

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 323 Professional Sports Franchises
SPONSOR(S): Economic Expansion & Infrastructure Council, Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 544

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-------------------------|------------------|----------------|
| 1) <u>Committee on Economic Development</u> | <u>9 Y, 0 N</u> | <u>McAuliffe</u> | <u>Croom</u> |
| 2) <u>Economic Expansion & Infrastructure Council</u> | <u>13 Y, 1 N, As CS</u> | <u>McAuliffe</u> | <u>Tinker</u> |
| 3) <u>Policy & Budget Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) is authorized under s. 288.1162, F.S., to certify up to eight applicants as a facility for a new or retained professional sports franchise. Currently, the following seven applicants have been certified: Broward County for Home Depot Stadium (Panthers); Joe Robbie, Inc., for Pro Player Stadium (Marlins); City of Jacksonville for Alltel Stadium (Jaguars); Tampa Bay Sports Authority for St. Pete Times Forum (Tampa Bay Lightning); City of St. Petersburg for Tropicana Field (Tampa Bay Devil Rays); BPL, Ltd., for American Airlines Arena (Miami Heat); and, Hillsborough County for Raymond James Stadium (Tampa Bay Buccaneers). The eighth certification of an applicant is for a franchise that is a member of the National Basketball Association that has been located in the state since 1987, and has not been previously certified (Orlando Magic). The Orlando Magic has not applied for certification.

The Department of Revenue (DOR) is required to distribute monthly \$166,667 (\$2 million annually) of tax proceeds collected under ch. 212, F.S., for no more than 30 years, to each applicant certified as a facility for a new or retained professional sports franchise by OTTED as meeting specific requirements outlined in s. 288.1162, F.S. Funds distributed can be used only for the public purposes delineated in s. 288.1162(6), F.S.

This CS creates a ninth certification of an applicant as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise" for a franchise that is a member of Major League Baseball and has been located within the state since 1993. The only franchise in the state that qualifies as an applicant for the ninth certification under the CS is the Florida Marlins.

If a professional sports team that is not currently certified, but is certified after the effective date of this CS leaves Florida, then the team or the applicant must hold the state harmless from the sales tax revenues thereafter distributed to the facilities.

The addition of a ninth certification for a new or retained professional sports franchise facility will have a recurring negative fiscal impact to General Revenue of \$2 million beginning in fiscal year 2007-08 and continuing for 30 years.

The CS has an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes – The CS requires an annual distribution from sales tax revenues of \$2 million for an additional certification slot for a facility for a new professional sports franchise. See details below.

B. EFFECT OF PROPOSED CHANGES:

HISTORY:

In 1988, the enactment of Ch. 88-226, L.O.F., provided a funding mechanism for state support of the construction of professional sports facilities in Florida. The Department of Commerce was assigned the duties of screening applicants, developing rules for processing applications, and presenting the applications to the Legislature for approval for funding.

It was not until 1991 that the current structure for certification of facilities for professional sports franchises and for funding of \$2 million through distribution of sales tax revenues became law.¹

PRESENT SITUATION:

Facilities for New and Retained Professional Franchises - Certification

The Governor's Office of Tourism, Trade, and Economic Development can certify a total of eight applicants as "facilities for new or retained professional sports franchises."² An applicant can be a unit of local government or it can be a private entity; however, local government must be responsible for the facility or own the land on which it sits. A "new professional sports franchise" means a professional sports franchise that is not based in this state prior to April 1, 1987, and a "retained professional sports franchise" means a professional sports franchise that has had a league-authorized location in this state on or before December 31, 1976, and has continuously remained at that location, and has never been located at a previously certified facility."³

To qualify an applicant for certification as either a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise", OTTED must determine that:

- A unit of local government is responsible for the construction, management, or operation of the professional sports franchise facility or holds title to the property on which the professional sports franchise facility is located;
- A franchise has agreed to use the facility for 10 or 20 years depending on type of franchise;
- The governing league approves;
- Projections indicate 300,000 in paid annual attendance;
- Tax revenues generated will equal or exceed \$2 million annually;
- The local government certifies that the facility serves a public purpose;
- An applicant has provided, is capable of providing, or has financial or other commitments to provide more than 50 percent of costs incurred or related to the improvement and development of the facility; and
- An applicant has not been previously certified and received funds for that certification.

