on sales, use, and other transactions. Section 212.20, F.S., governs the distribution of some of those funds collected by the Department of Revenue (DOR). Several provisions within s. 212.20, F.S., provide economic assistance to certain economic sectors.

Since 1993, facilities designated as new professional sports franchises or facilities for a retained professional sports franchise receive funding distributions from DOR after certification by OTTED.⁹ Other examples include facilities for retained spring training franchises;¹⁰ the Professional Golf Hall of Fame facility;¹¹ and the International Game Fish Association World Center facility.¹² Recipients receive a fixed monthly distribution of sales tax revenues set by statute for a fixed number of years:

- A facility for a new/retained professional sports franchise: \$166,667 monthly (\$2 million annually) for no more than 30 years, totaling a maximum of \$60 million;
- A facility for a retained spring training franchise: up to \$41,667 monthly (\$500,000 annually) for not more than 30 years, totaling a maximum of \$15 million;
- The Professional Golf Hall of Fame: \$167,667 monthly (\$2.012 million annually) for up to 25 years, totaling a maximum of \$50 million; and
- The International Game Fish Association World Center facility: \$83,333 monthly (\$1 million annually) for up to 14 years, totaling a maximum of \$14 million.

The criteria used by OTTED for certification include ownership of the property on which the facility is located,¹³ a declaration by the local government that the project serves a public purpose,¹⁴ projections for paid attendance, projections for sales tax revenues generated,¹⁵ and demonstration of the financial capability to provide more than one-half of the costs incurred or related to the improvement or development of the facility. Other requirements generally include reviews, recertification, sanctions, audits, and a prohibition of additional certifications for the same facility.

⁹ Section 212.20(6)(d)7.b., F.S., using criteria set out in s. 288.1162(4), F.S.

¹⁰ Section 212.20(6)(d)7.b., F.S., using criteria set out in s. 288.1162(5), F.S.

¹¹ Section 212.20(6)(d)7.c., F.S., using criteria set out in s. 288.1168(2), F.S.

¹² Section 212.20(6)(d)7.d., F.S., using criteria set out in s. 288.1169(2), F.S.

¹³ Except for the International Game Fish Association World Center facility.

¹⁴ Except for facilities for retained Spring Training Franchises.

¹⁵ Section 288.1162, (4)(e), F.S., requires facilities for professional sports franchises to project they will generate \$2 million in sales tax revenue per year; s. 288.1168 (2)(e), F.S., requires the Professional Golf Hall of Fame to demonstrate they will generate \$2 million in sales tax revenue per year; s. 288.1169 (2)(e), F.S., requires the International Game Fish Association World Center to demonstrate they will generate at least \$1 million in sales tax revenue per year. However, spring training facilities are not required by statute to demonstrate a specified dollar amount of annual sales tax generated.

Certified Professional Sports Facilities

Section 288.1162(7), F.S., provides that OTTED may certify up to eight facilities for new or retained professional sports franchises.¹⁶ According to OTTED, there are currently seven certified professional sports franchise facilities:¹⁷

- Pro Player Stadium, home of the Florida Marlins;
- Alltel Stadium, home of the Jacksonville Jaguars;
- Tropicana Field, home of the Tampa Bay Devil Rays;
- St. Pete Times Forum, home of the Tampa Bay Lightning;
- Home Depot Stadium, home of the Florida Panthers;
- Raymond James Stadium, home of the Tampa Bay Buccaneers; and
- American Airlines Arena, home of the Miami Heat.

Certified Spring Training Facilities

Section 288.1162(7), F.S., provides that OTTED can certify up to five retained spring training facilities. Currently, there are five certified facilities for retained spring training franchises in the following cities:

- Clearwater, for the Philadelphia Phillies;
- Dunedin, for the Toronto Blue Jays;
- Indian River County, for the L.A. Dodgers;
- Lakeland, for the Detroit Tigers; and
- Osceola County, for the Houston Astros.

III. Effect of Proposed Changes:

Senate Joint Resolution 1292 proposes the creation of s. 19, Art. VII of the State Constitution, to prohibit the use of public funds to aid any professional sports team, pay for any facility used or intended to be used by any professional sports team, or pay for any professional sporting event, unless approved by electors of the state or affected local government. This bill does not prohibit the use of funds for professional sports teams, facilities, and events already approved as of February 1, 2005.

The creation of s. 19, Art. VII of the State Constitution, must be approved by the electors of the state at the next general election or earlier special election. The joint resolution provides language that is to appear on the ballot.

¹⁶ A “new professional sports franchise” means a professional sports franchise that was not based in Florida prior to April 1, 1987, and a “retained professional sports franchise” means a professional sports franchise that has had a league-authorized location in Florida on or before December 31, 1976.

¹⁷ The only facility certified for a retained professional sports franchise is Raymond James Stadium for the Tampa Bay Buccaneers, the rest are certified for new professional sports franchises.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
