

MEMORANDUM

Re Sports Development Statute Section 288.11625, Florida Statutes

This document serves as the Department of Economic Opportunity's explanatory memorandum with respect to certain provisions of the Sports Development Statute, section 288.11625, Florida Statutes. This document was prepared by the Department of Economic Opportunity's legal counsel in anticipation of the first program application period.

Background and Summary

In 2014, the Florida Legislature enacted the Sports Development Statute for "[t]he purpose of ... provid[ing] applicants state funding ... for the public purpose of constructing, reconstructing, renovating, or improving a [sports] facility." § 288.11625, Florida Statutes.

The Statute tasks the Department of Economic Opportunity with screening applications and provides two distinct application processes. The general application and approval process, found in subsection (4), includes a competitive evaluation and ranking component. The special application process, found in subsection (11), modifies the general application and approval process by providing a separate process for any applications for new facilities or projects commenced between March 1, 2013, and July 1, 2014. The special application process specifically omits a competitive evaluation and ranking component and also permits the Legislative Budget Commission, rather than the Legislature, to "approve" applications. All pending applications (City of Jacksonville, City of Orlando, Daytona International Speedway, LLC, and South Florida Stadium LLC) fall under the special application process and therefore do not require ranking by the Department.

Under either application process, it is not the Department's role to allocate funding; that is a decision the Statute explicitly reserves for the Legislature under the general application process and for the Legislative Budget Commission under the special application process. A Department recommendation under the special application process is not a subjective determination by DEO that an applicant's project will have a positive economic impact, but is simply a certification that the statutory criteria are met, as noted in the Department's transmittal letter to the Legislature dated January 23, 2015.

Detailed Analysis

Question 1: Does the Special Application Process Require the Department to Rank Applicants?

Based on the plain language of the Statute, the special application process in subsection (11) does not require DEO to competitively evaluate and rank applicants. The Department specifically noted this conclusion on the Application Evaluation and Ranking form posted on its website in July 2014 (“**EXCEPTION:** Those entities applying under s. 288.11625(11), F.S., will not be ranked.”).¹

There are several reasons for this conclusion.

First, subsection (11) by its own terms sets out a separate and specific process for certain applications. Subsection (11) modifies paragraph (4)(e), providing that the Legislative Budget Commission may approve an application on or after January 1, 2015; it modifies the existing application period under paragraph (4)(b), by allowing applications to be submitted prior to June 1, 2014; and it specifies a 45-day certification deadline—not otherwise existing in the general application process in subsection (4)—after approval to ensure that a timely certification concludes the special application process.² Nowhere in the special process set up in subsection (11) is there a directive for the Department to rank applications. Instead, subsection (11) provides only that “[t]he Department must review the application and recommend approval to the Legislature or deny the application.”³

Second, the fact that subsection (11) directs the Department only to “review the application and recommend approval to the Legislature” and not to “rank the applicants” is important because under the general application process set out in subsections (4) and (5) these two functions—recommendation and ranking—are distinct.

¹ See Florida Department of Economic Opportunity, Sports Development Program Application Evaluation and Ranking at page 6, available at <http://floridajobs.org/office-directory/division-of-strategic-business-development/about-strategic-business-development/sports-development-program>.

² The “[n]otwithstanding paragraph (4)(e)” language in subsection (11) cannot be read to indicate that the special application process is the same as the general application process in all respects except for paragraph (4)(e). As noted, subsection (11) by its own terms changes requirements found *outside* of paragraph (4)(e).

³ Subsection (11) specifies that once funded by the Legislative Budget Commission and certified by the Department, applicants will be subject to the post-certification requirements provided for elsewhere in the Statute.

For the general application process, the Statute directs DEO to take two different actions. First, under paragraph (4)(c), within no more than sixty days after a complete application is submitted, DEO must “complete its evaluation of the application as provided under subsection (5) and notify the applicant in writing of the department’s decision to recommend approval of the applicant by the Legislature or to deny the application.” Second, under paragraph (4)(d), “[b]y each February 1, the department shall rank the applicants and provide to the Legislature the list of the recommended applicants in ranked order of projects most likely to positively impact the state based on criteria established under this section.” Applicants in the general process can apply anytime between June 1 and November 1. This means that, even for an application submitted at the end of the application period, DEO must complete the paragraph (4)(c) task of “recommend[ation]” prior to the paragraph (4)(d) task of “rank[ing] the applicants.” The sixty-day deadline also means that DEO must complete the paragraph (4)(c) task of “recommend[ation]” for any individual application before all applications are necessarily submitted—i.e., before it is even possible to rank all applicants against each other. Accordingly, the paragraph (4)(c) task of “recommend[ation]” is necessarily different from the paragraph (4)(d) task of “rank[ing] the applicants.”⁴

