

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 1216

INTRODUCER: Senator Latvala

SUBJECT: Professional Sports Facilities

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	Hrdlicka	CM	Pre-meeting
2.			AP	

I. Summary:

SB 1216 creates the Sports Development program. The program allows for distributions to professional sports franchises, approved by the Legislature and approved by the Department of Economic Opportunity (DEO), up to a tiered annual cap of \$3 million for the construction or improvement of a professional sports facility. Distributions can be up to 30 years for a potential maximum amount of \$90 million per certified applicant. The total annual distributions for all certified applicants are capped at \$13 million.

The bill allows the use of half-cent sales tax program revenue for a municipality or county to reimburse the state as required in the Sports Development program. The bill increases the amount that can be used to \$3 million.

The bill requires the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to include a detailed analysis of the Sports Development program in the Economic Development Programs Evaluation beginning January 1, 2018, and for every 3 years thereafter.

The bill provides an exception in the certification process for an applicant to receive funding for a facility for the retention of a Major League Baseball spring training franchise. The bill provides that such an agreement can be signed at any time before the expiration of an existing agreement, as long as the applicant has never received state funding for the facility as a spring training facility and the facility was constructed before January 1, 2000.

II. Present Situation:

Professional Sports in Florida

Florida currently has 10 major professional sports teams. The oldest major professional sports team in the state is the Miami Dolphins football franchise of the National Football League. The

Dolphins franchise began in 1966 as an expansion team as part of the now-defunct American Football League. The newest major professional sports team in the state is the Orlando Lions (Orlando City Soccer Club) in Major League Soccer (MLS). The club will become the MLS's 21st franchise in 2015. Below is a summary table of information on major professional sports franchises in Florida:

Franchise	Sport	League	Year Founded	Facility	Facility Opened	County
Miami Dolphins	Football	NFL	1966	Sun Life Stadium	1987	Miami-Dade
Tampa Bay Buccaneers	Football	NFL	1976	Raymond James Stadium	1998	Hillsborough
Miami Heat	Basketball	NBA	1988	American Airlines Arena	1999	Miami-Dade
Orlando Magic	Basketball	NBA	1989	Amway Center	2010	Orange
Tampa Bay Lightning	Hockey	NHL	1992	Tampa Bay Times Forum	1996	Hillsborough
Florida Panthers	Hockey	NHL	1993	BB&T Center	1998	Broward
Miami Marlins	Baseball	MLB	1993	Marlins Park	2012	Miami-Dade
Jacksonville Jaguars	Football	NFL	1995	EverBank Field	1995	Duval
Tampa Bay Rays	Baseball	MLB	1998	Tropicana Field	1990, occupied by Rays since 1998	Pinellas
Orlando City Soccer Club/ "Lions"	Soccer	MLS	2015	Orlando City Stadium (mid-2015)	2015 (est.)	Orange and Osceola / Orange

In addition to the 10 major professional sports teams, Florida is also home to 33 Minor League franchises in various sports, three Arena Football League teams, and two NASCAR sanctioned tracks. 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.

State Incentives for Professional Sports Teams

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.

The DEO is responsible for screening and certifying applicants for state funding. Applicants qualifying as new professional sports franchises 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. The number of certified professional sports franchises, both new and retained, is limited to eight total franchises.

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

- 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 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;
- The applicant has projections demonstrating a paid annual attendance of over 300,000 annually;
- The applicant has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the facility will generate \$2 million annually;
- The city or county where the facility is located has certified by resolution after a public hearing that the application serves a public purpose; and
- 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 facility.

Any applicant who meets the above mentioned criteria as verified by the DEO is eligible to receive monthly payments from the state of \$166,667 for not more than 30 years,¹ for an annual payment totaling \$2,000,004. The Department of Revenue (DOR) disburses the payments.

Further, payments 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. The state may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.

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 the DEO before any funds were disbursed under s. 212.20(6)(d), F.S.

