

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 204

INTRODUCER: Senators Brodeur and Hooper

SUBJECT: Competition for the Sale of Event Tickets

DATE: December 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 204 prohibits live performance venues from entering into a sole-source contract or a covenant not to compete with a ticket-selling platform to sell or distribute tickets and licenses to events located at the live performance venue. Additionally, live performance venues must allow performance artists to market, sell, or distribute tickets to their performances at the venue through a ticket platform of their choice.

The bill prohibits a live performance venue from distributing, selling, or transferring any tickets or licenses for compensation at an amount greater than the amount stated as the listed value of that ticket or license.

The bill defines the term “live performance venue” as a stadium, a convention center, an exhibition hall, an arena, a coliseum, or an auditorium that has accepted within the previous 10 years any federal, state, or local taxpayer funds for capital improvements or operational expenses, including but not limited to, funds collected pursuant to a convention development tax under s. 212.0305, F.S., and grants awarded under ch. 288, F.S.

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 Dec. 4, 2023).

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 Dec. 4, 2023). *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 Dec. 4, 2023).

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 (DOC) is responsible for screening and certifying applicants for state funding.¹⁸ For both new and retained franchises, the DOC 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

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.

Federal Antitrust Laws

In 1890, Congress passed the first antitrust law, the Sherman Act, as a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. Congress subsequently passed two additional antitrust laws in 1914: the Federal Trade Commission Act, which created the Federal Trade Commission (FTC), and the Clayton Act. Currently, these are the three core federal antitrust laws.²³

The Sherman Act

The Sherman Act outlaws every contract, combination, or conspiracy in restraint of trade, and any monopolization, attempted monopolization, or conspiracy or combination to monopolize. The Sherman Act does not prohibit every restraint of trade, only those that are unreasonable. For example, an agreement between two individuals to form a partnership may restrain trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. In contrast, certain acts are considered “per se” violations of the Sherman Act because they are so harmful to competition. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids.²⁴

The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the U.S. Department of Justice (DOJ). Criminal prosecutions are typically limited to intentional and clear violations, such as when competitors fix prices or rig bids.²⁵

The Federal Trade Commission Act

The Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices. The Supreme Court has said that all violations of the Sherman Act also violate the FTC Act. Therefore, the FTC can bring cases under the FTC Act against the same kinds of activities that violate the Sherman Act. The FTC Act also reaches other practices that harm competition but that may not fit neatly into categories of conduct formally prohibited by the Sherman Act. Only the FTC brings cases under the FTC Act.²⁶

The Clayton Act

The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates.²⁷ It also bans mergers and acquisitions where the effect may substantially lessen competition or create a monopoly. As amended by the Robinson-Patman Act of 1936, the Clayton Act also prohibits certain discriminatory prices, services, and allowances in dealings between merchants. The Clayton Act was amended again in 1976 by the Hart-Scott-Rodino Antitrust Improvements Act to require companies planning large mergers or

²³ See Federal Trade Commission, *The Antitrust Laws*, available at <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Dec. 4, 2023).

²⁴ *Id.*

²⁵ See Department of Justice, *Antitrust Division: Mission*, available at [Antitrust Division | Mission \(justice.gov\)](https://www.justice.gov/antitrust) (last visited Dec. 4, 2023).

²⁶ See Federal Trade Commission, *The Antitrust Laws*, available at <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Dec. 4, 2023).

²⁷ “Interlocking directorates” means the same person making business decisions for competing companies. *See also Id.*

acquisitions to notify the government of their plans in advance. Additionally, private parties are authorized to sue for triple damages when they have been harmed by conduct that violates either the Sherman or Clayton Act and to obtain a court order prohibiting the anticompetitive practice in the future.²⁸

Florida Antitrust Laws

Florida law also provides protections against anticompetitive practices. Chapter 542, F.S., the Florida Antitrust Act of 1980, has a stated purpose to complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition.²⁹ It outlaws every contract, combination, or conspiracy in restraint of trade or commerce in Florida³⁰ and any person from monopolizing or attempting or conspiring to monopolize any part of trade.³¹

III. Effect of Proposed Changes:

The bill provides a legislative declaration that sole-source contracts for the sale of tickets and licenses to events located at live performance venues within Florida violate public policy and harm the public good.

The bill establishes that a live performance venue may not enter into a sole-source contract or a covenant not to compete with a ticket-selling platform to sell or distribute tickets and licenses to events located at the live performance venue.

The bill defines the term “live performance venue” as a stadium, a convention center, an exhibition hall, an arena, a coliseum, or an auditorium that has accepted within the previous 10 years any federal, state, or local taxpayer funds for capital improvements or operational expenses, including but not limited to, funds collected pursuant to a convention development tax under s. 212.0305, F.S., and grants awarded under ch. 288, F.S.

The bill provides that a performance artist who is contracted to perform at a live performance venue may not be required to market, sell, or distribute tickets to the event at which they are performing through a specific ticket platform that the live performance venue has an exclusive contract with.

The bill requires a live performance venue to allow performance artists to market, sell, or distribute tickets to their performances at the venue through the use of the ticket platform of the performance artists’ choice. However, the ticket platform that is chosen must be subject to the same terms and conditions as would apply to any other platform that the live performance venue has executed a contract with for the same or similar services within the past two years.

The bill prohibits a live performance venue from distributing, selling, or transferring any tickets or licenses for compensation at an amount greater than the amount stated as the listed value of that ticket or license.

²⁸ *Id.*

²⁹ Section 542.16, F.S.

³⁰ Section 542.18, F.S.

³¹ Section 542.19, F.S.

The bill takes effect July 1, 2024.

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:

The bill prohibits a live performance venue from entering into a sole-source contract or a covenant not to compete with a ticket-selling platform to sell or distribute tickets and licenses to events located at the live performance venue. Additionally, live performance venues must allow performance artists to market, sell, or distribute tickets to their performances at the venue through a ticket platform of their choice. To the extent this bill impacts previously recorded contracts or covenants, the bill may unconstitutionally impair a contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, “No... law impairing the obligation of contracts shall be passed.” This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that “No state shall . . . pass any . . . law impairing the obligation of contracts.”

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,³² the Florida Supreme Court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether a state law operates as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Was the law enacted to deal with a broad, generalized economic or social problem;

³² See *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

- Does the law operate in an area that was already subject to state regulation at the time the contract was entered into; and
- Is the law's effect on the contractual relationships temporary or is it severe, permanent, immediate, and retroactive.³³

Absent an express statement of legislative intent that a bill is intended to apply retroactively, a statute is presumed to operate only prospectively.³⁴ However, the Legislature may wish to clarify whether the bill only applies to contracts or covenants entered into after the effective date of the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill prohibits live performance venues from entering into a sole-source contract or a covenant not to compete with a ticket-selling platform to sell or distribute tickets and licenses to events located at the live performance venue. Additionally, live performance venues must allow performance artists to market, sell, or distribute tickets to their performances at the venue through a ticket platform of their choice. This will potentially create more competition within the ticket sales marketplace.

The bill also prohibits a live performance venue from distributing, selling, or transferring any tickets or licenses for compensation at an amount greater than the amount stated as the listed value of that ticket or license, which will potentially create more transparency within the ticket sales marketplace.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 542.345 of the Florida Statutes.

³³ *Id.* at 779.

³⁴ *See Fla. Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187, 194-95 (Fla. 2011).

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.