The difference between “recommend[ing]” on the one hand, and “ranking” on the other, is confirmed by the structure of subsection (5), which under paragraph (5)(a) simply requires the Department, “[b]efore recommending an applicant to receive a state distribution,” to “verify” that eight objective requirements are met. The Statute does not make the process of “recommending an applicant” a discretionary task for the Department, but rather a process of confirming objective requirements are met (and doing so within sixty days of a complete application being submitted). Paragraph (5)(b), on the other hand, directs the Department to “competitively evaluate and rank applicants ... based on their ability to positively impact the state using [several] criteria.” It is this subjective ranking that must occur and be reported to the Legislature by February 1 under paragraph (4)(d).⁵

Subsection (11) requires DEO to “review the application and *recommend approval to the Legislature or deny the application*,” which is nearly identical to the paragraph (4)(c) directive for DEO to “notify the applicant in writing of the department’s decision to *recommend approval of the applicant by the Legislature or to deny the application*.” It follows, then, that subsection (11) calls only for what paragraph (4)(c) calls for—a recommendation based on verification of the objective requirements in paragraph (5)(a). Subsection (11) does not include the “ranking” language used in paragraph (4)(d) and thus does not call for a ranking.

⁴ Indeed, paragraph (4)(d) speaks of “the list of the recommended applicants in ranked order,” which presupposes that “recommended applicants” are *later* ranked.

⁵ Note, again, that the general application period runs for five months, yet DEO must render its paragraph (4)(c) recommendation within sixty days. So for an application determined complete on July 1, DEO must notify the applicant of its recommendation by August 30, even if no other applications have yet been received. This timing confirms the conclusion that a paragraph (4)(c) recommendation is based only on verification of the (5)(a) requirements and not the (5)(b) factors. It would be impossible to compare a July 1 application to a post-August 30 application prior to the sixty-day deadline.

Third, the House of Representative's Final Bill Analysis provides some guidance. Although the Final Bill Analysis contains a specific discussion of the ranking requirement and criteria when addressing applications considered by the full Legislature (see House Final Bill Analysis p. 9), the Final Bill Analysis specifically omits discussion of the ranking requirement when addressing applications considered by the Legislative Budget Commission pursuant to subsection (11). Here, the Final Bill Analysis only references DEO's role in reviewing, recommending approval or denying, and certifying the application (see House Final Bill Analysis p. 11). A copy of the House Final Bill Analysis is attached.

Question 2: What Is the Meaning of a DEO Recommendation under the Special Application Process?

As noted above, subsection (11) contains the nearly identical "recommendation" language as paragraph (4)(c). It follows, then, that the "recommendation" called for in subsection (11) includes only the verification of the mandatory eligibility criteria provided for in subparagraphs (5)(a)(1)-(8), and once DEO verifies that those statutory criteria are met, it has no basis to deny an application submitted under subsection (11). A recommendation under subsection (11) is not a subjective determination by DEO that an applicant's project will have a positive economic impact, but is simply a certification that the statutory criteria are met. Further evaluation of the merits of an application, and the ultimate decision of whether to fund a project, is reserved for the Legislative Budget Commission.

EXCERPTS FROM SECTION 288.11625, FLORIDA STATUTES, "SPORTS DEVELOPMENT"

(3) PURPOSE.—The purpose of this section is to provide applicants state funding under s.212.20(6)(d)6.f. for the public purpose of constructing, reconstructing, renovating, or improving a facility.

(4) APPLICATION AND APPROVAL PROCESS.—

(b) The annual application period is from June 1 through November 1.

(c) Within 60 days after receipt of a completed application, the department shall complete its evaluation of the application as provided under subsection (5) and notify the applicant in writing of the department's decision to recommend approval of the applicant by the Legislature or to deny the application.

(d) By each February 1, the department shall rank the applicants and provide to the Legislature the list of the recommended applicants in ranked order of projects most likely to positively impact the state based on criteria established under this section. The list must include the department's evaluation of the applicant.

(e) A recommended applicant's request for funding must be approved by the Legislature, enacted by a general law or conforming bill approved by the Governor in the manner provided in s. 8, Art. III of the State Constitution. After enactment, the department must certify an applicant and its approved request for funding. The approved request for funding must be certified as an annual distribution amount, and the department must notify the Department of Revenue of the initial certification and the distribution amount.

(5) EVALUATION PROCESS.—

(a) Before recommending an applicant to receive a state distribution under s. 212.20(6)(d)6.f., the department must verify that:

1. The applicant or beneficiary is responsible for the construction, reconstruction, renovation, or improvement of a facility and obtained at least three bids for the project.
2. If the applicant is not a unit of local government, a unit of local government holds title to the property on which the facility and project are, or will be, located.
3. If the applicant is a unit of local government in whose jurisdiction the facility is, or will be, located, the unit of local government has an exclusive intent agreement to negotiate in this state with the beneficiary.
4. A unit of local government in whose jurisdiction the facility is, or will be, located supports the application for state funds. Such support must be verified by the adoption of a resolution, after a public hearing, that the project serves a public purpose.
5. The applicant or beneficiary has not previously defaulted or failed to meet any statutory requirements of a previous state-administered sports-related program under s. 288.1162, s.288.11621, s. 288.11631, or this section. Additionally, the applicant or beneficiary is not currently receiving state distributions under s. 212.20 for the facility that

is the subject of the application, unless the applicant demonstrates that the franchise that applied for a distribution under s. 212.20 no longer plays at the facility that is the subject of the application.

