

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7095 PCB EAC 14-02 Professional Sports Facilities Incentive Application Process

SPONSOR(S): Appropriations Committee, Economic Affairs Committee, Patronis

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Affairs Committee	17 Y, 2 N	Collins	Creamer
1) Appropriations Committee	25 Y, 2 N, As CS	Proctor	Leznoff

SUMMARY ANALYSIS

The bill creates s. 288.11625, F.S., the Professional Sports Facility Incentive Program (program) process to provide state funding for the public purpose of constructing, reconstructing, renovating, or improving a professional sports facility. The program will be administered by the Department of Economic Opportunity (DEO). Annual distributions of state funds will be made by the Department of Revenue (DOR).

The bill allows municipalities and counties to expend portions of the local government half-cent sales tax for reimbursing the state as required by the program.

The bill adds the program to the list of economic development programs subject to review by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) by January 1, 2015.

The bill creates a new application, review, and approval process for funding sports facilities, but does not require any expenditure of funds. It also caps the total potential annual distributions at \$12 million in General Revenue funds. Such distributions will be contingent upon future approval by the Legislature and enactment by general law approved by the Governor.¹

The bill has an effective date of July 1, 2014.

¹ S. 8, Art. III of the State Constitution.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Professional Sports in Florida

There are nine major professional sports teams based in Florida covering each of the major professional sports leagues; the National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), and National Hockey League (NHL). The oldest major professional sports franchise in the state is the Miami Dolphins (NFL). The Dolphins franchise began play in 1966. The newest major professional sports team in the state is the Tampa Bay Rays (MLB) baseball franchise. The Rays franchise began play in 1998. The Miami Marlins (MLB), Tampa Bay Buccaneers (NFL), Jacksonville Jaguars (NFL), Orlando Magic (NBA), Miami Heat (NBA), Tampa Bay Lightning (NHL), and Florida Panthers (NHL) all play their home games in the state. MLB's Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.²

Beginning in 2015, the state will be home to a tenth major professional sports team when the Orlando City Soccer Club begins play as the 21st Major League Soccer (MLS) franchise.³ Plans for a future franchise in Miami have also been announced by the league.⁴ MLS is the premier professional soccer organization in the United States, having been launched in 1996 and boasting eight franchises valued at over \$100 million.⁵

Franchise	League	Inaugural Season	Home Facility	County	Facility Opened
Miami Dolphins	NFL	1966	Sun Life Stadium	Miami-Dade	1987
Tampa Bay Buccaneers	NFL	1976	Raymond James Stadium	Hillsborough	1998
Miami Heat	NBA	1988	American Airlines Arena	Miami-Dade	1999
Orlando Magic	NBA	1989	Amway Center	Orange	2010
Tampa Bay Lightning	NHL	1992	Tampa Bay Times Forum	Hillsborough	1996
Florida Panthers	NHL	1993	BB&T Center	Broward	1998
Miami Marlins	MLB	1993	Marlins Park	Miami-Dade	2012
Jacksonville Jaguars	NFL	1995	EverBank Field	Duval	1995
Tampa Bay Rays	MLB	1998	Tropicana Field	Pinellas	1990

State Incentives for Professional Sports Teams

² Florida Sports Foundation, *Sports in Florida*

http://www.flasports.com/index.php?option=com_content&view=article&id=97&Itemid=211 (last accessed January 14, 2014).

³ Major League Soccer, *Major League Soccer Names Orlando City SC as 21st Franchise, Set for 2015 Debut*, November 19, 2013; <http://www.mlssoccer.com/news/article/2013/11/19/major-league-soccer-names-orlando-city-21st-franchise-set-2015-debut> (last accessed February 20, 2014).

⁴ Major League Soccer, *David Beckham Exercises MLS Expansion Option on Future Miami Franchise*, February 5, 2014; <http://www.mlssoccer.com/news/article/2014/02/05/david-beckham-exercises-mls-expansion-option-future-miami-franchise> (last accessed February 20, 2014).

⁵ Forbes, *Major League Soccer's Most Valuable Teams* November 20, 2013; <http://www.forbes.com/sites/chris-smith/2013/11/20/major-league-soccer-s-most-valuable-teams/> (last accessed January 14, 2014).