As of January 8, 2013, there were eight certified new or retained professional sports franchise facilities in Florida. The facilities and the payment distribution for each are listed below:

¹ Section 212.20(6)(d)6.b., F.S.

Facility name	Certified entity	Franchise	First Payment	Final Payment	Total payments as of January 2014
Sun Life Stadium	Dolphins Stadium/ South Florida Stadium	Florida (Miami) Marlins ²	06/1994	06/2023	\$41,166,749
Everbank Field	City of Jacksonville	Jacksonville Jaguars	06/1994	05/2024	\$39,333,412
Tropicana Field	City of St. Petersburg	Tampa Bay Rays	06/1995	06/2025	\$37,166,741
Tampa Bay Times Forum	Tampa Bay Sports Authority	Tampa Bay Lightning	09/1995	08/2025	\$36,833,407
BB&T Center	Broward County	Florida Panthers	08/1996	07/2026	\$35,000,070
Raymond James Stadium	Hillsborough County	Tampa Bay Buccaneers	01/1997	12/2026	\$34,166,729
American Airlines Arena	BPL, LTD	Miami Heat	03/1998	03/2028	\$31,666,730
Amway Center	City of Orlando	Orlando Magic	02/2008	01/2038	\$12,000,024

(Information from the Department of Economic Opportunity and Department of Revenue)

A local government may be certified to receive funding for the purpose of acquiring, constructing, reconstructing, or renovating a spring training facility.³ There are 10 certified local governments for spring training facilities under s. 288.11621, F.S. The entities receive up to \$41,667 monthly for up to 30 years.

In 2013, the Legislature approved a new funding program for spring training facilities. Section 288.11631, F.S., provides a facility used by a single spring training franchise a distribution up to \$55,555 per month for up to 30 years; and a facility used by more than one franchise can receive up to \$111,110 monthly for up to 37.5 years.⁴ Distributions under this new program may not begin until July 1, 2016.

Monthly sales tax distributions (\$166,667 for up to 300 months) also fund the professional golf hall of fame.⁵ The International Game Fish Association World Center facility received a lump-sum payment (\$999,996) after it was certified in 2000 and received a monthly distribution (\$83,333 for up to 168 months) which ended in Fiscal Year 2013-14.⁶

² The Marlins franchise relocated from Sun Life Stadium to Marlins Park for the 2012 baseball season.

³ Sections 288.11621 and 288.11631, F.S.

⁴ Chapter 2013-42, L.O.F. Section 212.20(6)(d)6.e., F.S.

⁵ Sections 212.20(6)(d)6.c. and 288.1168, F.S.

⁶ Sections 212.20(6)(d)6.d. and 288.1169, F.S.

Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services. The statutes currently provide for more than 200 different exemptions.

Local Government Half-cent Sales Tax Program

The Local Government Half-cent Sales Tax Program is the largest source of revenue received by local governments among the state's shared revenue sources. The program primarily serves to provide ad valorem and utility tax relief, in addition to providing eligible local governments revenues for local programs.⁷ A local government may also pledge funds from the program for payment of principal and interest on any capital project.⁸

Moneys for the program are collected pursuant to the provisions of ch. 212, F.S. The program distributes funds to eligible local governments through three distributions of sales tax revenues remitted by a sales tax dealer within the eligible participating county.⁹ The *ordinary* distribution operates by a transfer of 8.814 percent of net sales tax proceeds remitted by a sales tax dealer in the eligible local government's jurisdiction to the Local Government Half-cent Sales Tax Clearing Trust Fund (trust fund).¹⁰ The *emergency* and *supplemental* distributions operate by a transfer of 0.095 percent of net sales tax proceeds to the trust fund, and are available only to those counties that meet certain fiscal eligibility requirements, or have an inmate population of greater than 7 percent of the total county population.¹¹ An additional, separate distribution from the trust fund is available to qualifying fiscally constrained counties.¹²

If a majority of the governing body of a county government and a majority of the members of the governing authority of municipalities representing at least 50 percent of the county's municipal population adopt an ordinance, up to \$2 million annually of the program funds allocated to that county may be used for the following purposes:^{13, 14}

- Funding a facility certified as a new or retained professional sports franchise under s. 288.1162, F.S., or a facility certified as a spring training franchise under s. 288.11621, F.S.; and
- Funding an applicant certified as a "motorsports entertainment complex" under s. 288.1171, F.S.

