

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: SB 1206

INTRODUCER: Senator Martin

SUBJECT: Live Performances

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1206 creates the “Right to Rock Act,” which prohibits the owner or operator of a public venue from canceling a live performance of an artist, a performer, or a musical group because of their lawful exercise of freedom of speech or their personal beliefs.

The bill defines “public venue” as a place, building, or structure, regardless of whether owned by or rented to a governmental entity, school, college, or university, which is funded by or constructed with public or government funds.

The bill does not apply to an owner or operator who cancels a live performance based on a reasonable belief that the performance would violate any applicable state law or rule.

The bill requires a venue owner or operator who cancels a live performance of an artist, a performer, or a musical group in violation of the provisions in the bill to bear all costs, fees, and penalties enumerated in the related contract with the artist, performer, or musical group.

The bill takes effect July 1, 2024.

II. Present Situation:

Local Option Taxes

Local governments in Florida are authorized to impose certain types of local option taxes.¹ The Department of Revenue (DOR) or the local government is responsible for administering the tax.² When the DOR administers the tax, its responsibilities include collecting the tax and distributing the funds to local governments to spend on locally authorized projects.³

Convention Development Taxes

Duval, Miami-Dade, and Volusia Counties are authorized to levy convention development taxes on transient rental transactions.⁴ The revenues of convention development taxes may generally be used for capital construction of convention centers and other facilities related to tourism and tourist promotion.⁵ However, the authorized uses vary according to each particular levy.⁶ The five available levies that may apply are:

- Consolidated government levy for convention development;⁷
- Charter county levy for convention development;⁸
- Special district levy for convention development;⁹
- Special levy for convention development;¹⁰ and

¹ Department of Revenue, *Local Option Taxes*, available at

[https://floridarevenue.com/taxes/taxesfees/Pages/local_option.aspx#:~:text=Florida%20Statutes%20\(F.S.\)-.Consolidated%20County%20Convention%20Development%20Tax,charged%20for%20transient%20rental%20transactions](https://floridarevenue.com/taxes/taxesfees/Pages/local_option.aspx#:~:text=Florida%20Statutes%20(F.S.)-.Consolidated%20County%20Convention%20Development%20Tax,charged%20for%20transient%20rental%20transactions)

(last visited Feb. 5, 2024).

² *Id.*

³ *Id.*

⁴ Department of Revenue, *Local Option Taxes: Convention Development Taxes*, available at

[https://floridarevenue.com/taxes/taxesfees/Pages/local_option.aspx#:~:text=Florida%20Statutes%20\(F.S.\)-.Consolidated%20County%20Convention%20Development%20Tax,charged%20for%20transient%20rental%20transactions](https://floridarevenue.com/taxes/taxesfees/Pages/local_option.aspx#:~:text=Florida%20Statutes%20(F.S.)-.Consolidated%20County%20Convention%20Development%20Tax,charged%20for%20transient%20rental%20transactions)

(last visited Feb. 5, 2024). *See also* s. 212.0305, F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Each county that operates under a government consolidated with that of one or more municipalities in the county may impose, pursuant to an ordinance enacted by the governing body of the county, a levy on the exercise within its boundaries of the taxable privilege of leasing or letting transient rental accommodations described in s. 212.0305(3), F.S., at the rate of 2 percent of each dollar and major fraction of each dollar of the total consideration charged therefor. *See* s. 212.0305(4)(a), F.S.

⁸ Each county, as defined in s. 125.011(1), F.S., may impose, under an ordinance enacted by the governing body of the county, a levy on the exercise within its boundaries of the taxable privilege of leasing or letting transient rental accommodations described in s. 212.0305(3), F.S., at the rate of 3 percent of the total consideration charged therefor. *See* s. 212.0305(4)(b), F.S. Section 125.011(1), F.S., defines “county” as any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the State Constitution, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county.

⁹ Each county which was chartered under Art. VIII of the State Constitution and which on January 1, 1984, levied a tourist advertising ad valorem tax within a special taxing district in that county may impose, pursuant to an ordinance enacted by the governing body of the county, a levy within the boundaries of such special taxing district on the exercise of the taxable privilege of leasing or letting transient rental accommodations described in s. 212.0305(3), F.S., at a rate of up to 3 percent of each dollar and major fraction of each dollar of the total consideration charged therefor. *See* s. 212.0305(4)(c), F.S.