Section 288.1162, F.S., provides the procedure by which professional sports franchises in Florida may be certified to receive state funding for the purpose of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise. Local governments, non-profit, and for-profit entities may apply to the program.

DEO is responsible for screening and certifying applicants for state funding.⁶ An applicant qualifying as a new professional sports franchise must be a professional sports franchise that was not based in Florida prior to April 1, 1987. Applicants qualifying as retained professional sports franchises must have had a league-authorized location in the state on or before December 31, 1976, and be continuously located at the location.⁷ The number of certified professional sports franchises, both new and retained, is limited to eight total franchises.⁸

For both new and retained franchises, DEO must confirm and verify the following:

- A local government is responsible for the construction, management, or operation of the professional sports franchise facility, or holds title to the property where the facility is located.⁹
- The applicant has a verified copy of a signed agreement with a new professional sports franchise for at least 10 years, or for 20 years in the case of a retained franchise.¹⁰
- The applicant has a verified copy of the approval by the governing body of the NFL, MLB, NHL, or NBA authorizing the location of a new franchise in the state after April 1, 1987, for new professional sports franchises, or verified evidence of a league-authorized location in the state on or before December 31, 1976, for a retained professional sports franchise.¹¹
- The applicant has projections demonstrating a paid annual attendance of over 300,000 annually.¹²
- The applicant has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the franchise's facility will equal or exceed \$2 million annually.¹³
- The city where the franchise's facility is located, or the county if the facility is in an unincorporated area, has certified by resolution after a public hearing that the application serves a public purpose.¹⁴
- The applicant has demonstrated that it has provided, or is capable of providing, financial or other commitments of more than one-half of the costs incurred or related to the improvement or development of the franchise's facility.¹⁵

Any applicant that meets the above mentioned criteria, as verified by DEO, is eligible to receive monthly payments from the state in the amount of \$166,667 for not more than 30 years totaling \$2,000,004 annually.¹⁶

State funding may only be used for the public purposes of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise; reimbursing associated costs for such activities; paying or pledging payments of debt service on bonds issued for such activities; funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds.¹⁷ The state

⁶ Section 288.1162(1), F.S.

⁷ Section 288.1162(4)(c), F.S.

⁸ Section 288.1162(6), F.S.

⁹ Section 288.1162(4)(a), F.S.

¹⁰ Section 288.1162(4)(b), F.S.

¹¹ Section 288.1162(4)(c), F.S.

¹² Section 288.1162(4)(d), F.S.

¹³ Section 288.1162(4)(e), F.S.

¹⁴ Section 288.1162(4)(f), F.S.

¹⁵ Section 288.1162(4)(g), F.S.

¹⁶ Section 212.20(6)(d)6.b., F.S.

¹⁷ Section 288.1162(5), F.S.

may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.¹⁸

No facility may be certified more than once, and no sports franchise can be the basis for more than one certification unless the previous certification was withdrawn by the facility or invalidated by DEO before any funds were disbursed under s. 212.20(6)(d), F.S.¹⁹

As of February 17, 2014, there were eight certified professional sports franchise facilities in Florida. The facilities and the payment distribution for each, as provided by the Department of Revenue, are listed below:

Facility Name	Certified Entity	Franchise	First Payment	Total ²⁰
Sun Life Stadium	Dolphin Stadium/South Florida Stadium Corp.	Florida Marlins	06/94	\$41,333,416
Everbank Field	City of Jacksonville	Jacksonville Jaguars	06/94	\$39,500,079
Tropicana Field	City of St. Petersburg	Tampa Bay Rays	06/95	\$37,333,408
Tampa Bay Times Forum	Tampa Sports Authority	Tampa Bay Lightning	09/95	\$37,000,074
BB&T Center	Broward County	Florida Panthers	08/96	\$35,166,737
Raymond James Stadium	Hillsborough County	Tampa Bay Buccaneers	01/97	\$34,333,402
American Airlines Arena	BPL, LTD	Miami Heat	03/98	\$31,833,397
Amway Center	City of Orlando	Orlando Magic	02/08	\$12,166,691

Effect of Proposed Changes

The bill creates s. 288.11625, F.S., the Professional Sports Facility Incentive Program. The purpose of the program is to provide state funding under s. 212.60(6)(d)6.f., F.S., for the public purpose of constructing, reconstructing, renovating, or improving a professional sports facility.