6. The applicant or beneficiary has sufficiently demonstrated a commitment to employ residents of this state, contract with Florida-based firms, and purchase locally available building materials to the greatest extent possible.

7. If the applicant is a unit of local government, the applicant has a certified copy of a signed agreement with a beneficiary for the use of the facility. If the applicant is a beneficiary, the beneficiary must enter into an agreement with the department. The applicant's or beneficiary's agreement must also require the following:

a. The beneficiary must reimburse the state for state funds that will be distributed if the beneficiary relocates or no longer occupies or uses the facility as the facility's primary tenant before the agreement expires. Reimbursements must be sent to the Department of Revenue for deposit into the General Revenue Fund.

b. The beneficiary must pay for signage or advertising within the facility. The signage or advertising must be placed in a prominent location as close to the field of play or competition as is practicable, must be displayed consistent with signage or advertising in the same location and of like value, and must feature Florida advertising approved by the Florida Tourism Industry Marketing Corporation.

8. The project will commence within 12 months after receiving state funds or did not commence before January 1, 2013.

(b) The department shall competitively evaluate and rank applicants that timely submit applications for state funding based on their ability to positively impact the state using the following criteria:

1. The proposed use of state funds.
2. The length of time that a beneficiary has agreed to use the facility.
3. The percentage of total project funds provided by the applicant and the percentage of total project funds provided by the beneficiary, with priority in the evaluation and ranking given to applications with 50 percent or more of total project funds provided by the applicant and beneficiary.
4. The number and type of signature events the facility is likely to attract during the duration of the agreement with the beneficiary.
5. The anticipated increase in average annual ticket sales and attendance at the facility due to the project.
6. The potential to attract out-of-state visitors to the facility.
7. The length of time a beneficiary has been in this state or partnered with the unit of local government. In order to encourage new franchises to locate in this state, an application for a new franchise shall be considered to have a significant positive impact on the state and shall be given priority in the evaluation and ranking by the department.
8. The multiuse capabilities of the facility.
9. The facility's projected employment of residents of this state, contracts with Florida-based firms, and purchases of locally available building materials.
10. The amount of private and local financial or in-kind contributions to the project.
11. The amount of positive advertising or media coverage the facility generates.

12. The expected amount of average annual new incremental state sales taxes generated by sales at the facility above the baseline that will be generated as a result of the project, as required under subparagraph (6)(b)2.
13. The size and scope of the project and number of temporary and permanent jobs that will be created as a direct result of the facility improvement.

(11) APPLICATION RELATED TO NEW FACILITIES OR PROJECTS COMMENCED BEFORE JULY 1, 2014.—Notwithstanding paragraph (4)(e), the Legislative Budget Commission may approve an application for state funds by an applicant for a new facility or a project commenced between March 1, 2013, and July 1, 2014. Such an application may be submitted after May 1, 2014. The department must review the application and recommend approval to the Legislature or deny the application. The Legislative Budget Commission may approve applications on or after January 1, 2015. The department must certify the applicant within 45 days of approval by the Legislative Budget Commission. State funds may not be distributed until the department notifies the Department of Revenue that the applicant was approved by the Legislative Budget Commission and certified by the department. An applicant certified under this subsection is subject to the provisions and requirements of this section. An applicant that fails to meet the conditions of this subsection may reapply during future application periods.

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 7095	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Appropriations Committee; Economic Affairs Committee; Patronis	89 Y's	27 N's
COMPANION BILLS:	(CS/CS/SB 1216)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 7095 passed the House on April 25, 2014. The bill was amended by the Senate on May 2, 2014, and subsequently passed the House on May 2, 2014.

The bill creates s. 288.11625, F.S., the Sports Development Program (program) to provide state funding under s. 212.20, F.S., for the public purpose of constructing, reconstructing, renovating, or improving a professional sports facility owned by a local government or a facility owned by a private entity that is located on land owned by a local government. The program will be administered by the Department of Economic Opportunity (DEO or the department). Annual distributions of state funds will be made by the Department of Revenue (DOR).

The bill amends s. 212.20, F.S., to increase the monthly distribution caps for applicants certified under s. 288.11631, F.S., and to shorten the time period that a certified applicant may receive such disbursements. The bill also amends s. 212.20, F.S., to set caps on the amount of distributions that may be made through the program and to authorize monthly payments to certified applicants.

The bill amends s. 218.64, F.S., to allow municipalities and counties to expend portions of the local government half-cent sales tax for reimbursing the state as required by the program. In addition, s. 218.64, F.S., is amended to increase the amount of the local government half-cent sales tax that may be allocated to funding by counties for certified applicants under the new or retained professional sports franchise program, the motorsport entertainment complex program, or the spring training baseball franchise program, or for reimbursing the state through the Sports Development Program from \$2 million to \$3 million.

