

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1298

INTRODUCER: Senator Gruters

SUBJECT: Agreements with Professional Sports Teams

DATE: January 14, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1298 prohibits a governmental entity from entering into an agreement with a professional sports team that requires a financial commitment by the state or a governmental entity unless the agreement includes a written verification that the professional sports team will play the U.S. national anthem at the beginning of each team sporting event.

Failure to comply with the written verification constitutes a default and subjects the team to any penalty the agreement authorizes for default, which may include the team repaying money paid to the team by the state or governmental entity.

The agreement must be strictly enforced. Should a governmental entity fail to timely enforce the written verification, the Attorney General is authorized to intervene.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on July 1, 2022.

II. Present Situation:

Professional Sports Franchise Program

Florida is home to many professional and semi-professional sports teams, organizations and facilities, including professional football, basketball, baseball, hockey, soccer, and National Association of Stock Car Racing (NASCAR) sanctioned tracks. The Professional Sports Franchise program allows professional sports franchises to receive state sales and use tax revenue to pay for the acquisition, construction, reconstruction, or renovation of a facility for a

new or retained professional sports franchise.¹ Local governments, non-profit, and for-profit entities may apply to the program.

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding.² For both new and retained franchises, the DEO must confirm and verify the following:³

- A local government is responsible for the construction, management, or operation of the professional sports franchise facility, or holds title to the property where the facility is located.
- The applicant has a verified copy of a signed agreement with a new professional sports franchise for at least 10 years, or for 20 years in the case of a retained franchise.
- The applicant has a verified copy of the approval by the governing body of the NFL, MLB, NHL, or NBA authorizing the location of a new franchise in the state after April 1, 1987, for new professional sports franchises, or verified evidence of a league-authorization location in the state on or before December 31, 1976, for a retained professional sports franchise.
- The applicant has projections demonstrating a paid annual attendance of over 300,000.
- 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.
- The local government where the franchise’s facility is located, or the county of the facility is in an unincorporated area, has certified by resolution after a public hearing that the application serves a public purpose.
- The applicant has demonstrated that it has provided, is capable of providing, financial or other commitments of more than one-half of the costs incurred or related to the improvements or development of the franchise’s facility.

Approved applicants are eligible to receive up to \$2,000,004 per year for a period of up to 30 years.⁴ No more than eight facilities can be certified under this program at one time.⁵

Currently, eight facilities receive distributions under the Professional Sports Franchise Program. Each facility is on track to receive \$60 million, which is the maximum distribution allowable under this program (\$166,667 per month or \$2,000,004 per year, over 30 years) as follows:⁶

Facility name	Location, Certified entity, & certification date	Franchise	First and Final payments	Total payments as of Aug. 2020
BB&T Center	Sunrise, Broward County, June 1996	Florida Panthers	Aug. 1996 July 2026	\$47,833,429

¹ Section 288.1162, F.S.

² Section 288.1162(1), F.S.

³ Section 288.1162(4)(a)-(g), F.S.

⁴ Section 212.20(6)(d)6.b., F.S.

⁵ Section 288.1162(6), F.S.

⁶ Office of Program Policy Analysis and Government Accountability, *Report 20-08, Florida Economic Development Program Evaluations-Year 8*, p. 48 (Dec. 2020), available at <https://oppaga.fl.gov/Documents/Reports/20-08.pdf> (last visited Jan. 14, 2022).

TIAA Bank Field	Jacksonville, City of Jacksonville, April 1994	Jacksonville Jaguars	June 1994 May 2024	\$52,166,771
Hard Rock Stadium	Miami, South Florida Stadium Corp., May 1993	Miami Dolphins	June 1994 June 2023	\$54,000,108
American Airlines Arena	Miami, Basketball Properties, LTD, Feb. 1998	Miami Heat	March 1998 March 2028	\$44,500,089
Amway Center	Orlando, City of Orlando, Nov. 2007	Orlando Magic	Feb. 2008 Jan. 2038	\$24,833,383
Raymond James Stadium	Tampa, Hillsborough County, Nov. 1996	Tampa Bay Buccaneers	Jan. 1997 Dec. 2026	\$47,000,094
AMALIE Arena	Tampa, Tampa Bay Sports Authority, July 1995	Tampa Bay Lightning	Sept. 1995 Aug. 2025	\$49,666,766
Tropicana Field	St. Petersburg, City of St. Petersburg, July 1995	Tampa Bay Rays	July 1995 June 2025	\$50,000,100
			Total:	\$370,000,740

State Incentives for Spring Training Facilities

Spring Training Baseball Franchises

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.⁷ 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.⁸ The DEO is authorized to certify up to 10 facilities at any given time.⁹

Retention of Spring Training Baseball Franchises

Local governments that partner with a spring training baseball franchise may apply for certification from the DEO to receive state distributions for renovating or constructing a spring

⁷ Section 212.20(6)(d)6.b., F.S.

⁸ Section 288.11621(3), F.S.

⁹ Section 288.11621(2)(b), F.S.

training baseball facility.¹⁰ Certified applicants receive a distribution from state sales tax revenue of up to \$83,333 per month for 20 years for a facility used by a single spring training baseball franchise or up to \$166,667 per month for 25 years for a facility used by more than one spring baseball training franchise.¹¹ The amount of state incentive funding per certified applicant may not exceed \$20 million if the applicant's facility is used by one franchise or \$50 million if the applicant's facility is used by more than one franchise.¹²

Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹³ admissions,¹⁴ transient rentals,¹⁵ and a limited number of services. Chapter 212, F.S., contains 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.