⁷ Office of Economic and Demographic Research, *2013 Local Government Financial Information Handbook*, (December 2013), available at: <http://edr.state.fl.us/Content/local-government/reports/lgfi13.pdf>, (last visited on March 6, 2014).

⁸ Section 218.64, F.S.

⁹ Section 218.63, F.S., defines eligibility requirements. In order to participate in the program, a local government must meet the revenue sharing eligibility requirements specified in s. 218.23, F.S. See also s. 218.62, F.S.

¹⁰ Section 212.20(6)(d)2., F.S.

¹¹ Section 212.20(6)(d)3., F.S.

¹² Section 218.67, F.S.

¹³ Section 218.64(3)(b), F.S.

¹⁴ If a county and municipal government's governing body support using program funds to support funding of professional sports, spring training, or motorsports entertainment complexes, their distribution for general use is provided *after* funding is provided for these projects.

III. Effect of Proposed Changes:

Sports Development Program

Section 4 creates s. 288.11625, F.S., which establishes the Sports Development program. The program is administered by the DEO which is responsible for screening applicants for state funding under s. 212.20, F.S. The purpose of the program is to provide state funding to a professional sports franchise of the National Football League (NFL), the National Hockey League (NHL), the National Basketball Association (NBA), the National or American Leagues of Major League Baseball (MLB), Major League Soccer (MLS), or the National Association for Stock Car Auto Racing (NASCAR) for the construction, reconstruction, renovation, or improvement of a facility. The facility must be the responsibility of, or on land owned by, a unit of local government. The bill excludes any portion of a facility used for transient lodging.

The DEO shall complete evaluations of applications within 60 days and notify the applicant if the application has been recommended to the Legislature or denied. Applications can be submitted between June 1 and November 1 annually. By February 1 of each year, the DEO will rank the recommended applications and present them to the Legislature for approval. Applications that are approved by the Legislature and subsequently certified by the DEO do not need to be approved by the Legislature each year to receive funding. Certified applications remain certified for the duration of the agreement between the unit of local government that is responsible for the facility or owns the property the facility is on and the beneficiary of the state funding or 30 years, whichever is less.

The bill requires the DEO, prior to recommendation of an application, to verify that:

- The applicant or beneficiary is responsible for the improvements to the facility and has obtained at least three bids on the project;
- If the applicant is the beneficiary that the facility is on land owned by local government;
- The local government, in whose jurisdiction the facility will be located, has an exclusive intent agreement to negotiate with the beneficiary in this state;
- The local government supports the application for state funds, verified by adoption of a resolution that the project serves a public purpose;
- The applicant or beneficiary has not defaulted or failed to meet statutory requirements of a previous state-administered sports program under s. 288.1162, F.S. (professional sports franchises), s. 288.11621, F.S. (spring training baseball franchises), or s. 288.1168, F.S. (professional golf hall of fame);
- The applicant or beneficiary is not receiving distributions under s. 212.20, F.S.;
- The facility that is the subject of the application is not the subject of distributions under s. 212.20, F.S.;
- The applicant has a commitment to employing state residents, contracting with Florida-based firms, and purchasing materials available locally to the greatest extent possible;
- The project will commence within 12 months of receiving state funds; and
- If the applicant is a local government, then it has an agreement between it and the beneficiary for the use of the facility.

If the applicant is the beneficiary, then the beneficiary must enter into an agreement with the DEO that requires: 1) The beneficiary to reimburse the state for any funds that have been and

will be distributed if the beneficiary relocates before the expiration of the agreement; and 2) The beneficiary to pay for signage to be displayed in a prominent location and feature Florida advertising approved by the Florida Tourism Industry Marketing Corporation (Visit Florida).