Application Process

Applicants must be a unit of local government or an entity that is responsible for construction, management, or operation of a pro sports facility. A professional sports franchise (beneficiary) is eligible to apply under certain circumstances. DEO is directed to establish procedures and application forms to be used by program applicants and accept applications between June 1 and November 1 of each year. The bill gives DEO 60 days to complete its evaluation and notify the applicant in writing of its decision to recommend that the Legislature fund the project or deny the application. Applicants not approved by the Legislature, but recommended for funding by DEO may update a previously submitted application and re-apply.

The applicant must provide an independent analysis (Expected Sales Tax Analysis) by a state-certified public accountant (CPA) that provides an estimate of the new incremental state sales taxes generated by admissions to the facility, by parking on property owned or controlled by the beneficiary or the applicant, or by sales made by vendors at the facility above the average annual amount of state sales taxes generated during the preceding 36-month period (estimate).

Evaluation Process

¹⁸ Section 288.1162(7), F.S.

¹⁹ Section 288.1162(8), F.S.

²⁰ Total paid as of February 17, 2014.

Before recommending an applicant for funding to the Legislature, DEO must first verify that all of the following requirements are met:

- The applicant is responsible for the project.
- If the applicant is a beneficiary, then a local government holds title to the property on which the facility is located.
- If the applicant is a local government, then the local government has an exclusive intent agreement to negotiate in this state with the beneficiary.
- The local government in whose jurisdiction the facility is located has passed a resolution after public hearing in support of the project.
- Neither the applicant nor the beneficiary have previously defaulted or failed to meet the requirements of a sports-related program within ch. 288, F.S.
- The applicant is not a Major League Baseball spring training facility, a Professional Golf Hall of Fame facility, or an International Game Fish Association World Center facility.
- The applicant has demonstrated a commitment to employing Florida residents and firms, and purchasing locally available building materials whenever possible.
- If the applicant is a local government, then they have a signed agreement with a beneficiary for use of the facility.
- If the applicant is a beneficiary, then they must enter into an agreement with DEO that requires them to repay any state funds disbursed, plus a five percent penalty should they cease to be the facility's primary tenant before their agreement expires, and to pay for VISIT Florida-approved advertising at the facility.
- The total project cost must be at least \$100 million, with more than half the funding coming from private sources.
- The applicant has provided the Expected Sales Tax Analysis. DEO must consult with DOR or EDR to verify the analysis and may consult with DOR or EDR to develop a standard calculation for estimating new incremental state sales taxes generated by sales at the facility and adjustments to annual distributions.

By February 1 of each year, DEO will provide evaluations of all applications received during the application period to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

By February 1 of each year, DEO will also provide a separate list of all applications recommended to receive an annual distribution from DOR, in ranked order, to the Governor, the President of the Senate, and the Speaker of the House of Representatives for final approval. Rankings will be determined by the project's ability to produce a significant positive economic impact within the state based on the following criteria:

- The ability of the project to provide a positive return on the state's investment.
- The proposed use of state funds.
- The length of time that a beneficiary has agreed to use the facility.
- The percentage of total project funds provided by the applicant, the percentage of total project funds provided by the beneficiary, and the total amount of private or in-kind contributions to the project.
- The number and type of "signature events"²¹ the facility is likely to attract during the duration of the agreement with the beneficiary.
- The anticipated increase in average annual ticket sales and attendance at the facility due to the project.

²¹ Signature events are defined as sporting events that create a significant positive economic impact within the state, and enhances that status of the state as a premier sports tourism destination. Signature events include, but are not limited to, NFL Super Bowls, College Football Playoff games, college football bowl games, professional sports all-star games, international sporting events and tournaments, and professional motorsports events.

- The potential to attract out-of-state visitors to the facility.
- The multiuse capabilities of the facility.
- The facility's projected employment of state residents, contracts with firms based within the state, and purchases of locally available building materials.
- The amount of positive advertising or media coverage the facility generates.
- The estimate provided in the Expected Sales Tax Analysis.
- The size and scope of the project and number of temporary and permanent jobs that will be created as a direct result of the project.

DEO may not recommend more than one annual distribution for any applicant, facility, or beneficiary at a time.

