

STORAGE NAME: h0289a.ccc.doc
DATE: April 16, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

BILL #: HB 289
RELATING TO: Motorsports Entertainment Complex
SPONSOR(S): Representative(s) Barreiro
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) TOURISM YEAS 6 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 10 NAYS 1
 - (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 11 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides for the distribution of a portion of revenues from the tax on sales, use, and other transactions to a motorsports entertainment complex the Office of Tourism, Trade, and Economic Development (OTTED) has certified as meeting requirements created by the bill. Thirty days after OTTED notifies the Department of Revenue (DOR) of the applicant certification, \$166,667 shall be distributed monthly to the applicant for 30 years (\$2 million annually over 30 years, or \$60 million).

The bill delineates requirements for certification of an applicant as a motorsports entertainment complex (complex), which is defined as a closed-course racing facility with ancillary grounds and facilities. In order to be certified, not only is OTTED required to determine that the complex meets the definition but it also must determine that the complex meets additional criteria specified in the bill. OTTED must recertify annually that the complex generates sufficient sales tax revenues as required by the bill.

A certified applicant may use funds to pay for construction, reconstruction, expansion, or renovation of the complex and related transportation or other infrastructure improvements that are related to, necessary for, or appurtenant to the complex; for debt service reserve funds, arbitrage rebate obligations, or other amounts relating to bonds with respect to the aforementioned; and for advertising and promotion of the complex or the community. The Department of Revenue may audit to verify that the distributions have been expended pursuant to the s. 288.1170, F.S., created by the bill, and if determined not to have been expended pursuant to the section, may pursue recovery of funds.

The Committee on Tourism adopted four amendments, which are traveling with the bill, that place additional conditions on the facility for certification, and reduce the distribution of revenues by half, to \$1 million annually. They also respond to, and correct, the issues raised in the COMMENTS section of this analysis.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 212.20, F.S., governs the distribution by the Department of Revenue of tax revenues collected under the provisions of Chapter 212, F.S. If the amendments to s. 212.20, F.S., made by Chapter 2000-260, Laws of Florida, are not repealed, that section will also govern distributions of the taxes collected under the new telecommunications tax statutes enacted in 2000.

Pursuant to s. 212.20(6)(e)7., F.S., the Department of Revenue (DOR) distributes tax revenues to professional sports franchise facilities that are certified by the Office of Tourism, Trade, and Economic Development (OTTED) as meeting requirements set forth in s. 288.1162, F.S., to the Professional Golf Hall of Fame facility as certified pursuant to s. 288.1168, F.S., and to the International Game Fish Association World Center facility as certified pursuant to s. 288.1169, F.S. Each recipient receives a fixed monthly distribution that is set by statute. No other sports-related businesses or facilities are entitled to distributions from DOR of tax revenues collected pursuant to Chapter 212, F.S.

The amounts listed below are the monthly payments currently authorized by law:

- \$166,667.....New professional sports franchise facility*
- \$166,667.....Retained professional sports franchise facility*
- \$ 41,667(up to).....Retained spring training franchise facility*
- \$166,667.....Professional Golf Hall of Fame facility**
- \$ 83,333.....International Game Fish Association World Center facility***

* Monthly payment is for not more than 30 years.

** Monthly payment is for up to 25 years.

*** Monthly payment is for up to 14 years; however, a lump sum payment of \$999,996 was made after certification and before July 1, 2000 (equating the payments to 15 years).

The law caps the number of new and retained professional sports franchise facilities eligible for funding at eight. Currently, there are six new professional sports franchise facilities and one retained professional sports franchise facility that have been certified and are receiving money. The remaining certification can only be for one specific facility. Section 288.1162, F.S., requires that at least five facilities for retained spring training franchises be certified by OTTED. OTTED cannot certify funding for less than the requested amount to any applicant certified as a facility for a retained spring training franchise. Both ss. 212.20(6)(e), and 288.1162, F.S., however, cap the total monthly distribution in the aggregate to all facilities for a retained spring training franchise at \$208,335.