¹⁰ Each county which was chartered under Art. VIII of the State Constitution and which on January 1, 1984, levied a tourist advertising ad valorem tax within a special taxing district in that county may impose, pursuant to an ordinance enacted by the governing body of the county, a levy outside the boundaries of such special taxing district and to the southeast of State Road

- Subcounty levy for convention development.¹¹

Economic Development Programs

Florida’s economic development programs are used to help promote a diverse and resilient economy.¹² Each program is designed to serve a different role, and there is an emphasis on attracting businesses and retaining jobs.¹³ The programs come in various forms such as tax refunds, tax credits, tax exemptions, and grants.¹⁴ An analysis of a project’s needs, as well as eligibility requirements of various programs help determine which programs may be a good fit for each project.¹⁵ Below is a chart that provides an overview of the different types of economic development programs, the claims process, and revenue sources.¹⁶

Program	Description	Overview of Claims Process	Revenue Source
Tax Refunds	Refund of taxes paid	(1) Business pays taxes (2) State verifies job creation, wages, and tax payments (3) State issues refund to eligible business	Annual appropriation
Tax Credits	Credit against taxes owed	(1) State verifies jobs and capital investment (as applicable) (2) Eligible business claims credits on state taxes after meeting program requirements	Foregone revenue
Tax Exemptions	Exemption from taxes owed	(1) DOR issues tax exemption permit to business for approved tax-exempt purchases (2) Business uses permit to make eligible tax-exempt purchases	Foregone revenue

415, on the exercise of the taxable privilege of leasing or letting transient rental accommodations described in s. 212.0305(3), F.S., at a rate of up to 3 percent of each dollar and major fraction of each dollar of the total consideration charged therefor. See 212.0305(4)(d), F.S.

¹¹ Each county which was chartered under Art. VIII of the State Constitution and which on January 1, 1984, levied a tourist advertising ad valorem tax within a special taxing district in that county may impose, pursuant to an ordinance enacted by the governing body of the county, a levy outside the boundaries of such special taxing district and to the northwest of State Road 415, on the exercise of the taxable privilege of leasing or letting transient rental accommodations described in s. 212.0305(3), F.S., at a rate of up to 3 percent of each dollar and major fraction of each dollar of the total consideration charged therefor. The proceeds of this levy shall be known as the subcounty convention development tax. See 212.0305(4)(e), F.S.

¹² Department of Economic Opportunity, *2022 Incentives Report*, available at <https://www.floridajobs.org/docs/default-source/reports-and-legislation/2021-2022-annual-incentives-report.pdf> (last visited Feb. 5, 2024).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Grants	Grant with a performance-based agreement	(1) Business achieves performance milestones (2) State verifies job creation, wages, and capital investment (as applicable) (3) State issues payment	Annual appropriation
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Professional Sports Franchise Program

Florida is home to many professional and semi-professional sports teams, organizations and facilities, including professional football, basketball, baseball, hockey, soccer, and National Association of Stock Car Racing sanctioned tracks. The Professional Sports Franchise program allows professional sports franchises to receive state sales and use tax revenues to pay for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise.¹⁷ Local governments, non-profit, and for-profit entities may apply to the program.

The Florida Department of Commerce (DCM) is responsible for screening and certifying applicants for state funding.¹⁸ For both new and retained franchises, the DCM must confirm and verify the following:¹⁹

- 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;
- 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;
- 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 Florida after April 1, 1987, for new professional sports franchises, or verified evidence of a league-authorization location in Florida on or before December 31, 1976, for a retained professional sports franchise;
- The applicant has projections demonstrating a paid annual attendance of over 300,000;
- The applicant has an independent analysis demonstrating that the annual amount of sales taxes generated by the use or operation of the franchise’s facility will be at least \$2 million;
- The local government where the franchise’s facility is located, or the county of the facility is in an unincorporated area, has certified by resolution after a public hearing that the application serves a public purpose; and
- The applicant has demonstrated that it has provided, is capable of providing, financial or other commitments of more than one-half of the costs incurred or related to the improvements or development of the franchise’s facility.