Legislative Approval

In order to receive a distribution through this program, an applicant must be approved by the Legislature and enacted by general law approved by the Governor.²²

An applicant whose application is recommended by DEO but not approved by the Legislature may reapply and update any information in the original application as required.

Certification and Contract

An applicant approved by the Legislature and certified by DEO must enter into a contract with the department that:

- Specifies the terms of the state's investment.
- States the criteria that the certified applicant must meet in order to remain certified.
- States that the certified applicant is subject to decertification as recommended by DEO or by the Legislature.
- Requires the certified applicant to submit both analyses outlined in the bill.
- Specifies information that the certified applicant must report to DEO.
- Requires that no later than 60 days following the certified applicant's final annual distribution as determined by a contract with DEO, the certified applicant will reimburse the state for each year that the Expected Sales Tax Analysis demonstrates the amount of new incremental state sales taxes generated by sales at the facility is less than the annual distribution amount.
- Includes any other provisions deemed prudent by DEO.

Annual Distribution of State Funds

DEO shall determine the annual distribution a certified applicant may receive based on the estimate of new incremental states sales taxes provided in the Expected Sales Tax Analysis. A certified applicant may receive up to 75 percent of the estimate or \$2 million, whichever is less.

Annually, beginning 12 months after certification, a certified applicant must submit to DEO an analysis (Annual Comparison Analysis) prepared by an independent CPA licensed in this state demonstrating the actual amount of new incremental state sales taxes generated by sales at the facility over the previous 12-month period to the most recent annual distribution. DEO may consult with DOR to verify each Annual Comparison Analysis.

In any 12-month period when total annual distributions for all certified applicants equal \$12 million or more, DEO may not certify new annual distributions for any additional certified applicants.

DOR will begin annual distributions within 60 days of notification from DEO that an applicant is certified.

²² S. 8, Art. III of the State Constitution.
STORAGE NAME: h7095a.APC
DATE: 4/3/2014

Approved Use of Funds

A certified applicant may only use state funds for the following purposes:

- Constructing, reconstructing, renovating, or improving a facility.
- Reimbursing costs associated with constructing, reconstructing, renovating, or improving a facility.
- Paying or pledging for the payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable associated with bonds issued for the construction or renovation of a facility.

Reports

By November 1 of each year, a certified applicant must submit to DEO any required information for inclusion in the report the department will provide to the Legislature by February 1. Every three years, DEO must verify that a certified applicant is meeting the program requirements. If they are not, DEO must notify the Governor and Legislature of the requirements not being met and recommend future action as part of the report due February 1. DEO will consider exceptions that may have prevented the certified applicant from meeting the requirements of the program if they include force majeure events or a significant economic downturn.

Audits

Every five years, beginning in 2020, the Auditor General will conduct audits to verify the Annual Comparison Analyses, and to verify that the annual distributions are being expended as required. The findings will be reported to DEO. If the Auditor General finds that the annual distributions are not expended as required, then DOR must be notified.

Repayment of Distributions

A certified applicant may be subject to repayment of state funds if:

- The beneficiary has broken the terms of its agreement with a local government. A beneficiary must reimburse the state for funds that have been distributed, plus a five percent penalty, if the beneficiary no longer occupies or uses a facility as the facility's primary tenant before the agreement expires.
- DEO has determined that an applicant has submitted any false or misleading information. The applicant must reimburse the state for funds that have been distributed, plus a five percent penalty.
- Beginning 24 months after the first annual distribution has been disbursed; a certified applicant must reimburse the state in an amount equal to each subsequent annual distribution less 75 percent of the actual new incremental state sales taxes generated by sales at the facility each year that an applicant is certified, plus a 5 percent penalty. The reimbursements must be submitted to DOR no later than 60 days following the certified applicant's final annual distribution as determined by the certified applicant's contract with DEO.

Halting of Payments

The applicant may request to halt future annual distributions by providing DEO with written notice at least 20 days prior to the next annual distribution payment. DEO must notify DOR to halt future payments.

DEO will direct DOR to halt future disbursements to any certified applicant that has been determined to have submitted any false or misleading information.

Other Changes

The bill amends s. 212.20, F.S., to allow applicants certified under the program to receive monthly payments from DOR equal to 1/12th the amount certified by DEO. It also places a \$12 million cap on the total amount that may be distributed annually by DOR to certified applicants.