Criteria is set forth in Chapter 288, F.S., for certification for each of the above listed types of facilities. Criteria for all includes such things as relationship with and support of a local unit of government, projections for paid attendance, and demonstration of being able to provide or having financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the facility. As a condition of certification for all, but the retained spring training franchise facility, there must be an independent analysis demonstrating that the amount of revenues projected to be generated by the respective facilities will exceed any money received from the state. Only the Professional Golf Hall of Fame facility and the International Game Fish Association World facility have certification requirements for dedication of specific funding amounts for promotion of the facility and promotion of Florida tourism.

For facilities for professional, retained professional and retained spring training franchises, s. 288.1662, F.S., prohibits an applicant previously certified under any provisions of the section and receiving funding from being eligible for an additional certification. There are no requirements for review and recertification by OTTED or requirements for reduction in funding or decertification by OTTED if not meeting initial certification requirements. Sections 288.1168 and 288.1169, F.S., relating to the Professional Golf Hall of Fame facility and the International Game Fish Association World facility, contain requirements for recertification by OTTED every 10 years as well as mechanisms for imposing monetary sanctions for failure to meet all certification requirements or abatement of funding until certification requirements are met.

For all certified by OTTED, DOR is required to audit to verify that the distributions under the various governing sections have been expended as required by those sections; however, only s. 288.1162, F.S., states that DOR may pursue recovery of funds if they have been determined to have been expended outside the requirements of the law.

Sections 288.1162, 288.1168, and 288.1169, F.S., require OTTED to serve as the state agency for screening applicants for state funding pursuant to s. 212.20, F.S., and for certifying applicant facilities for funding. Section 288.1229, F.S., authorizes the creation of a direct-support organization to assist OTTED in two primary areas, one of which is in the promotion and development of the sports industry and related industries for the purpose of improving the economic presence of these industries in Florida. As part of this assistance, OTTED uses the direct support organization, the Florida Sports Foundation, to carry out the applicant screening duties required under ss. 288.1162, 288.1168, and 288.1169, F.S. The

Florida Sports Foundation submits the applications to OTTED, which certifies the eligibility of the applicants under the law.

Currently, there are no general sales tax revenue distributions permitted for motorsports entertainment complexes. There are, however, two motorsports entertainment complexes in the state: Daytona International Speedway (Volusia County) and the Homestead-Miami Speedway (Dade County). The Daytona International Speedway facility and property is owned by Volusia County with a small portion owned by the Volusia Racing Recreational District, a special district. The Homestead-Miami Speedway facility and property is owned by the City of Homestead. In both areas, the facilities are leased from the governmental entity to International Speedway Corporation (ISC) that operates the speedways.

The Daytona International Speedway was constructed in 1959 and is located on 480 acres. The facility has current seating of 165,059 and a 2.5-mile track with 31 degree banked turns. Events held at the Daytona international Speedway include NASCAR Winston Cup Series, Busch Series, Craftsman Truck Series, Grand American Road Racing Series, and American Motorcycle Association Series.

The Homestead-Miami Speedway was constructed in 1995 and is located on 434 acres. The facility has current seating of 72,000 and a 1.5-mile tract with 6 degree banked turns. Events held at the Homestead-Miami Speedway include NASCAR Winston Cup Series, Busch Series, Craftsman Truck Series, Grand American Road Racing Series, and Championship Auto Racing Team Series.

C. EFFECT OF PROPOSED CHANGES:

House Bill 289 amends s. 212.20(6)(e), F.S., to provide for the distribution of a portion of revenues from the tax on sales, use, and other transactions to a motorsports entertainment complex that has been certified by the Office of Tourism, Trade, and Economic Development (OTTED) as meeting requirements specified in s. 288.1170, F.S., created by this bill. Thirty days after OTTED notifies the Department of Revenue of the applicant's certification, \$166,667 shall be distributed monthly for up to 30 years to the applicant (\$2 million over 30 years for a total of \$60 million).