The DEO must rank the applications based on their ability to positively impact the state under the following criteria:

- The proposed use of state funds;
- The length of time a beneficiary has agreed to use the facility;
- The percentage of total project funds provided by the applicant and beneficiary with priority given to applications with 50 percent or more of total project funds not from state distributions;
- The number and type of signature events the facility is likely to attract during the duration of the agreement with the beneficiary;¹⁵
- The increase in ticket sales and attendance annually due to the project;
- The potential to attract out-of-state visitors;
- The length of time a beneficiary has been in-state or partnered with local government, with priority given to franchises new to the state;
- The facility's multiuse capabilities;
- The facility's projected employment of state residents, contracts with Florida-based firms, and locally purchased materials;
- The amount of private and local financial or in-kind contributions; and
- The amount of positive advertising or media coverage the facility generates.

The bill directs the DEO to determine the annual distribution based on the total cost of the project. At the time of evaluation and review by the department, the applicant must provide an analysis by an independent certified public accountant that shows the amount of state sales tax generated at the facility during the 12 months prior to the submission of the application (referred to as the baseline) and the expected amount of new incremental state sales tax generated by sales (above the baseline) as a result of the project. The DEO will distribute an amount equal to the new incremental sales tax generated by sales tax at the facility with annual caps based on total project cost. Projects with a total project cost of over \$200 million are capped at \$3 million annually. Projects with a total project cost of at least \$100 and less than \$200 million are capped at \$2 million annually. Projects with a total project cost less than \$100 million are capped at \$1 million annually.

The bill caps total distributions for this program at \$13 million for any 12 month period.

The bill requires a contract to be signed between a certified applicant and the DEO that specifies the terms of the state's investment and the criteria for a certified applicant to remain certified. The contract requires the certified applicant to submit an annual independent analysis that demonstrates the actual amount of new incremental state sales tax generated during the previous

¹⁵ The bill defines "signature event" as a professional sports event with significant export factor potential. "Export factor" means the attraction of economic activity or growth into the state which otherwise would not have occurred. Examples of signature events may include but are not limited to: NFL Super Bowls, All-Star games, international sporting events and tournaments, professional automobile race championships, and the establishment of a new professional sports franchise in this state.

12 months compared to the baseline established in the application and evaluation. This requirement applies 12 months after completion of the project or 12 months after the first 4 annual distributions, whichever is less. The analysis must be submitted within 60 days after the end of the previous 12 month period. The contract also requires the certified applicant to reimburse the state for the amount each year that the actual new incremental state sales tax generated by sales at the facility is less than the annual distributions it received under this program during the most recent 12 month period. This requirement also applies 12 months after project completion or 12 months after receiving the first 4 annual distributions, whichever is less. The DEO may place a lien on the applicant's facility if it is unwilling or unable to reimburse the state in this matter. If the applicant is a municipality or county, it may reimburse the state from its half-cent sales tax allocation. Reimbursements are sent to the DOR for deposit in the General Revenue Fund. The contract can include any provisions deemed prudent by the DEO and must specify other information that the certified applicant must report to the DEO.

The applicant may use the state funds for the following purposes:

- Construction, reconstruction, renovation, or improving a facility;
- Paying or pledging payment of debt service on bonds issued for construction or renovation of the facility;
- Funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for construction or renovation of the facility; or
- Reimbursing the costs of the aforementioned uses for funds or refinancing bonds issued for the construction or renovation of the facility.

The bill requires the certified applicant to annually submit by November 1 any information the DEO requires. The DEO shall summarize this information for its inclusion in its annual report to the Legislature due February 1.

Every 5 years after an applicant receives its first distribution, the DEO must verify that the applicant is still meeting program requirements. If the applicant is not meeting the requirements that information must be included in the annual report for the Governor and the Legislature; the report must also include the DEO's recommended future action. The DEO can consider mitigating circumstances that may have prevented the applicant from meeting program requirements when recommending future action.