The bill amends s. 288.0001, F.S., to include the Sports Development Program among the list of economic development programs scheduled to be reviewed and analyzed by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) beginning January 1, 2018 and every three years thereafter.

The bill amends s. 288.11631, F.S., to permit changes to the agreement between a certified applicant of the Spring Training Retention program and a spring training franchise that allow previously certified applicants to apply to add a second franchise to an existing spring training facility, to alter the reimbursement process for certified applicants that issued bonds to construct or renovate a facility, and to clarify that an eligible applicant may not already be a certified applicant under the program.

There is no fiscal impact on local government revenues or expenditures. See FISCAL COMMENTS section for fiscal impact on state government.

The bill was approved by the Governor on June 20, 2014, ch. 2014-167, L.O.F., and will become effective on July 1, 2014.

Rick Scott
GOVERNOR



Cissy Proctor
EXECUTIVE DIRECTOR

STORAGE NAME: h7095z1.EDTS
DATE: June 24, 2014

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 300,000.¹¹
- 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.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 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 following public purposes:

- 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; or
- 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

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.

The state 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 may 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 May 1, 2014, there were eight certified professional sports franchise facilities in Florida. The facilities and the payment distribution for each, as provided by DOR, 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

State Incentives for Spring Training Franchises

Spring Training Baseball Franchises

Section 288.11621, F.S., defines a process by which the DEO may certify local governments to receive a distribution of \$41,667 per month (\$500,000 per year) for a period of up to 30 years. The funds may be used to acquire, construct, reconstruct, or renovate a facility for a baseball spring training franchise, pay debt service on bonds issued for those purposes, or, in some instances, assist a spring training franchise in moving from one local government to another. Funds must be expended within 48 months of the receipt of the initial payment, and the acquisition, construction, reconstruction, or renovation must be completed within 24 months of starting.

In order to be certified, the department must verify that:

- The local government applying owns or will own the facility or the land on which the facility is or will be located.
- The applicant has a certified copy of a signed agreement with a spring training franchise to use the facility for at least 20 years, and to reimburse the state for any state funds expended under this section if the franchise relocates prior to the end of the agreement.
- The applicant has made a commitment to pay for at least 50 percent of the cost of acquisition, construction, reconstruction, or renovation of the facility.
- The applicant has shown the facility will attract paid attendance of at least 50,000 annually.
- The facility is located in a county that levies a tourist development tax.

DEO is required to evaluate the applications on a competitive basis, using the following criteria:

¹⁶ Section 288.1162(5), F.S.

¹⁷ Section 288.1162(7), F.S.

¹⁸ Section 288.1162(8), F.S.

¹⁹ Total paid as of February 17, 2014.

- projected impact on the local economy;
- amount of local matching funds dedicated to the project;
- potential for the facility to serve multiple purposes;
- intended use of funds;
- length of time that a franchise has held spring training in the applicant's community;
- amount of time the facility has been used by any team for spring training;
- amount of time remaining in the agreement for the franchise to use the facility;
- net increase in total recreational space that the facility would represent; and
- location of the facility in a brownfield, enterprise zone, or community redevelopment area.

DEO is authorized to certify up to 10 facilities at any given time. Upon certification, the applicant and the department must enter into an agreement specifying:

- the amount of state incentive funding to be distributed;
- the criteria that must be met in order for the applicant to remain certified;
- the department may recover state incentive funds if the applicant is decertified;
- the information that the applicant must report to the department; and
- any other provision deemed prudent by the department.

An applicant may not be certified for more than one spring training franchise at a time. Current law also specifies the contents to be included in an annual report by the applicant to the department, and a process by which an applicant may be decertified. The Auditor General is authorized to conduct audits to ensure that the funds are being used as required by law. If the Auditor General finds that this is not the case, DOR may pursue recovery of the funds.

The applicants currently certified through s. 288.11621, F.S., are as follows:

Certified Applicant	Team	Date of First Payment	Total Distributed²⁰
Clearwater	Philadelphia Phillies	Feb. 2001	\$6.5M
Dunedin	Toronto Blue Jays	Feb. 2001	\$6.5M
Indian River County	Los Angeles Dodgers	Feb. 2001	\$6.5M
Osceola County	Houston Astros	Feb. 2001	\$6.5M
Lakeland	Detroit Tigers	Feb. 2001	\$6.0M
Charlotte County	Tampa Bay Rays	Mar. 2007	\$3.5M
Bradenton	Pittsburgh Pirates	Mar. 2007	\$3.5M
Sarasota	Cincinnati Reds/ Baltimore Orioles ²¹	Mar. 2007	\$3.5M
St. Lucie County	New York Mets	Mar. 2007	\$1.8M
Lee County	Minnesota Twins	July 2013	\$0.3M

Retention of Spring Training Baseball Franchises

Section 288.11631, F.S., which became law in 2013, mostly mirrors the provisions of s. 288.11621. The differences between the sections include:

- The agreement must be for a minimum of the length of the term of the bonds issued for the construction or renovation of the facility, or if no such bonds are issued, at least 20 years.
- A new agreement may not be signed unless the previous agreement, if any, is within 4 years of expiring.
- There is no limit to the number of applicants which may be certified.

