

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EAC 14-02 Professional Sports Facility Incentive Program

SPONSOR(S): Economic Affairs Committee

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|---------|--|
| Orig. Comm.: Economic Affairs Committee | | Collins | Creamer |

SUMMARY ANALYSIS

The bill creates s. 288.11625, F.S., the Professional Sports Facility Incentive Program process (program) 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 program consists of the following:

Application Process

- Applicants may be local governments or entities responsible for a facility that is located on land owned by a local government.
- Annually, DEO will accept applications from June 1 – November 1.
- Within 60 days of receiving a competed application, DEO will notify the applicant of its decision to recommend that the Legislature fund the project or deny the application.
- An applicant's request for funding must be approved by the Legislature through general law and signed into law by the Governor.
- DEO may not recommend multiple annual distributions for any single applicant or facility.

Evaluation Process

- The applicant must provide an analysis of the expected amount of new incremental state sales taxes that will be generated by sales at the facility.
- DEO must verify that the applicant is eligible to participate in the program and meets all requirements.
- Annually by February 1, DEO will rank the applicants based on each project's ability to produce a significant positive economic impact within the state and provide the ranking to the Legislature for final approval.

Certification and Contract

- Each certified applicant must enter into a contract with DEO specifying the terms of the state's investment and providing clawback provisions for certified applicants who fail to meet program requirements.
- Applicants may remain certified for no more than 30 years.

Distribution

- DEO will determine the annual distribution a certified applicant may receive based on the expected amount of new incremental state sales taxes that will be generated by sales at the facility.
- Annually, certified applicants may receive up to 75 percent of the expected new incremental sales taxes generated, up to \$2 million.
- DEO may not certify new applicants once total annual distributions reach \$12 million.

Repayment of Distributions

- A certified applicant may be required to reimburse the state, with penalties, if it provides false or misleading information, fails to generate the required amount of new incremental state sales taxes, or if the franchise relocates or is no longer the primary tenant of the facility prior to the end of its agreement.

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 Revenue Estimating Conference has not analyzed the fiscal impact of the bill. However, the bill caps total annual distributions at \$12 million in General Revenue funds.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb02.EAC

DATE: 2/24/2014

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.¹

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.² Plans for a future franchise in Miami have also been announced by the league.³ 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.⁴

| 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

¹ 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).

² 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).

³ 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).

⁴ 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.⁵ 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.⁶ The number of certified professional sports franchises, both new and retained, is limited to eight total franchises.⁷

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.⁸
- 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.⁹
- 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.¹⁰
- The applicant has projections demonstrating a paid annual attendance of over 300,000 annually.¹¹
- 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.¹²
- 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.¹³
- 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.¹⁴

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.¹⁵

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.¹⁶ The state

⁵ Section 288.1162(1), F.S.

⁶ Section 288.1162(4)(c), F.S.

⁷ Section 288.1162(6), F.S.

⁸ Section 288.1162(4)(a), F.S.

⁹ Section 288.1162(4)(b), F.S.

¹⁰ Section 288.1162(4)(c), F.S.

¹¹ Section 288.1162(4)(d), F.S.

¹² Section 288.1162(4)(e), F.S.

¹³ Section 288.1162(4)(f), F.S.

¹⁴ Section 288.1162(4)(g), F.S.

¹⁵ Section 212.20(6)(d)6.b., F.S.

¹⁶ 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.¹⁷

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.¹⁸

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 ¹⁹ |
|-------------------------|---|----------------------|---------------|---------------------|
| 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 process. 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 sales at the facility above the average annual amount of state sales taxes generated by sales at the facility during the preceding 36-month period (estimate).

Evaluation Process

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

¹⁷ Section 288.1162(7), F.S.

¹⁸ Section 288.1162(8), F.S.

¹⁹ Total paid as of February 17, 2014.

- 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 relocate 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 recommended applications, 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"²⁰ 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.
- 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.

²⁰ 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 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.

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 and approved 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 the certified applicant reimburse the state 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.

Before the sixth annual distribution is made by DOR, the certified applicant must submit to DEO an analysis (Initial Comparison Analysis) prepared by an independent CPA comparing the actual amount of new incremental state sales taxes generated by sales at the facility since certification to the sum of the first five annual distributions. DEO may consult with DOR to verify the Initial Comparison Analysis.

Annually, beginning with the sixth annual distribution, the certified applicant must submit to DEO an analysis (Annual Comparison Analysis) prepared by an independent CPA comparing 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.

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 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.
- The amount of new incremental state sales taxes generated by sales at the facility that is less than the sum of the first five annual distributions as demonstrated in the Initial Comparison Analysis. The certified applicant must reimburse the state for the difference between state funds that have been disbursed and actual new state sales taxes generated by sales at the facility, plus a five percent penalty, if such determination is made.
- The actual new incremental sales taxes generated by sales at the facility during the most recent 12-month period was less than the annual distribution as demonstrated in the Annual Comparison Analysis. This applies to the sixth annual distribution and all subsequent annual distributions.

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 not made reimbursements as required by the program in a timely manner.

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:
See Fiscal Comments.

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 reimbursement of 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

None.