

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 549 Performing Arts Center Funding

SPONSOR(S): Randolph

TIED BILLS: **IDEN./SIM. BILLS:** SB 1062

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Economic Development Policy Committee</u>	<u></u>	<u>Kruse</u>	<u>Kruse</u>
2)	<u>Finance & Tax Council</u>	<u></u>	<u></u>	<u></u>
3)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Section 212.20, F.S., provides for the Department of Revenue to turn over all funds received and collected to the Chief Financial Officer to be credited to the General Revenue fund of the state. The statute allows for certain proceeds to be redistributed back to organizations such as the professional golf hall of fame, the International Game Fish Association World Center facility, and any organization designated as a “facility for a new professional sports franchise” or a “facility for a retained professional sports franchise.” These organizations receive monthly distributions in the amounts of \$166,667, \$83,333, and \$166,667, respectively.

The bill amends current law to add an additional distribution under section 212.20(6)(d)7.b.(II), F.S., to provide that not more than \$166,667 will be distributed monthly to each applicant certified as a performing arts center under section 288.1163, F.S.

The bill creates s. 288.163, F.S., to provide the administration, eligibility, distributions, and use of the funds to be distributed to qualifying performing arts centers.

The Revenue Estimating Conference has estimated an annualized recurring negative fiscal impact of \$8 million to state revenue. However, no actual fiscal impact will occur until 2011-2012.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 212.20, F.S., provides for the Department of Revenue to turn over all funds received and collected to the Chief Financial Officer to be credited to the General Revenue fund of the state. The statute allows for certain proceeds to be redistributed back to organizations such as the professional golf hall of fame, the International Game Fish Association World Center facility, and any organization designated as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise." These organizations receive monthly distributions in the amounts of \$166,667, \$83,333, and \$166,667, respectively.

There are several performing arts centers that could be affected by the bill's passage. The Broward Center for the Performing Arts opened its doors on February 26, 1991. The governing body is the Performing Arts Center Authority which is a 13-member volunteer board. Members are appointed to a four-year term and represent every region of Broward County. The Broward Performing Arts Foundation, Inc., is the fund-raising organization for the Center. This not-for-profit charitable foundation, composed of business and community leaders, plays a critical role in supporting the Center. The Foundation is a 501(c) 3 charitable corporation with IRS approval. Directors serve three-year staggered terms. The Center features Broadway Shows, the Miami City Ballet, operas, symphonies, and various other musical concerts.

The Center is currently launching a \$40 million capital campaign to increase visitor traffic to their facility. The Center expects \$40 million in total costs, of which \$24 million will be for construction. The Center expects the project to generate approximately 800 full or part-time jobs.

The Orlando Dr. Phillips Performing Arts Center (DPAC) is a new performing arts center for downtown Orlando that was first proposed in 2003. Construction was started in the fall of 2009. It is scheduled to replace the Bob Carr Performing arts Centre in 2012. The governing body, DPAC's Board of Directors, is a volunteer board with 34 members including 8-member executive board, and 6 ex-officios. Currently, the Bob Carr Performing Arts Centre is home to the Orlando Philharmonic Orchestra, Florida Symphony Youth Orchestra, the former Orlando Opera, and a variety of other shows, exhibits, and events. DPAC expects the project to have a \$425 million total project cost, of which \$207 million is to be spent on construction. The project has spent \$80 million to date. DPAC expects to create 4,000 full or part-time jobs from the construction phase and 1,500 for operations.

Effect of Proposed Changes

The bill amends current law to add an additional distribution under section 212.20(6)(d)7.b.(II), F.S., to provide that not more than \$166,667 will be distributed monthly to each applicant certified as a performing arts center under section 288.1163, F.S.

The bill creates s. 288.163, F.S., to provide the administration, eligibility, distributions, and use of the funds to be distributed to qualifying performing arts centers.

Administration and Definitions

The Office of Tourism, Trade, and Economic Development (OTTED) is designated by the bill to serve as the state agency for screening applicants for state funding and for certifying an applicant as a performing arts center that is eligible for funding. The bill defines "performing arts center" to mean a facility at which live theater, live opera, live ballet, or other live cultural events are held and that is publicly owned and operated or owned and operated by a not-for-profit organization and is open to the public. OTTED shall notify the Department of Revenue of any facility certified by the office as a performing arts center that is eligible for funding.