²⁰ As of 2/28/14

²¹ The Cincinnati Reds relocated from Sarasota in 2009. The Baltimore Orioles replaced them in 2010 after relocating from Ft. Lauderdale.

- The net increase in recreational areas represented by the facility is not considered in the evaluation process.
- The amount of state funding provided in the agreement between the applicant and the department may not exceed \$20 million, or if the applicant hosts 2 or more franchises, \$50 million.
- Funds provided as a result of certification under this section may not be used to acquire or reconstruct a facility, or to assist a franchise in moving from one local government to another.

Upon certification under this section DOR is directed to distribute \$55,555 monthly (\$666,660 annually) to the applicant from sales tax revenues. In the event the applicant hosts more than one franchise, the distribution will be \$111,110 monthly (\$1,333,320 annually). An applicant which has already been certified and is receiving a distribution under current law may also be certified to receive funding under this new section. Distributions shall begin 60 days after certification, or July 1, 2016, whichever is later.

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. The state's sales and use tax is levied on tangible personal property and a limited number of services at a rate of 6 percent. 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 state-shared revenue received by local governments. The program provides ad valorem and utility tax relief, in addition to providing eligible local governments revenues for local programs.²² A local government may also pledge funds from the program for payment of principal and interest on any capital project.²³

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.²⁴ The distribution transfers 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).²⁵ The emergency and supplemental distributions transfer 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.²⁶ An additional, separate distribution from the trust fund is available to qualifying fiscally constrained counties.²⁷

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 may, by ordinance, allocate up to \$2 million annually of the Local Government Half-cent Sales Tax Program funds received by that county for the following purposes:^{28, 29}

²² 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/lghih13.pdf>, (last visited on May 8, 2014).

²³ Section 218.64, F.S.

²⁴ 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.

²⁵ Section 212.20(6)(d)2., F.S.

²⁶ Section 212.20(6)(d)3., F.S.

²⁷ Section 218.67, F.S.

²⁸ Section 218.64(3)(b), F.S.

²⁹ 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.

- Funding a facility certified as a new or retained professional sports franchise under s. 288.1162, F.S.;
- Funding for 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.

Effect of Proposed Changes

Sports Development Program

The bill creates s. 288.11625, F.S., to allow for distributions of state sales and use tax revenue pursuant to s. 212.20, F.S., to fund professional sports franchise facilities. The program is administered by DEO which is responsible for screening applicants for state funding. The purpose of the program is to provide state funding for the construction, reconstruction, renovation, or improvement of a sports facility, the proposed acquisition of land to construct a new facility, and construction of improvements to state-owned land necessary for the efficient use of the facility.

Definitions

The bill creates the following definitions within the program.

- Agreement – a signed contract between a unit of local government and a beneficiary.
- Applicant – a unit of local government which is responsible for the construction, management, or operation of a facility; or an entity that is responsible for the construction, management, or operation of a facility if a unit of local government holds title to the underlying property on which the facility is located.
- Beneficiary – a professional sports franchise of the NFL, NHL, NBA, the National League or American League of MLB, Minor League Baseball, MLS, the North American Soccer League (NASL), the Professional Rodeo Cowboys Association (PRCA), the promoter or host of a signature event administered by Breeders’ Cup Limited, or the promoter of a signature event sanctioned by the National Association for Stock Car Auto Racing (NASCAR). A beneficiary may also be an applicant under this program.

However, no MLB or Minor League Baseball franchises may be beneficiaries unless MLB provides the Attorney General verification that it has altered its rules on free agents to allow Cuban refugees 17 years or older who have been in the United States for less than one year and were not present before the most recent MLB Rule 4 Draft of amateur players to contract as free agents under the same guidelines as any player who is a resident of the United States, Puerto Rico, or Canada. MLB must also report to the Attorney General on any individual who is a resident of the state or operates in the state who may be involved in human smuggling or trafficking for purposes of evading MLB free agency rules.

- Commence or commenced – occurrence of a physical activity on the project site which is related to the construction, reconstruction, renovation, or improvement of the project site.
- Facility – a structure, and its adjoining parcels of local-government-owned land, primarily used to host games or events held by a beneficiary and does not include any portion used to provide transient lodging.
- Project – a proposed construction, renovation, or improvement of a facility or the proposed acquisition of land to construct a new facility and construction of improvements to state-owned land necessary for the efficient use of the facility.