Tax Distribution

¹ See Ch 91-274, L.O.F.

² Currently, seven applicants/facilities have been certified: Broward Co. for Home Depot Stadium (Panthers); Joe Robbie, Inc., for Pro Player Stadium (Marlins); City of Jacksonville for Alltel Stadium (Jaguars); Tampa Bay Sports Authority for St. Pete Times Forum (Tampa Bay Lightning); City of St. Petersburg for Tropicana Field (Tampa Bay Devil Rays); BPL, Ltd., for American Airlines Arena (Miami Heat); and Hillsborough County for Raymond James Stadium (Tampa Bay Buccaneers).

³ See s. 288.1162(3)(a) and (b), F.S. The Miami Dolphins is the only team in the state that does not qualify under either definition.

The only team eligible under the definition of "retained professional sports franchise" is the Tampa Bay Buccaneers.

Chapter 212, F.S., imposes a state sales and use tax of six percent on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles. Tax collections are deposited by the Department of Revenue (department) in the General Revenue Fund and into a variety of trust funds benefiting state agencies and local governments.

Section 212.20 (6), F.S., requires the department to distribute \$166,667 monthly (\$2 million annually), pursuant to s. 288.1162, F.S., to each applicant certified as a facility for a new or retained professional sports franchises for no more than 30 years. The department may audit to verify that the distributions have been expended for the public purposes as required in s. 288.1162(6), F.S. If the department determines that the funds have not been used as required, it may pursue recovery of the funds.⁴

Funds distributed under s. 212.20, F.S., may be used by the certified applicant only for the public purpose of:

- Paying for the acquisition, construction, reconstruction, or renovation of a facility for a professional sports franchise; or
- Paying debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds issued for the acquisition, construction, reconstruction, or renovation of such facility or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

No applicant previously certified by OTTED that has received funding under s. 212.20, F.S., is eligible for an additional certification unless the previous certification was withdrawn by the facility or invalidated by OTTED before funds were distributed under s. 212.20, F.S.⁵

Currently, the certification of a facility ends if the franchise that qualified as the facility for certification leaves the facility and any remaining franchise does not qualify as a “new professional sports franchise,” “retained professional sports franchise,” or “retained spring training franchise.”

Local Option

Section 218.64, F.S., provides a local option funding mechanism authorizing local governments to use up to \$2 million annually of the local government half-cent sales tax allocation to provide funding for facilities for new or retained professional sports franchises, facilities for retained spring training franchises, or motorsports entertainment complexes. The use of local funds for this purpose must be authorized by the majority of members of the county governing authority and by the majority of the members of the governing authorities of municipalities representing at least 50 percent of the municipal population of the respective county. OTTED is required to certify applicants seeking local funding based on applicable existing provisions in s. 288.1162, F.S., or in s. 288.1171, F.S.

EFFECT OF PROPOSED CHANGES:

This CS makes a number of changes to s. 288.1162, F.S., in order to provide state funding for a new sports facility for the Florida Marlins, and to continue the distribution of sales tax funding to Dolphin Stadium until 2023.

This CS adds a ninth certification under s. 288.1162, F.S., for an applicant that will serve as a facility for a new or retained professional sports franchise that is a Major League Baseball team and has been located in Florida since 1993. The Florida Marlins franchise is the only one of the nine professional sports franchises in the state that meets the proposed criteria.

This CS establishes new certification criteria for OTTED to determine whether an applicant is eligible as a professional sports franchise facility. In addition to the other certification criteria, an applicant must provide OTTED a guarantee by the team owner or applicant stating that if the team does not play at least 90 percent of its pre-season, regular season, and post-season home games in Florida, each year thereafter the guarantor will pay the state the amount by which the distributions of sales tax revenue to

⁴ See s. 288.1162(8), F.S.