The bill creates s. 288.1170, F.S., to delineate requirements for certification of an applicant as a motorsports entertainment complex which is defined as a closed-course racing facility with ancillary grounds and facilities. By definition, the motorsports entertainment complex must have at least 70,000 seats and 7 scheduled days of motorsports events each calendar year. Additionally, the complex must have paid admissions of more than 200,000, serve food during sanctioned motorsports events, and engage in tourism. In order to be certified, not only is OTTED required to determine that the complex meets the definition but it also must determine the following: a unit of local government holds title to the land or title to the complex or is responsible for its construction, management and operation; seven scheduled days of motorsports events were held at the complex in the most recently completed calendar year or seven scheduled days of motorsports events are scheduled in the calendar year after submission of the application; the applicant has completed an independent analysis that demonstrates that the project will attract, or in the most recently completed calendar year has attracted, paid attendance of more than 200,000 annually and

demonstrates that the amount of revenues generated by taxes is consistent with the provisions of the act; the municipality or county in which the complex is located has certified by resolution after a public hearing that the applicant serves a public purpose; and, the complex is located in a county defined in s. 125.011(1), F.S. No complex certified under this section is eligible for any additional certification or funding under the section.

Each year OTTED must recertify that the complex generates sufficient sales tax revenues annually as consistent with the act.

A certified applicant may use funds to pay for construction, reconstruction, expansion, or renovation of the complex and related transportation or other infrastructure improvements and for paying for debt service reserve funds, arbitrage rebate obligations, or other amounts relating to bonds with respect to the aforementioned. Funds may also be used for paying for advertising and promotion of the complex or of the community. The Department of Revenue may audit to verify that the distributions have been expended pursuant to the section.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 212.20(6)(e)7., F.S., as it will read if the telecommunication tax amendments (contained in section 35 of Chapter 2000-260, Laws of Florida) are "*repealed*" by section 58 of Chapter 2000-260, Laws of Florida. The change in s. 212.20(6)(e), F.S., allows distribution of proceeds to begin 30 days after notice by Office of Tourism, Trade and Economic Development (OTTED) to the Department of Revenue (DOR) that the applicant has been certified as a motorsports entertainment complex pursuant to s. 288.1170, F.S. The distribution to the applicant is to be \$166,667 monthly for up to 30 years. (\$2 million annually over 30 years, or \$60 million).

Section 2. Amends s. 212.20(6)(e)7, F.S., as it will read if the telecommunication tax amendments (contained in section 35 of Chapter 2000-260, Laws of Florida) are "*not repealed.*" The change in s. 212.20(6)(e), F.S., allows distribution of proceeds to begin 30 days after notice by OTTED to DOR that the applicant has been certified as a motorsports entertainment complex pursuant to s. 288.1170, F.S. The distribution to the applicant is to be \$166,667 monthly for up to 30 years (\$2 million annually over 30 years, or \$60 million).

Section 3. Creates s. 288.1170, F.S., providing definitions; certification criteria for, and duties of, the motorsports entertainment complex; as well as responsibilities of OTTED and DOR.

Subsection (1) provides definitions for "applicant," "motorsports entertainment complex," "motorsports event," "office," "owner," "sanctioning body," and "unit of local government." An "applicant" is defined as the "owner" of a complex. An "owner" is a person who owns or operates a complex, or a person who leases a complex or the land on which a complex is located from the Federal Government, the state, or a county, municipality, or special district, and operates the motorsports entertainment complex. A "motorsports entertainment complex" is defined as a closed course racing facility, with ancillary grounds and facilities with at least 70,000 seats, that has at least 7 scheduled days of motorsports events each calendar year, and has paid admissions of more than 200,000 annually.

Additionally, the complex must serve food during sanctioned motorsports events and engage in tourism.

Subsection (2) requires OTTED to be the state agency responsible for screening applicants for state funding pursuant to s. 212.20(6)(e), F.S., and for certifying an applicant as a motorsports entertainment complex. OTTED is to develop and adopt rules for the receipt and processing of applications for funding pursuant to s. 212.20, F.S. OTTED shall make a determination regarding any application not later than 120 days after the application is filed.