- Signature event – a professional sports event with significant export factor potential. For purposes of the program, the term “export factor” means the attraction of economic activity or growth into the state which otherwise would not have occurred. Examples include Super Bowls,

professional sports All-Star games, international sporting events and tournaments, professional motorsports events, and the establishment of a new professional sports franchise in the state.

- State sales taxes generated by sales at the facility – state sales taxes imposed under ch. 212, F.S., and generated by admissions to the facility; parking on property owned or controlled by the beneficiary or applicant; team operations and necessary leases; sales by the beneficiary; sales by other vendors at the facility; and ancillary uses within 1,000 feet, including team stores, museums, restaurants, retail, lodging, and commercial uses from economic development generated by the beneficiary or facility as determined by DEO.

Application and Approval Process

The bill requires DEO to establish the procedures and application forms necessary to implement the program. Applications will be accepted by the department from June 1 through November 1 each year. Within 60 days of receiving a completed application DEO will evaluate the application and notify the applicant in writing of the department's decision to recommend or deny approval.

DEO is required to provide the Legislature a list of the recommended applicants ranked in order of projects most likely to positively impact the state.

To be approved for funding, an application must be approved by the Legislature in a conforming bill or general law approved by the Governor. Once enacted, DEO is required to certify an applicant and its approved request for funding and notify DOR of the initial certification and distribution amount. An applicant remains certified for the length of the agreement between the beneficiary and the local government that owns the facility or owns the property on which the facility is or will be located, or for 30 years, whichever is less.

DEO may only recommend one distribution at a time for any applicant, facility or beneficiary. A facility or beneficiary is prohibited from receiving multiple distributions at any time through s. 212.20, F.S., for any state-administered, sports-related program.³⁰ The bill allows for an exception to applicants that can show the beneficiary that was the subject of a previous distribution under s. 212.20, F.S., no longer plays at the facility that is the subject of the application under the new program.

Evaluation Process

Before recommending an applicant to receive a state distribution, DEO must verify that:

- The applicant or beneficiary is responsible for the construction, reconstruction, renovation, or improvement of a sports facility and obtained at least three bids for the project.
- If the applicant is not a unit of local government, a unit of local government holds title to the property on which the sports facility and project are, or will be, located.
- If the applicant is a unit of local government in whose jurisdiction the facility is, or will be located, the unit of local government has an exclusive intent agreement to negotiate in this state with the beneficiary.
- A unit of local government in whose jurisdiction the sports facility is, or will be located, has expressed support for the application for state funds through the adoption of a resolution that the project serves a public purpose.
- The applicant or beneficiary has not previously defaulted or failed to meet any statutory requirements of a previous state-administered, sports-related program under ss. 288.1162, 288.11621, 288.11631, F.S., or the Sports Development Program.
- The applicant or beneficiary is not currently receiving state distributions under s. 212.20, F.S., for the sports facility that is the subject of the application, unless the applicant shows that the

franchise that applied for the previous distribution no longer plays at that sports facility.

³⁰ Such sports-related programs include ss. 288.1162, 288.11621, and 288.11631, F.S.

- The applicant or beneficiary has demonstrated a commitment to employ state residents, contract with Florida-based firms, and purchase locally-available building materials to the greatest extent possible.
- If the applicant is a unit of local government, the applicant has a certified copy of a signed agreement with a beneficiary for the use of the sports facility. If the applicant is a beneficiary, the beneficiary must enter into an agreement with DEO.³¹
- The project will commence within 12 months after receiving state funds or did not commence before January 1, 2013.

DEO is directed to competitively evaluate and rank applicants that timely submit applications for state funding based on their ability to positively impact the state using the following criteria:

- 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 and the percentage of total project funds provided by the beneficiary, with priority given to applications with 50 percent or more of total project funds provided by the applicant and beneficiary.
- The number and type of signature events 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 length of time a beneficiary has been in the state or partnered with the unit of local government with new franchises given priority.
- The multiuse capabilities of the facility.
- The facility's projected employment of state residents, contracts with Florida-based firms, and purchases of locally-available building materials.
- The amount of private and local financial or in-kind contributions to the project.
- The amount of positive advertising or media coverage the facility generates.
- The expected amount of average annual new incremental state sales taxes generated by sales at the facility above the baseline that will be generated as a result of the project.
- The size and scope of the project and number of temporary and permanent jobs that will be created as a direct result of the facility improvement.

During the evaluation period, the applicant must provide DEO an analysis by an independent certified public accountant which demonstrates the average amount of state sales taxes generated by sales at the facility during the previous 36-month period immediately preceding the beginning of the application period. This amount is known as the "baseline." The analysis must also show the expected amount of average annual new incremental state sales taxes generated by sales at the facility above the baseline which will be generated as a result of the project. The expected amount must be at least \$500,000 above the baseline for the applicant to be eligible to receive a distribution. An application for a new facility will have a baseline of zero. The baseline is \$2 million for an applicant certified under s. 288.1162, F.S., which is currently receiving state distributions through s. 212.20, F.S. Projects with a total cost of \$300 million which are at least 90 percent funded by private sources will have a baseline of zero.