⁵ See s. 288.1162(4)(h), F.S.

the facilities certified on account of that team exceeds the sales tax revenue generated by the facility certified under the new program. The only exception is for teams that cannot play because of a "force majeure event," defined as a "flood, fire, or other casualty, war, revolution, civil commotion, an act of a public enemy, embargo, an act of government in its sovereign capacity, or labor difficulty, including without limitation a strike, lockout, or any circumstance beyond the reasonable control of the professional sports franchise affected." Within sixty days after the team does not play at least 90 percent of its home games in Florida, the guarantor is required to secure its guaranty with an annuity contract in favor of the Department of Revenue.

The CS modifies the existing prohibition against an applicant being qualified for certification if the franchise that will be using the new facility formed the basis for an earlier certification. Under the CS, an applicant that will serve as the home facility for a professional sports franchise, which was the basis for a previous certification of a facility used by two franchises, can be certified.

The CS deletes the requirement that a facility certified between May 23 and May 25, 1993, may receive a second certification, and specifies that any sales tax funds distributed pursuant to s. 212.20, F.S., for the second certification must be offset by the amount of funds distributed under the original certification. The CS also deletes the requirement that no funds may be distributed for the second certification until all amounts payable for the first certification have been distributed.

The CS specifies that notwithstanding any other provision in s. 288.1162, F.S., a professional sports franchise continuing to use a facility that was used by two such franchises shall be deemed the franchise that formed the basis of the previous certification. This provision would designate the Miami Dolphins, replacing the Florida Marlins, as the franchise associated with the previously certified Joe Robbie Stadium (now called Dolphin Stadium). Additionally, the previous certification shall continue to apply for the period permitted from the original date of certification, or the year 2023.

C. SECTION DIRECTORY:

Section 1: Amends ss. 288.1162(4), (7), and (9), relating to professional sports franchises; expands the number of slots for applicants for facilities for new and retained professional sports franchises; provides exceptions for certification disqualification; designates the ninth certification for a specific applicant.

Section 2: Provides for an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

| | <u>FY 07-08</u> | <u>FY 08-09</u> | <u>FY 09-10</u> |
|------------------------|-----------------|-----------------|-----------------|
| General Revenue | (\$2M) | (\$2M) | (\$2M) |
| See "Fiscal Comments." | | | |

2. Expenditures:

Minimal. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

A local government may be the recipient of the \$2 million for a sports franchise facility if they own or operate the facility, however such funds must be used to make improvements to a current facility or build a new facility.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

Allowing one additional applicant to be certified by OTTED as a facility for a new professional sports franchise or a facility for a retained professional sports franchise will have a recurring negative fiscal impact to General Revenue of \$2 million annually beginning in fiscal year 2007-2008 and continuing for 30 years for a total General Revenue loss of \$60 million.

It will have an impact on OTTED and the Department of Revenue with regard to the application review and certification process for the new certification slot created by the CS. However, OTTED and department may be able to absorb these costs with current resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The CS does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

While the CS analysis mentions the recurring negative fiscal impact to General Revenue of (\$2) million beginning in FY 07-08 and continuing for 30 years, it fails to mention that creating a new stadium will generate a positive source of tax revenue for the State. Conservative figures state that a new stadium will create sales tax revenue in excess of \$8 million a year. The State will still net over \$6 million a year in new sales tax revenue, even with (\$2) million a year rebate going to the sports franchise.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Thursday, March 15, 2007, the Committee on Economic Development reported the bill favorably with one amendment.

The amendment establishes new certification criteria for OTTED to determine whether an applicant is eligible as a professional sports franchise facility. In addition to the other certification criteria, an applicant must provide OTTED a guarantee by the team owner or applicant that if the team does not play at least 90 percent of its pre-season, regular season, and post-season home games in Florida, each year thereafter the guarantor will pay the state the amount by which the distributions of sales tax revenue to the facilities certified on account of that team exceeds the sales tax revenue generated by the facility certified under the new program. The only exception is for teams that cannot play because of a "force majeure event," defined as a "flood, fire, or other casualty, war, revolution, civil commotion, an act of a public enemy, embargo, an act of government in its sovereign capacity, or labor difficulty, including without limitation a strike, lockout, or any circumstance beyond the reasonable control of the professional sports franchise affected." Within sixty days after the team does not play at least 90 percent of its home games in Florida, the guarantor is required to secure its guaranty with an annuity contract in favor of the Department of Revenue.