The bill amends s. 218.64, F.S., to allow municipalities and counties the option to expend portions of the local government half-cent sales tax for the purpose of reimbursing the state as a condition of the contract terms required for this program.

The bill amends s. 288.0001, F.S., to add this program to the list of economic development programs scheduled to be reviewed by EDR and the OPPAGA by January 1, 2015.

B. SECTION DIRECTORY:

- Section 1: Amends s. 212.20, F.S., to allow applicants certified under the Professional Sports Facility Program to receive monthly payments equal to 1/12th the annual distribution amount authorized by the program.
- Section 2: Amends s. 218.64, F.S., to allow municipalities and counties the option to expend portions of the local government half-cent sales tax for the purpose of reimbursing the state for funds expended.
- Section 3: Amends s. 288.0001, F.S., to add the Professional Sports Facility Incentive Program to the list of economic development programs scheduled for review by January 1, 2015.
- Section 4: Creates s. 288.11625, F.S., the Professional Sports Facility Incentive Program to provide state funding under s. 212.60(6)(d)6.f., F.S., for the public purpose of constructing, reconstructing, renovating, or improving a professional sports facility.
- Section 5: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

DEO and DOR did not advise of any additional resources that would be required to implement the bill. DEO advised the bill formalizes and expands a process that is currently in place.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may encourage the owners or operators of pro sports stadiums to undertake major renovations, which could have positive impacts on the construction sector. Additionally, such renovations could have a positive impact on ticket sales and other sales associated with sporting and other events.

D. FISCAL COMMENTS:

The bill prohibits DOR from distributing more than \$12 million to certified applicants in a single year, and prohibits any single certified applicant from receiving an annual disbursement over \$2 million. Certified applicants are subject to reimburse state funds if they do not meet all program requirements. Certified applicants may receive annual payments for as long as 30 years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DEO may adopt rules to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2014, the Appropriations Committee adopted a strike-all amendment to HB 7095 and reported the bill favorably as a committee substitute. The strike-all amendment:

- Expanded the definition of "Beneficiary" to include the National Association of Professional Baseball Leagues, Major League Soccer, or the North American Soccer League, the Professional Rodeo Cowboy Association, and the promoter of a signature event sanctioned by the National Association for Stock Car Auto Racing.
- Modified the definition of "state sales taxes generated by sales at the facility" to include taxes generated from parking on property owned or controlled by the beneficiary or the applicant, and removed the requirement that the taxes generated from sales made by vendors at the facility be tied to events occurring at the facility.
- Allowed an applicant to include a statement describing the positive economic impact the project is expected to have on the state.
- Required DEO to submit both a ranked list of recommended applicants and an evaluation of each application received to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1 of each year.
- Removed the requirement that the applicant reimburse the state an amount equal to the sum of the first five annual distributions less 75 percent of the actual new incremental state sales taxes generated by sales at the facility since the date of certification of the applicant, plus a 5 percent penalty.
- Removed the requirement that the applicant reimburse the state each year in an amount equal to the annual distribution received less 75 percent of the actual new incremental state sales taxes generated by sales at the facility during the most recent 12-month period after receiving the sixth annual distribution.
- Required that beginning 24 months after the first annual distribution has been disbursed; a certified applicant must reimburse the state in an amount equal to each subsequent annual distribution less 75 percent of the actual new incremental state sales taxes generated by sales at the facility each year that an applicant is certified, plus a 5 percent penalty. The reimbursements must be submitted

to DOR no later than 60 days following the certified applicant's final annual distribution as determined by the certified applicant's contract with DEO.

- Required that annually, beginning 12 months after certification, a certified applicant must submit to DEO an analysis (Annual Comparison Analysis) prepared by an independent CPA licensed in this state demonstrating the actual amount of new incremental state sales taxes generated by sales at the facility over the previous 12-month period to the most recent annual distribution.
- Removed the requirement that DEO adjust the sixth and subsequent annual distributions to be disbursed to a certified applicant based on the comparison of the baseline amount of state sales taxes generated compared to the actual amount of new incremental state sales taxes generated by sales at the facility since the date of certification.
- Allowed the certified applicant to be decertified by either DEO or the Legislature.

This analysis is drafted to the committee substitute as reported by the Appropriations Committee.