Distribution of State Funds

³¹ The applicant's or beneficiary's agreement must require that the beneficiary reimburse the state for funds that will be distributed if the beneficiary no longer occupies the facility before the agreement expires. The beneficiary's agreement must also require that the beneficiary pay for VISIT Florida, Inc. approved advertising within the facility.

DEO will determine the annual distribution amount an applicant may receive based on 75 percent of the average annual new incremental state sales taxes generated by sales at the facility. Such annual distribution will be limited by the following tiered system:

- If the total project cost is \$200 million or greater, the annual distribution amount may be up to \$3 million.
- If the total project cost is at least \$100 million, but less than \$200 million, the annual distribution amount may be up to \$2 million.
- If the total project cost is at least \$30 million, but less than \$100 million, the annual distribution amount may be up to \$1 million.

An applicant certified under s. 288.1162, F.S., which is currently receiving state distributions through s. 212.20, F.S., for the facility or beneficiary which is the subject of the application under the Sports Development Program may be eligible for an additional distribution of up to \$1 million. The total project cost must be at least \$100 million. This does not apply to an applicant that can show the beneficiary of the previous state distribution no longer plays at the facility.

DEO is required to consult with DOR and EDR to develop a standard calculation for estimating the average annual new incremental state sales taxes generated by sales at the facility.

The bill amends s. 212.20, F.S., to set caps on the amount of distributions that may be made through the program, and to authorize monthly payments to certified applicants. DEO may not certify an applicant if, as a result of the certification, the total amount distributed will exceed \$13 million in any fiscal year. In the 2014-2015 fiscal year, DEO may not certify annual distributions of more than \$7 million for all certified applicants.

Contract

An applicant approved by the Legislature and certified by DEO must enter into a contract with the department which:

- specifies the terms of the state's investment;
- states the criteria that the certified applicant must meet in order to remain certified;
- requires the applicant to submit the independent analyses required by the program;
- specifies information that the certified applicant must report to DEO; and
- includes any provisions deemed prudent by DEO.

The contract must also require the applicant to reimburse the state, after all distributions have been made, any amount by which the total distributions made under the program exceed actual new incremental state sales taxes generated by sales at the facility during the contract. If any reimbursement is due to the state, such reimbursement must be made within 90 days after the last distribution has been made under the contract. If the applicant is unable or unwilling to reimburse the state, DEO may place a lien on the applicant's facility. If the applicant is a municipality or county, it may reimburse the state from its half-cent sales tax allocation. Reimbursements will be sent to DOR for deposit into the General Revenue Fund.

Use of Funds

Certified applicants may use funds disbursed through the Sports Development Program for the following purposes:

- Constructing, reconstructing, renovating, or improving a facility or reimbursing such costs;



- Paying or pledging for the payment of debt service on bonds issued for the construction or renovation of a facility;

- Funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto on bonds issued for the construction or renovation of a facility; and
- Reimbursing the costs associated with debt service payments or refinancing of bonds issued for the construction or renovation of a facility.

Reports

By November 1 each year, each certified applicant must provide DEO any information required by the department to be summarized for inclusion in the annual report submitted to the Legislature as required by the program. Every five years after an applicant receives its first monthly distribution, DEO must verify that the applicant is meeting the program requirements. If the applicant fails to meet these requirements, DEO shall notify the Governor and the Legislature in its next annual report that the requirements are not being met and recommend future action. DEO is required to take into consideration extenuating circumstances that may have prevented the applicant from meeting the program requirements.

Audits

The Auditor General may conduct audits to verify the independent analysis required by the program and to verify that the distributions are expended as required. If the Auditor General finds that the distribution payments are not expended as required, the Auditor General must notify DOR, which may pursue recovery of distributions under the laws and rules that govern the assessment of taxes.

Application Related to New Facilities or Projects Commenced Before July 1, 2014

The Legislative Budget Commission (LBC) may approve an application for state funds by an applicant for a new facility or a project commenced between March 1, 2013, and July 1, 2014. Such applications may be submitted after May 1, 2014. DEO must review the application and recommend approval to the Legislature or deny the application. The LBC may approve applications on or after January 1, 2015. DEO must certify the applicant within 45 days of approval by the LBC. State funds may not be distributed until DEO notifies DOR that the applicant was approved by the LBC and certified by DEO. An applicant certified by this method is subject to all the provisions and requirements of the program. An applicant that is denied approval through this process may reapply during future application periods.

Repayment of Distributions

A certified applicant may be subject to repayment of distributions³² if any of the following occurs:

- An applicant's beneficiary has broken the terms of its agreements with the applicant and relocated from the facility or no longer occupies or uses the facility as the facility's primary tenant. The beneficiary will reimburse the state for state funds that will be distributed, plus a five percent penalty, if the beneficiary relocates before the agreement expires.
- A determination by DEO has been made that the applicant submitted false, misleading, deceptive, or otherwise untrue information. The applicant must reimburse the state for state funds that have been and will be distributed, plus a five percent penalty. If the applicant is a municipality or county, it may reimburse the state from its half-cent sales tax allocation.