The bill permits the Auditor General (AG) to conduct audits on the independent analysis required of the applicant and to verify that the distributions are being expended according to program requirements. If the AG determines that distributions are being improperly expended, the AG must inform the DOR, which may pursue recovery of the distributions.

A certified applicant may be subject to repayment of distributions if the beneficiary breaks the terms of the agreement for facility use and relocates or if the DEO determines that the applicant has been false, misleading, deceptive, or otherwise untrue in any information submitted to the DEO. The repayment of distributions includes all state funds that were distributed and will be distributed.

The bill permits the applicant to halt payments of distribution by informing the DEO in writing at least 20 days prior to the next monthly distribution.

The bill permits the DEO to adopt rules to implement the program.

Section 1 amends s. 212.20, F.S., to authorize the DOR to distribute monthly amounts from state sales tax revenue equal to one-twelfth of the annual distribution amount certified by the DEO under the Sports Development program created by s. 288.11625, F.S. The DOR must begin distributions 45 days from notification by the DEO of an applicant's certification by the DEO and approval by the Legislature. The DOR may not distribute more than \$13 million annually under s. 212.20(6)(d)6.f., F.S.

Section 2 amends s. 218.64, F.S., to authorize the additional use of half-cent sales tax program revenue for reimbursing the state as required by a contract pursuant to s. 288.11625(7), F.S. Due to the annual project cap in s. 288.11625, F.S., the bill also raises the amount of the half-cent sales tax that can be used to \$3 million, from \$2 million, on:

- Funding a facility certified as a new or retained professional sports franchise or a facility certified as a spring training franchise;
- Funding an applicant certified as a "motorsport entertainment complex"; and
- Reimbursing the state as required by contract in s. 288.11625(7).

Section 3 amends s. 288.0001, F.S., to require the EDR and the OPPAGA to include a detailed analysis of the Sports Development program created by s. 288.11625, F.S., in the annual Economic Development Programs Evaluation beginning January 1, 2018, and every 3 years thereafter.

Spring Training

Section 5 amends s. 288.11631, F.S., allowing an exception in the certification process for an applicant to receive funding for a facility for the retention of a spring training franchise. Current law provides that a signed agreement for the use of the facility by the franchise, required in the certification process, cannot be signed more than 4 years before the expiration of any existing agreement with the spring training franchise for the use of the facility. The bill provides that such an agreement can be signed at any time before the expiration of an existing agreement, as long as the applicant has never received state funding for the facility as a spring training facility under ss. 288.11621 and 288.11631, F.S., and the facility was constructed before January 1, 2000.

Section 6 authorizes the DEO to adopt emergency rules to implement the bill.

Section 7 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

There may be indeterminate negative fiscal impact beginning in Fiscal Year 2016-17 due to the changes to the Spring Training Program, which may permit certain applicants to apply for certification earlier than under current law.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The DOR reported an insignificant departmental impact.¹⁶

The DEO reported that it would require one FTE to administer the Sports Development Program, at a cost of \$85,000.¹⁷

VI. Technical Deficiencies:

The DOR reported that under s. 288.11625(11), F.S., the bill requires reimbursements under certain circumstances but does not specify how the state is to receive those payments. The DOR assumes that the intent is the same as proposed language in s. 288.11625(7), F.S., requiring reimbursements to be sent to the DOR for deposit into the General Revenue Fund.¹⁸

VII. Related Issues:

The bill permits, and considers all conditions met for, the DEO to adopt emergency rules for the purpose of implementing the bill. The emergency rules will remain in effect for 6 months after adopted and may be renewed during the process to adopt permanent rules. The DEO is also authorized to adopt rules to implement the Sports Development Program.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.20, 218.64, 288.0001, and 288.11631.

¹⁶ Department of Revenue, *Legislative Bill Analysis: SB 1216*, March 3, 2014.

¹⁷ Department of Economic Opportunity, *Legislative Bill Analysis: SB 1216*, March 12, 2014.

¹⁸ Department of Revenue, *Legislative Bill Analysis: SB 1216*, March 3, 2014.

This bill creates section 288.11625 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.