¹⁷ Section 288.1162, F.S.

¹⁸ Section 288.1162(1), F.S.

¹⁹ Section 288.1162(4)(a)-(g), F.S.

Approved applicants are eligible to receive up to \$2,000,004 per year for a period of up to 30 years.²⁰ No more than eight facilities can be certified under this program at one time.²¹

Currently, at least seven facilities receive distributions under the Professional Sports Franchise Program, and one facility received its final distribution in June of 2023. Each facility is on track to receive \$60 million, which is the maximum distribution allowable under this program (\$166,667 per month or \$2,000,004 per year, over 30 years) as follows:²²

Facility name	Location, Certified entity, & certification date	Franchise	First and Final payments	Total payments as of Nov. 30, 2023
BB&T Center	Sunrise, Broward County, June 1996	Florida Panthers	Aug. 1996 July 2026	\$54,666,776
Hard Rock Stadium	Miami, South Florida Stadium Corp., May 1993	Miami Dolphins	June 1994 June 2023	\$60,000,120
TIAA Bank Field	Jacksonville, City of Jacksonville, April 1994	Jacksonville Jaguars	June 1994 May 2024	\$59,000,118
American Airlines Arena	Miami, Basketball Properties, LTD, Feb. 1998	Miami Heat	March 1998 March 2028	\$51,333,436
Amway Center	Orlando, City of Orlando, Nov. 2007	Orlando Magic	Feb. 2008 Jan. 2038	\$31,666,730
Raymond James Stadium	Tampa, Hillsborough County, Nov. 1996	Tampa Bay Buccaneers	Jan. 1997 Dec. 2026	\$53,833,441
AMALIE Arena	Tampa, Tampa Bay Sports Authority, July 1995	Tampa Bay Lightning	Sept. 1995 Aug. 2025	\$56,500,113
Tropicana Field	St. Petersburg, City of St. Petersburg, July 1995	Tampa Bay Rays	July 1995 June 2025	\$56,833,447
			Total:	\$423,834,181

Public-private Partnerships (P3s)

Public-private partnerships are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and

²⁰ Section 212.20(6)(d)6.b., F.S.

²¹ Section 288.1162(6), F.S.

²² Florida Department of Commerce, *All Professional Sports Facilities Payments as of Nov. 30, 2023*. On file with the Senate Commerce and Tourism Committee.

financing of public building and infrastructure projects. Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for use by the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.²³

Section 255.065, F.S., governs the procurement process for P3s for public purpose projects. It authorizes a responsible public entity to enter into a P3 for a specified qualifying project if the responsible public entity determines the project is in the public's best interest.²⁴

A "responsible public entity" is defined as a county, municipality, school district, special district, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.²⁵

A "qualifying project" is defined as:

- A facility or project that serves a public purpose, including any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
- An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
- A water, wastewater, or surface water management facility or other related infrastructure; or
- For projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.²⁶

Freedom of Speech

Freedom of speech is the right to engage in expression without censorship or interference from government or its agencies.²⁷ This right is guaranteed by the Constitution of the United States and the Constitution of the State of Florida.

The First Amendment of the United States Constitution provides that,

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

²³ See United States Department of Transportation, The Federal Highway Administration, Innovative Program Delivery, *P3 Defined*, available at <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on Feb. 5, 2024).

²⁴ Section 255.065(3)(d), F.S.

²⁵ Section 255.065(1)(j), F.S.

²⁶ Section 255.065(1)(i), F.S.

²⁷ See *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983).