Subsection (3) requires that prior to certifying an applicant as a motorsports entertainment complex, in addition to meeting the definitional requirements, OTTED must determine the following:

- a unit of local government holds title to the land on which the complex is located, holds title to the complex, or is responsible for the construction, management, and operation of the complex;
- seven scheduled days of motorsports events were held at the motorsports entertainment complex in the most recently completed calendar year or seven scheduled days of motorsports events are scheduled to be held at the motorsports complex in the calendar year which begins after the submission of the application. The applicant shall submit certifications from the appropriate officials of the relevant sanctioning bodies that such sanctioned motorsports events were or will be held at the motorsports entertainment complex;
- the applicant has an independent analysis or study, verified by OTTED, demonstrating that the complex will attract, or in the most recently completed calendar year has attracted, paid attendance of more than 200,000 annually and demonstrates that the amount of the revenues generated by the taxes imposed under Chapter 212, F.S., with respect to the use and operation of the motorsports complex is consistent with the provisions of the act;
- the municipality or county, if the complex is located in an unincorporated area, has certified by resolution after a public hearing that the complex serves a public purpose; and
- the motorsports entertainment complex is located in a county defined in s.125.011(1), F.S.

Subsection (4) requires OTTED, upon determination that an applicant meets the certification requirements, to notify both the applicant and DOR of the certification. If the applicant fails to meet the certification requirements, OTTED is required to notify the applicant not later than 10 days following the determination.

Subsection (5) requires that OTTED certify each year that the complex continues to generate sufficient sales tax revenues as required pursuant to paragraph 3(d).

Subsection (6) prohibits a complex previously certified or that has received funding under the certification from being eligible for additional certification.

Subsection (7) provides that an applicant certified as a motorsports entertainment complex may use the funds for paying for construction, reconstruction or renovation of the complex and related transportation or infrastructure improvements; paying debt service reserve funds, arbitrage, rebate obligations, or the amounts payable with respect to bonds issued for construction or renovation, expansion or for the reimbursement of cost or refinancing of bonds issued for the same purpose; and paying for programs of advertising and promotion related to the complex or the municipality or county, if the complex is located in an unincorporated area, provided such programs of advertising and promotion are designed to increase paid attendance at the complex or increase tourism in or promote the economic development of the community in which the motorsports entertainment complex is located.

Subsection (8) provides that DOR may audit to verify that the distribution has been expended as required by this section. Also, such information is subject to confidentiality requirements of Chapter 213, F.S. If DOR determines that the distributions have not been expended as required, it may pursue recovery of the funds.

Section 4. Provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

| | | |
|-------------------------|------------------|------------------|
| 1. <u>Revenues:</u> | <u>2001-2002</u> | <u>2002-2003</u> |
| | (\$2 million) | (\$2 million) |
| 2. <u>Expenditures:</u> | <u>2001-2002</u> | <u>2002-2003</u> |
| | -0- | -0- |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

| | | |
|---------------------|------------------|------------------|
| 1. <u>Revenues:</u> | <u>2001-2002</u> | <u>2002-2003</u> |
| | \$2 million | \$2 million |

Comment: Local governments that are the owners of the complex or the land would be assisted by \$2 million per year that could be bonded to assist in construction, reconstruction, renovation and other transportation and infrastructure needs related to the complex.

| | | |
|-------------------------|------------------|------------------|
| 2. <u>Expenditures:</u> | <u>2001-2002</u> | <u>2002-2003</u> |
| | -0- | -0- |

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As Florida's motorsports entertainment industry continues to develop and improve, there may be a positive economic impact on private businesses due to multiplier effects.

D. FISCAL COMMENTS:

The estimated fiscal impact on General Revenue is (\$2 m) in FY 2001-02 and (\$2 m) in FY 2002-03. The bill may generate additional sales tax revenues due to commercial development and capital improvements.

The Tourism Committee amendments reduce the negative impact on General Revenue from \$2 m to \$1 m annually.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state sales tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Section 3 of the bill provides authority for OTTED and the Department of Revenue to adopt rules to implement their specific powers or duties described.

C. OTHER COMMENTS:

The four Tourism Amendments traveling with the bill would insert language intended to remove all of the concerns discussed below.

Similar bills, not identical, have been introduced in the 1997, 1998, 1999, and 2000 legislative sessions.

HB 289 does not include language in s. 288.1170, F.S., as did versions in previous years, to require the following:

- provide an independent analysis or study, verified by OTTED, which demonstrates that the amount of the revenues generated by the taxes imposed under chapter 212, F.S., with respect to the use and operation of the complex will equal or exceed the amount of the tax dollars being returned to the complex (\$2 million per year);
- provide that during the annual certification process, if the complex fails to generate \$2 million in sales tax revenues annually, the distribution of revenues will be reduced to an amount equal to \$166,667 multiplied by a fraction, the numerator of which is the actual revenues generated and the denominator of which is \$2 million;
- keep the reduction in effect until revenues generated by the complex in a consecutive 12-month period equal or exceed \$2 million; and,
- provide that an applicant has demonstrated that it is capable of providing, or has financial or other commitments to provide, more than one-half of the cost that will be incurred after certification for improvements and development.

The language is consistent with other types of funding mechanisms and similar certification processes to receive funds under the current statute for facilities for new or retained professional sports franchises, retained spring training franchises, a professional golf hall of fame, and the International Game Fish Association World Center. (See the present situation section of the analysis.)

Comments by the Department of Revenue

The Department of Revenue stated that OTTED should be required to certify both the identity of the recipient of funds under s. 212.20(6)7.e., F.S., and the amount of the monthly distribution.

The department offered proposed amendments to s. 212.20(6)7.e., F.S., which would set a cap of \$166,667. The department also stated that there is no guidance in s. 212.20, F.S., as to how to determine the amount of the distribution within the permitted range. In addition, the proposed s. 288.1170, F.S., contains no provisions concerning the amount of payment, how it is to be determined, or whether it can be adjusted after initial certification.

Unless the intent is that a facility should receive distributions for 30 years regardless of whether OTTED recertified it on an annual basis, the bill should be amended to require OTTED to notify the department if there is any change in a facility's certification status or payment. The department stated that it believes that these issues cannot not be resolved by rulemaking, however, it offered recommendations for corrections whereby an amendment may be requested after review.

Comments by OTTED

OTTED stated that it would experience minimal impact for the screening and certification process. The Department of Revenue will be required to process the payments.

No other agency or entity provided written comment on HB 289.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 7, 2001, the Committee on Tourism reported the bill favorably with four amendments. Specifically, the amendments do the following:

Amendment 1:

- Reduces the monthly distribution to the certified applicant from \$166,667 monthly to \$83,333 monthly unless OTTED notifies the Department of Revenue that the applicant is no longer certified, in which case distributions will cease:
- Requires that the monthly distribution is subject to reduction pursuant to s. 288.1170, F.S.

Amendment 2:

- Requires that as a condition of certification, the applicant has an independent analysis or study that demonstrates that the amount of revenues generated by sales tax revenues will equal or exceed \$1 million annually.
- Requires that as a condition of certification, the applicant has demonstrated that it is capable of providing, or has financial or other commitments to provide, more than one-half of the costs incurred for capital improvements to the complex which will enable it to retain or add motorsports events.

Amendment 3: (with title amendment)

- Requires OTTED to recertify annually that the complex generates \$1 million in sales tax revenues and that if the complex fails to do so, the distribution of revenues will be reduced and the reduction will remain in effect until revenues generated by the complex exceed \$1 million for a consecutive 12 month period.
- Requires OTTED to notify the Department of Revenue if it determines that the complex is no longer certified to receive distributions or if the distribution amount is to be adjusted.

Amendment 4:

- Changes the effective date from July 1, 2001, to October 1, 2001, to provide sufficient time to prepare for payment distributions.

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Monique Cheek

Staff Director:

Judy C. McDonald

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Douglas Pile

Staff Director:

Greg Turbeville

AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Rebecca R. Everhart

Council Director:

Hubert "Bo" Bohannon