Additionally, s. 212.20(6)(d)6, F.S., requires the Department of Revenue (DOR) to distribute specified amounts on a monthly basis to applicants certified as a sports training facility, applicants certified as the professional golf hall of fame, and applicants certified as a spring training facility.

Local Government Half-cent Sales Tax

The Local Government Half-cent Sales Tax program distributes a portion of state sales tax revenue via three separate distributions to eligible county or municipal governments. Allocation formulas serve as the basis for these separate distributions.¹⁶ The program's primary purpose is to provide relief from ad valorem and utility taxes in addition to providing counties and municipalities with revenues for local programs.¹⁷

Counties may use up to \$3 million annually of the local government half-cent sales tax for the following purposes:¹⁸

- New or retained professional sports franchises under the Professional Sports Franchise Program, or a spring training franchise under s. 288.11621, F.S.; or
- A certified applicant as a motorsport entertainment complex under s. 288.1171, F.S.¹⁹

¹⁰ Section 288.11631(1)-(2), F.S.

¹¹ Section 212.20(6)(d)6.e., F.S.

¹² Section 288.11631(2)(c), F.S.

¹³ Section 212.05(1)(a)1.a, F.S.

¹⁴ Section 212.04(b), F.S.

¹⁵ Section 212.03(1)(a), F.S.

¹⁶ Office of Economic and Demographic Research, *2021 Local Government Financial Information Handbook*, p. 55, available at <http://edr.state.fl.us/Content/local-government/reports/lgh21.pdf> (last visited Jan. 6, 2022).

¹⁷ *Id.*

¹⁸ Section 218.64(3), F.S.

¹⁹ The motorsports entertainment complex has had no applicants or funds dispersed since program inception. See Office of Program Policy Analysis and Government Accountability, *Report 20-08, Florida Economic Development Program Evaluations-Year 8*, p. 35 (Dec. 2020), available at <https://oppaga.fl.gov/Documents/Reports/20-08.pdf> (last visited Jan. 14, 2022).

III. Effect of Proposed Changes:

The bill provides that beginning July 1, 2022, a governmental entity is prohibited from entering into an agreement with a professional sports team that requires a financial commitment by the state or a governmental entity unless the agreement includes:

- A written verification that the professional sports team will play the United States national anthem at the beginning of each team sporting event²⁰ held at the team’s home venue or other facility controlled by the team for the event; and
- A provision providing that a failure to comply with the written verification:
 - Constitutes a default of the agreement.
 - Immediately subjects the team to any penalty the agreement authorizes for default, which may include repaying any money paid to the team by the state or any governmental entity or classifying the team as ineligible to receive further money under the agreement.
 - May subject the team to a prohibition on contracting with the state.

A governmental entity that enters into an agreement with a professional sports team must strictly enforce the “failure to comply” provision. The Attorney General may intervene to enforce the provision should the governmental entity fail to timely enforce the provision.

The bill takes effect on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution guarantees that “Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”²¹ The

²⁰ The bill defines a “sporting event” as any preseason, regular season, or postseason game or event of a professional sports team.

²¹ Amend I, U.S. Const.

rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.²²

The right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.²³ Speech that is mandated or compelled alters the content of speech.²⁴ A government regulation based on the content of speech is presumptively invalid and will be upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.²⁵ The government bears the burden of demonstrating the constitutionality of any such content-based regulation.²⁶

The U.S. Supreme Court rejected a private college's argument that conditioning federal funds on compliance with federal education law violated the First Amendment, finding that "Congress is free to attach reasonable and unambiguous conditions to federal financial assistance that educational institutions are not obligated to accept."²⁷ However, under the unconstitutional conditions doctrine, there is a limit on Congress' ability to place conditions on the receipt of funds.²⁸ "[T]he government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech' even if he has no entitlement to that benefit."²⁹

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V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If a professional sports team receiving funding from the state or a governmental entity does not play the national anthem per an agreement with a governmental entity, then that professional sports team could not only see a loss in distributions, but may have to repay any money paid to the team by the state or a governmental entity.

²² Amend XIV, U.S. Const., *See also* Art. I, Fla. Const.

²³ *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). *See also West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

²⁴ *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 795 (1988). *See also Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 256-58 (1974).

²⁵ *Ashcroft v. Am. Civil Liberties Union*, 521 U.S. 656-66 (2004).

²⁶ *Id.* at 660.

²⁷ *Grove City College v. Bell*, 465 U.S. 555, 575 (1984).

²⁸ *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006)

²⁹ *Board of Comm'rs, Wabaunsee Cty. v. Umbehr*, 518 U. S. 668, 674 (1996).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, the DOR distributes specified amounts to certain recipients for facilities used by sports teams. It is unclear, under the bill, if these required payments made by the DOR are considered an agreement between a governmental entity and a professional sports team. Additionally, it is unclear how the governmental entity would be notified of a default on the agreement.

The bill provides that if a governmental entity fails to timely enforce the “failure to comply” provision in the agreement, the Attorney General may step in to enforce the provision. However, it is unclear what constitutes timely enforcement.

Neither the bill nor Chapter 286, F.S., define “governmental entity.”

VIII. Statutes Affected:

This bill creates section 286.31 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.