Article I, section 4 of the Florida Constitution provides that,

Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

Violations and Permissible Regulations of Free Speech and Expression

The government or another state actor, such as a public university, violates a person's right of free speech and expression when the person's speech is punished or restricted based on its content. Even offensive content is constitutionally protected and subject to the highest level of constitutional scrutiny so long as it does not constitute a threat or incite violence,²⁸ is not fraudulent or falsely defamatory,²⁹ or is not grossly obscene, as in the case of child pornography.³⁰ For example, in *Cohen v. California*, the United States Supreme Court reversed the conviction of a man arrested for wearing a jacket that said "F**k The Draft" while walking through the corridor of a courthouse, where the conviction was based solely on the contents of the jacket's message.³¹ As noted by the Supreme Court, "so long as there is no showing of an intent to incite disobedience to or disruption of the draft, Cohen could not, consistently with the First and Fourteenth Amendments, be punished for asserting the evident position on the inutility or immorality of the draft his jacket reflected."³²

However, the government or a public actor may limit or regulate an individual's freedom of speech or expression if the speech or expression occurs on government-owned property, such as at a public elementary, middle, or high school, or at public universities.³³ Such limitations are determined by the characterization of the type of public forum created on government property.³⁴

Public Forums on Government Property

There are three types of public forums:³⁵

- A "traditional" or "open public forum"³⁶ is a place with a longstanding tradition of freedom of expression, such as a public park, sidewalk, or street corner. In an open public forum, the government may only impose *content-neutral*, logistical restrictions on the time, place, and manner of speech and expression.³⁷ Such content-neutral restrictions must be narrowly

²⁸ See *Cohen v. California*, 403 U.S. 15, 18 (1981), which notes the message on defendant's jacket did not incite violence or disrupt the draft.

²⁹ See *U.S. v. Alvarez*, 567 U.S. 709, 723 (2012) ("Where false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment.").

³⁰ *New York v. Ferber*, 458 U.S. 747, 764 (1982).

³¹ See *Cohen*, 403 U.S. 15, 18 (1981).

³² *Id.*

³³ *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992).

³⁴ *Id.* at 678-79.

³⁵ *Id.*

³⁶ See *Perry Education Association v. Perry Local Educators Association*, 460 U.S. 37, 45-46 (1992).

³⁷ *Id.*

tailored to serve a significant governmental interest and leave open alternative channels for communication.³⁸

- “Designated” public forums and “limited public forums”³⁹ are places with a more limited history of expressive activity. Examples may include a community theater or a university meeting hall.⁴⁰ A designated public forum usually refers to a place opened up for and designated to function like a traditional public forum, meaning the rules of a traditional public forum apply.⁴¹ On the other hand, a limited public forum is usually opened only for certain groups or topics, and thus, the government may also restrict the use of the forum to the purposes for which the forum was opened in addition to time, place, and manner restrictions.⁴² For example, when a public school permits outside groups to use its building after hours for certain types of meetings, a limited public forum has been opened.⁴³ Once a limited forum is open, any limitation must be reasonable and viewpoint-neutral.⁴⁴
- A “closed public forum” or “nonpublic forum” is a place that is not traditionally open to public expression, such as the teacher’s school mailroom at issue in *Perry* or a military base.

III. Effect of Proposed Changes:

The bill creates s. 760.61, F.S., the “Right to Rock Act,” which prohibits the owner or operator of a public venue from canceling a live performance of an artist, a performer, or a musical group because of the artist’s, performer’s, or musical group’s lawful exercise of freedom of speech or the artist’s, performer’s, or musical group members’ personal beliefs.

The bill defines “public venue” as a place, building, or structure, regardless of whether owned by or rented to a governmental entity, school, college, or university, which is funded by or constructed with public or government funds.

The bill provides that s. 760.61(1), F.S., does not apply to an owner or operator who cancels a live performance based on a reasonable belief that the performance would violate any applicable state law or rule.

The bill requires a venue owner or operator who cancels a live performance of an artist, a performer, or a musical group in violation of s. 760.61(1), F.S., to bear all costs, fees, and penalties enumerated in the related contract with the artist, performer, or musical group.

The bill takes effect July 1, 2024.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469-70 (2009).

⁴² *Id.*

⁴³ *Good News Club v. Milford Central School*, 533 U.S. 98, 106–07 (2001) (holding a school’s exclusion of Christian children’s club from meeting after hours based on its religious nature was unconstitutional viewpoint discrimination given the public school had opened as a limited public forum).

⁴⁴ *Summum*, 555 U.S. at 470.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

See the "Present Situation," in Section II of this bill analysis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 760.61 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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