Halting of Payments

The applicant may request in writing at least 20 days before the next monthly distribution that DEO halt future payments. DEO must immediately notify DOR to halt future payments.

Rulemaking

DEO may adopt rules to implement the Sports Development Program.

³² Repayment of distributions must be sent to DOR for deposit into the General Revenue Fund.

Spring Training

The bill amends s. 288.11631, F.S., to allow that agreements made between an applicant and a spring training franchise may be signed at any time before the expiration of any existing agreement with a spring training franchise for use of a facility if the applicant has never received state funding for the facility as a spring training facility under the state's spring training programs³³ and the facility was constructed before January 1, 2000.

The bill provides that if bonds were issued to construct or renovate a facility for a spring training franchise, any reimbursement required by a franchise that relocates before the expiration of its agreement with an applicant certified under s. 288.11631, F.S., must be equal to the total amount of state distributions expected to be paid from the date the franchise breaks its agreement with the applicant through the final maturity of the bonds.

The bill prohibits applicants from receiving multiple certifications through s. 288.11631, F.S. However, the bill provides that an applicant certified for use of its facility by one spring training franchise may apply to amend its certification for use of its facility by more than one spring training franchise. The maximum amount of state incentive funding to be distributed may not exceed \$50 million for a certified applicant with a facility used by multiple spring training franchises.

The bill amends s. 212.20, F.S., to increase the monthly disbursement caps for applicants certified under s. 288.11631, F.S., and to shorten the time period that a certified applicant may receive such disbursements. DOR may distribute up to \$83,333 monthly for up to 20 years for a facility used by a single spring training franchise, or up to \$166,667 monthly for up to 25 years for a facility used by multiple spring training franchises.

Professional Sports Facility: Designation as a Shelter Site for the Homeless

The bill amends s. 288.1166, F.S., to limit the occurrences during which a sports facility constructed with financial assistance from the state may be used as a shelter for the homeless in accordance with the criteria of a locally existing homeless shelter program to periods of a declared federal, state, or local emergency. Under existing law, a sports facility could not be used for such purpose if the facility was otherwise contractually obligated for a specific event or activity. The bill expands these restrictions to include the facility being designated or used by the county owning the facility as a staging area and if the county that owns the stadium determines it owns or operates enough homeless assistance shelters to meet the sheltering needs of homeless persons within the county.

Local Government Half-cent Sales Tax

The bill amends s. 218.64, F.S., to increase from \$2 million to \$3 million the amount of half-cent sales tax revenue that a county may allocate towards new or retained professional sports franchises under s. 288.1162, F.S., a certified applicant as a motorsport entertainment complex under s. 288.1171, F.S., or for reimbursing the state as required by the Sports Development Program.

Economic Development Programs Evaluation

The bill amends s. 288.0001, F.S., to include the Sports Development Program among the list of economic development programs scheduled to be reviewed and analyzed by EDR and OPPAGA beginning January 1, 2018, and every three years thereafter.

³³ Both ss. 288.11621 and 288.11631, F.S., provide state funds to eligible spring training facilities.



FLORIDA DEPARTMENT of
ECONOMIC OPPORTUNITY

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³³ Both ss. 288.11621 and 288.11631, F.S., provide state funds to eligible spring training facilities.

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill allows counties to use an additional \$1 million of local government half-cent sale tax revenue to fund certified applicants under the New or Retained Professional Sports Franchise program or Motorsports Entertainment Complex program, or to reimburse the state under the Sports Development Program.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may encourage the owners or operators of professional sports facilities to undertake major renovations which could have positive impacts on the construction sector. Additionally, such improvements could have a positive impact on sports tourism within the state.

D. FISCAL COMMENTS:

DEO estimates it will need one new full-time employee to carry out its portion of the program for an estimated total cost of \$85,000.³⁴ DOR expects an insignificant impact on the department.³⁵

The bill allows up to \$7 million of state sales and use tax revenue to be distributed in Fiscal Year 2014-2015 to applicants approved by the LBC on or after January 1, 2015. The bill allows up to \$13 million of state sales and use tax revenue to be distributed in each subsequent fiscal year for applicants approved by the Legislature and certified by DOR.

The bill reduces General Revenue Fund receipts by \$4.7 million annually beginning in Fiscal Year 2016-2017 due to the changes to the Spring Training Retention program. The changes may permit certain applicants to apply for certification earlier than under current law, accelerate the distribution schedules, and change the repayment requirements when bonds are issued.

This bill was not evaluated by the Revenue Estimating Conference.

³⁴ DEO 2014 Agency Legislative Bill Analysis for SB 1216; March 12, 2014

³⁵ DOR 2014 Agency Legislative Bill Analysis for CS/CS/SB 1216; April 23, 2014