Eligibility Criteria

Before certifying an applicant as a performing arts center eligible for funding, OTTED must determine that:

(a) A unit of local government or a not-for-profit organization is responsible for the construction, maintenance, or operation of the performing arts center or holds title to or a leasehold interest in the property on which the performing arts center is located and that the applicant is or will be the owner, tenant, or operator of the performing arts center.

(b) The applicant has projections, verified by the Office of Tourism, Trade, and Economic Development, that demonstrate that the performing arts center will attract a paid attendance of more than 150,000 annually.

(c) The applicant has an independent analysis or study, verified by the Office of Tourism, Trade, and Economic Development, that presents calculations that the amount of the revenues projected to be generated by the taxes imposed under chapter 212, F.S., with respect to the use and operation of the performing arts center and events will equal or exceed \$250,000 annually. Based upon a verification of the analysis or study by the office, the office shall certify the annual distribution for which the applicant is eligible, which distribution shall not exceed 75 percent of the annual revenues projected to be generated by the taxes imposed under chapter 212, F.S., or \$2 million, whichever is less. Only revenues collected after July 1, 2010, shall be counted toward the revenue projection under this paragraph.

(d) The municipality or county in which the performing arts center is located has certified by resolution after a public hearing that funding for the performing arts center serves a public purpose.

Distributions

The bill provides that the department shall distribute the amount certified pursuant to s. 288.163(4)(c), F.S., in equal monthly installments of not more than \$166,667 each to each applicant that has been certified as a performing arts center pursuant to s. 288.163, F.S. Only the two projects described in the Present Situation section are known to be ready for eligibility. At least one of these projects is already under way and therefore the "incentive" value of the proposed bill is unknown. The distributions in current law for professional sports franchises are meant to act as incentives to attract or retain sports franchises.

Distributions begin 60 days after such certification and shall continue for not more than 30 years. An applicant certified pursuant to s. 288.163, F.S., may not receive more in distributions than actually expended by the applicant for the public purposes provided for in s. 288.163(5), F.S. In no case shall begin before July 1, 2012.

Uses of Funds

An applicant certified as a performing arts center and certified for funding may use funds provided pursuant to that sub-sub-subparagraph solely for the public purposes of:

(a) Paying for the acquisition, construction, reconstruction, renovation, capital improvement, or maintenance of the performing arts center or any ancillary facilities, including, but not limited to, parking structures, meeting rooms, and retail and concession space.

(b) Paying or pledging for the payment of debt service on, or funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds or other indebtedness issued for the acquisition, construction, reconstruction, renovation, or capital improvement of the performing arts center or any ancillary facilities.

(c) Reimbursing costs for refinancing bonds or other indebtedness, including the payment of any interest and prepayment premium or penalty on such indebtedness, issued for the acquisition, construction, reconstruction, renovation, or capital improvement of the performing arts center or any ancillary facilities.

Oversight and Audits

The Department of Revenue may conduct audits as provided in s. 213.34, F.S., to verify that the distributions made under this section have been expended as required in this section. If the department determines that the distributions made under this section have not been expended as required by this section, the department may pursue recovery of the funds under the laws and rules governing the assessment of taxes.

Rulemaking

The Office of Tourism, Trade, and Economic Development shall adopt rules for receiving and processing applications for funding pursuant to s. 212.20(6)(d)6.b.(II), F.S.

The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1. Amends s. 220.20, F.S., to provide a new distribution to qualifying performing arts centers.

Section 2. Creates s. 288.163, F.S., to establish the parameters of the distribution program.

Section 3. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If amended, as the bill sponsor has indicated an intention to do (see Drafting Issues or Other Comments), the Revenue Estimating Conference (REC) has estimated a recurring \$8 million annualized negative fiscal impact to state revenue. However, no actual fiscal impact will occur until 2011-2012.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Performing arts centers that meet the conditions of the bill may be able to expand their operations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill provides OTTED with authority to adopt rules to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill sponsor provided an amendment to the REC which provided that any distribution to an individual center is capped at \$2 million, may not begin before July 1, 2011, may not continue for more than 30 years, and caps the number of facilities at eight. Further, the definition of performing arts center is revised to: have one or more theatres, each of which has no more than 3,500 seats; present live theatre, live opera, live ballet or other performance events and be owned and operated by a public entity or a not-for-profit organization. The amendment also revises the criteria for distribution. This amendment is the basis for the REC fiscal impact estimation described in the Fiscal Impact on State Governments section.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES