Workforce Development & Tourism Subcommittee

Tuesday, January 28, 2020
3:30 PM – 6:30 PM
12 HOB

Meeting Packet

Jose Oliva
Speaker

Rene Plasencia
Chair

The Florida House of Representatives

Commerce Committee

Workforce Development & Tourism Subcommittee

Jose R. Oliva
Speaker

Rene Plasencia
Chair

Meeting Agenda

Tuesday, January 28, 2020
3:30 pm – 6:30 pm
12 HOB

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

HB 1369 Sports Franchises and Facilities by Pigman

Consideration of the following proposed committee bill(s):

PCB WTS 20-01 -- Intercollegiate Athlete Compensation and Rights

V. Closing Remarks

VI. Adjournment

317 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1369 Sports Franchises and Facilities
SPONSOR(S): Pigman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee		Willson MW	Barry MJB
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Florida is home to many professional and semi-professional sports franchises. Generally, the facilities where these franchises play are financed through local government-issued bonds, which are repaid using a combination of state and local tax revenues and related incentive programs. The facilities are generally located on land leased or purchased from local government.

The bill repeals the following sections of law:
- Section 288.1162, F.S., relating to Professional Sports Franchises,
- Section 288.11621, F.S., relating to Spring Training Baseball Franchises,
- Section 288.11625, F.S., relating to Sports Development,
- Section 288.11631, F.S., relating to Retention of MLB Spring Training Baseball Franchises, and
- Section 288.1171, F.S., relating to Motorsports Entertainment Complexes.

The bill prohibits the use of Tourist Development Tax or Convention Development Tax revenues to finance or construct any aspect of a facility that is or will be used by a sports franchise after July 1, 2020.

The bill amends subsections 218.64(2) & (3), F.S., removing the authority for local governments to spend the half-cent sales tax on a motorsport entertainment complex or for reimbursements under the sports development program.

The bill creates s. 288.1163, F.S., providing for certain conditions relating to sports franchise facilities and public land. Specifically, the bill:
- Prohibits a sports franchise from constructing or improving a facility on land that is leased from the state or local government.
- Requires that the lease or sale of public land to a sports franchise for a sports facility must be at fair market value.
- Specifies that a facility that is owned, operated or leased by a sports franchise is not tax exempt.
- Provides that any new or amended contract include a provision requiring the sports franchise to pay off any outstanding governmental debt in the event that the sports franchise stops using the facility.

The bill deletes subparagraph 125.35(1)(b)3., F.S., relating to the lease of professional sports franchise facilities that are financed by certain tax revenues.

The bill specifies that lawful contracts entered into before July 1, 2020, will not be affected and that the provisions of the bill will not be construed to impair existing contracts without the consent of the parties.

The bill may have an indeterminate fiscal impact on both the state and local governments.

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Incentives for Professional Sports Franchise Facilities

Professional Sports Franchise Program (s. 288.1162, F.S.)

The Professional Sports Franchise program allows professional sports franchises in Florida to receive state sales and use tax revenue to pay for the construction or renovation of a facility for a new or retained professional sports franchise.[1] Local governments, non-profit entities, and for-profit entities may apply to the program. Approved applicants are eligible to receive up to $2,000,004 per year for a period of up to 30 years.[2] No more than eight facilities can be certified under this program at one time.[3]

Currently, eight facilities receive distributions under the Professional Sports Franchise Program. Each facility is currently 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:

Facility name	Location, Certified entity, & Certification Date	Franchise	First Payment Final Payment	Lease Expiration Date	Total payments as of Jan. 2020
Hard Rock Stadium (formerly Sun Life, Land Shark, Dolphin, Pro Player, Joe Robbie)	Miami, S. FL. Stadium Corp., May 1993	Miami Marlins[4]	06/1994 06/2023	99 yr, issued 1987	$53,166,773
TIAA Field (previously EverBank Field)	Jacksonville, City of Jacksonville, April 1994	Jacksonville Jaguars	06/1994 05/2024	2030	$51,333,436
Tropicana Field	St. Petersburg, City of St. Petersburg, May 1995	Tampa Bay Rays	07/1995 06/2025	2027	$49,166,765
Amelie Arena (previously Tampa Bay Times Forum)	Tampa, Tampa Bay Sports Auth., July 1995	Tampa Bay Lightning	09/1995 08/2025	2025	$48,833,431
BB&T Center	Sunrise, Broward County, June 1996	Florida Panthers	08/1996 07/2026	2028	$47,000,094
Raymond James Stadium	Tampa, Hillsborough County, November 1996	Tampa Bay Buccaneers	01/1997 12/2026	2028	$46,166,759
American Airlines Arena	Miami, BPL, LTD, February 1998	Miami Heat	03/1998 03/2028	2030	$43,666,754
Amway Center	Orlando, City of Orlando, November 2007	Orlando Magic	02/2008 01/2038	2036	$24,000,048
(Information from the Department of Revenue[5] and OPPAGA[6])				**TOTAL:**	**$363,334,060**

[1] S. 288.1162, F.S.
[2] S. 212.20(6)(d)6.b., F.S.
[3] S. 288.1162(6), F.S.
[4] The Marlins franchise relocated from Sun Life Stadium to Marlins Park in 2012.
[5] Email from Lynne Moeller, Office of Legislative & Cabinet Services, Department of Revenue, Pro Sports summary by fiscal year as of 1-31-20 (Jan. 24, 2020).
[6] OPPAGA, *Report No. 17-13, Florida Economic Development Program Evaluations-Year 5*, p. 56 (Dec. 28, 2017).

Spring Training Baseball Franchises Program (s. 288.11621, F.S.)

The Spring Training Baseball Franchise incentive is the state's funding mechanism to attract and retain facilities for Major League Baseball (MLB) spring training in Florida. Qualified applicants are eligible for up to $500,000 annually for up to 30 years. These dollars are typically pledged with designated Tourist Development Tax revenue and other local government resources to secure bonds to fund the acquisition, construction, reconstruction or renovation of spring training facilities.

In 1991, the law establishing incentives to attract professional franchises to the state was significantly revised and expanded to include an incentive for spring training baseball franchises. Certification criteria for the spring training franchise incentive included a commitment by the franchise to use the facility for fifteen years, projections for paid attendance (at least 50,000 annually), demonstration of the financial capability to provide more than one-half of the costs incurred or related to the improvement or development of the facility, proof that the facility was located within 20 miles of an interstate or other limited-access highway system, and a requirement that the county levy a four-percent Tourist Development Tax, with 87.5% of the proceeds dedicated for the construction of the complex.[7] This law also limited the total number of awards for both the professional sports franchises and new spring training franchises to six, and prohibited facilities from receiving more than one award.

In 1999, the Legislature extended the use of the Professional Sports and Additional Professional Sports Tourist Development Taxes to fund debt service on spring training franchise facilities.[8] At that point, no local governments had applied for the incentive. In 2000, the law was amended to limit the incentive to "retained" rather than "new" spring training franchises; delete the requirement that the facility be located within 20 miles of an interstate or other limited-access highway system; establish ranking criteria for awards;[9] and limit the awards to publicly-owned facilities, authorized for in-state relocations.[10]

In 2006, the number of authorized awards for spring training facilities was expanded to ten, with the imposition of additional certification criteria. Counties were authorized to use up to $2 million of their local option half-cent sales tax revenues annually to fund facilities for new or retained professional sports franchises and facilities for retained spring training franchises.[11] Finally, the scope of the incentive was expanded in 2010, to include any spring training franchise rather than only "retained" spring training franchises,[12] and by August 2012, ten facilities were certified for the incentive.[13]

Currently, under s. 218.64(3), F.S., counties may use up to $3 million annually of the local government half-cent sales tax allocated to that county for a number of purposes, including, as specified in s. 218.64(3)(a), F.S., "funding a certified applicant as a facility for a new or retained professional sports franchise under s. 288.1162, F.S., or a certified applicant as defined in s. 288.11621, F.S., for a facility for a spring training franchise."[14]

Before certifying an applicant to receive state funding for a facility for a spring training franchise, the Department of Economic Opportunity (DEO) must verify that[15]:

- The applicant is responsible for the acquisition, construction, management, or operation of the facility for a spring training franchise or holds title to the property on which the facility for a spring training franchise is located.

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[7] Ch. 91-274, Laws of Fla.
[8] Ch. 99-287, Laws of Fla.
[9] EDR, *Return on Investment for the Florida Sports Foundation Grants and Related Programs*, p. 21. (January 2015).
[10] Ch. 2000-186, Laws of Fla.
[11] Ch. 2006-262, Laws of Fla.
[12] Ch. 2010-140, Laws of Fla. (with provisions relating to the spring training incentive were transferred from s. 288.1162 to newly created s. 288.11621, F.S.)
[13] EDR, *Return on Investment for the Florida Sports Foundation Grants and Related Programs*, p. 21.
[14] S. 218.64(3), F.S.
[15] S. 288.11621(2)(a), F.S.

- The applicant has a certified copy of a signed agreement with a spring training franchise for the use of the facility for a term of at least 20 years. The agreement also must require the franchise to reimburse the state for state funds expended by an applicant under this section if the franchise relocates before the agreement expires. The agreement may be contingent on an award of funds under this section and other pre-conditions.
- The applicant has made a financial commitment to provide 50 percent or more of the funds required by an agreement for the acquisition, construction, or renovation of the facility for a spring training franchise. The commitment may be contingent upon an award of funds under this section and other pre-conditions.
- The applicant demonstrates that the facility for a spring training franchise will attract a paid attendance of at least 50,000 annually to the spring training games.
- The facility for a spring training franchise is located in a county that levies a tourist development tax under s. 125.0104, F.S.

Each applicant certified since July 1, 2010, enters into an agreement that:[16]
- Specifies the amount of the state incentive funding to be distributed.
- States the criteria that the certified applicant must meet in order to remain certified.
- States that the certified applicant is subject to decertification if the certified applicant fails to comply with this section or the agreement.
- States that DEO may recover state incentive funds if the certified applicant is decertified.
- Specifies information that the certified applicant must report to DEO.
- Includes any provision deemed prudent by DEO.

A certified applicant may use funds provided under s. 212.20(6)(d)6.b., F.S., to:[17]
- Serve the public purpose of acquiring, constructing, reconstructing, or renovating a facility for a spring training franchise.
- Pay or pledge for the payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto, bonds issued for the acquisition, construction, reconstruction, or renovation of such facility, or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.
- Assist in the relocation of a spring training franchise from one unit of local government to another only if the governing board of the current host local government by a majority vote agrees to relocation.

Additionally, state funds awarded to a certified applicant for a facility for a spring training franchise may not be used to subsidize facilities that are privately owned, maintained, and used only by a spring training franchise.[18] The expenditure of state funds distributed to a certified applicant, must begin within 48 months after the initial receipt of the state funds, with the additional requirement of the construction of, or capital improvements to, a spring training facility being completed within 24 months after the project's commencement.[19]

Retention of MLB Spring Training Baseball Franchises Program (s. 288.11631, F.S.)

Section 288.11631, F.S., authorizes local governments that partner with a spring training baseball franchise to apply for certification from DEO to receive state distributions for the purpose of renovating or constructing a spring training baseball facility.[20]

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

[16] S. 288.11621(2)(c), F.S.
[17] S. 288.11621(3)(a), F.S.
[18] S. 288.11621(3)(b), F.S.
[19] S. 288.11621(3)(d)(3), F.S.
[20] S. 288.11631(1)–(2), F.S.

for 25 years for a facility used by more than one spring baseball training franchise.[21] 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.[22]

Section 288.11631, F.S., which became law in 2013, mostly mirrors the provisions of s. 288.11621, F.S. 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.
- 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 DEO 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.

Spring Training Facilities for Major League Baseball Franchises:

Team	Facility	Location, Certified Entity, Certification Date, Statute	Monthly Distribution, # Years Bonded, Total State Funds	First Payment Final Payment	Team's Lease Expires	Total Payments as of Jan. 2020
Detroit Tigers	Joker Marchant Stadium	Lakeland Lakeland January 2001 s. 288.1162, F.S.	$38,889 15 years $7 million	March 2001 February 2016	2016	$7,000,020
Houston Astros	Osceola County Stadium	Kissimmee Osceola County January 2001 s. 288.1162, F.S.	$41,667 15 years $7.5 million	March 2001 February 2016	2016	$7,500,060
Los Angeles Dodgers[23]	Holman Stadium (now Dodgertown)	Vero Beach Indian River County January 2001 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2001 February 2031	No lease	$9,458,409
Philadelphia Phillies	Spectrum Field (formerly Bright House Field	Clearwater Clearwater December 2006 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2001 February 2031	2023	$9,458,409
Toronto Blue Jays	Florida Auto Exchange Stadium	Dunedin Dunedin January 2001 s. 288.1162, F.S.	$41,667 20 years $10 million	March 2001 February 2023	2017	$9,458,409
Baltimore Orioles	Ed Smith Stadium	Sarasota Sarasota January 2006 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2007 March 2037	2039	$6,458,385

[21] S. 212.20(6)(d)(6)(e), F.S.
[22] S. 288.11631(2)(c), F.S.
[23] This facility, now known as Historic Dodgertown, was previously occupied by the Los Angeles Dodgers until the Dodgers moved their spring training facility to Arizona in 2008. The facility hosts local sports events that bring in amateur, high school, collegiate, and international sports teams. There is not currently a Major League Baseball team based at the facility, and it is privately owned.

New York Mets	Tradition Field	Port St. Lucie St. Lucie County December 2006 s. 288.1162, F.S.	$21,985 30 years $7.9 million	March 2007 March 2017	2016	$2,660,241
Pittsburgh Pirates	McKechnie Field	Bradenton Bradenton December 2006 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2007 March 2037	2037	$6,458,385
Tampa Bay Rays	Charlotte Sports Park	Port Charlotte Charlotte County December 2006 s. 288.1162, F.S.	$41,667 30 years $15 million	March 2007 March 2037	2028	$6,458,385
Minnesota Twins	Hammond Stadium	Ft. Myers Lee County August 2012 s. 288.11621, F.S.	$41,667 30 years $15 million	July 2013 June 2043	2045	$3,291,693
Houston Astros[24] (Recertification)	Ballpark of the Palm Beaches	West Palm Beach Palm Beach County October 2015 s. 288.11631, F.S.	$166,667 25 years $50 million	October 2016 September 2041	2048	$6,666,680
Washington Nationals	*See above*	*See above*	*See above*	*See above*	*See above*	*See above*
Detroit Tigers (Recertification)	Joker Marchant Stadium	Lakeland Lakeland December 2015 s. 288.11631, F.S.	$83,333 20 years $20 million	November 2016 October 2036	2036	$3,249,987
New York Yankees	George M. Steinbrenner Field	Tampa Tampa Sports Authority December 2016 s. 288.11631, F.S.	$83,333 20 years $20 million	January 2017 December 2036	2046	$3,083,321
New York Mets (Recertification)	First Data Field (formerly Tradition Field)	Port St. Lucie St. Lucie County March 2017 s. 288.11631, F.S.	$83,333 20 years $20 million	June 2017 May 2037	2042	$2,666,656
Atlanta Braves	CoolToday Park	City of North Port US Bank, as Trustee November 2017 s. 288.11631, F.S.	$83,333 20 years $20 million	January 2018 December 2037	*unknown*	$2,083,325
Toronto Blue Jays	Florida Auto Exchange Stadium	Dunedin US Bank Corp. Trust July 2018 s. 288.11631, F.S.	$83,333 20 years $20 million	September 2018 August 2038	*unknown*	$1,416,661
(Information from the Department of Revenue[25] and OPPAGA[26])					**TOTAL:**	**$87,369,026**

Sports Development Program (s. 288.11625, F.S.)

The Sports Development Program provides state funding for constructing, reconstructing, renovating, or improving professional sports facilities, as provided under s. 288.11625, F.S. The program is administered by DEO. In order to receive funding under the program, DEO must first recommend the

[24] The Houston Astros moved their spring training operations from Osceola County to Palm Beach County in 2015. They share the newly certified facility with the Washington Nationals.

[25] Email from Lynne Moeller, Office of Legislative & Cabinet Services, Department of Revenue, Pro Sports summary by fiscal year as of 1-31-20 (Jan. 24, 2020).

[26] OPPAGA, *Report No. 17-13, Florida Economic Development Program Evaluations-Year 5*, p. 54-55 (Dec. 28, 2017).

applicant's request for funding to the Legislature and receive approval, then certify the approved request for funding as an annual distribution amount to the Department of Revenue.

The Program is funded by state sales and use tax revenues. Individual facilities may receive up to $3 million annually, and no more than $13 million can be distributed under the Program in a single year. A facility can receive distributions for up to 30 years and up to $90 million per certified facility.

Eligible professional sport franchises include the National Football League, the National Hockey League, the National Basketball League, Major and Minor League Baseball, Major League Soccer, the North American Soccer League, the Professional Rodeo Cowboys Association, the promoter or host of a signature event administered by the Breeders' Cup Limited or the promotor of a signature event hosted by the National Association of Stock Car Auto Racing (NASCAR).

The Legislature created the Sports Development Program in 2014. To date, no facilities or applicants have been approved to receive funding and no distributions have been made under the Program.[27]

Motorsports Entertainment Complex Certification (s. 288.1171, F.S.)

Section 288.1171, F.S., provides the procedure by which a local government may receive certification for a motorsport entertainment complex in order to use $2 million of Local Government Half-cent Sales Tax Program funds to pay for certain costs associated with the complex. A motorsport entertainment complex is defined as a closed-course racing facility. As of January 2020, no local government has ever been certified for the motorsport entertainment complex program.[28]

DEO is responsible for screening and certifying applicants to allow them to use program funds for these purposes. An applicant must be a unit of local government that either owns a motorsport entertainment complex or owns the land on which a complex is located.

Before certifying an applicant as a motorsport entertainment complex, the DEO must first verify that:

- The local government holds title to the land on which the complex is located or holds title to the complex; and
- The local government in which the complex is located has certified by resolution after a public hearing that the application for certification serves a public purpose.

DEO determines an applicant meets eligibility requirements, it must notify the applicant and the Department of Revenue (DOR) of the applicant's certification through an official letter. If an applicant does not meet the requirements, the DEO must notify the applicant within 10 days of such determination. An applicant may not receive more than one certification. There are no limitations on the number of applicants that may be certified.

An applicant certified as a motorsport entertainment complex may only use funds provided from the Local Government Half-cent Sales Tax Program for the public purposes of paying for the construction, reconstruction, expansion, or renovation of a motorsport entertainment complex, including related transportation and other infrastructure improvements; paying debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds. Additional eligible uses include paying for advertising and promotional activities related to the motorsport entertainment complex or the municipality or county in which the complex is located, if such activities are designed to increase tourism or promote economic development of the municipality or county.

[27] Email from Karis Lockhart, Deputy Director of Legislative Affairs, DEO, RE: Sports Development Program (Jan. 21, 2020).
[28] *Id.*

Effect of the Bill

The bill repeals s. 288.1162, F.S., relating to Professional Sports Franchises, s. 288.11621, F.S., relating to Spring Training Baseball Franchises, s. 288.11625, F.S., relating to Sports Development, s. 288.11631, F.S., relating to Retention of MLB Spring Training Baseball Franchises, and s. 288.1171, F.S., relating to Motorsports Entertainment Complexes.

Public Financing and Sports Facilities[29]

Many stadiums and sports facilities are financed with tax-exempt bonds, which are issued through state and local governments or other public entities such as regional sports authorities. Tax-exempt bonds allow issuers to take on debt at a lower interest rate relative to taxable bonds. In turn, the underwriter is able to get a better return on their investment because their earnings are exempt from federal income tax. The maturity structure for tax-exempt bonds is typically 20 to 30 years, so it is essentially a long-term debt that is paid back over time. Tax-exempt bonds are secured by pledged revenues which are usually generated from a tax or fee. The most commonly pledged revenues for sports facilities bonds are tourist development taxes, ad valorem taxes, and sales taxes, including local option sales taxes. Annual sales tax distributions for sports facilities financing are also used to secure tax-exempt bonds. In a few instances, the bonds have been issued as general obligation debt, which means that all revenues of the issuer, regardless of the source, may be used to pay debt service, if needed. Rarely, proceeds from land sales or other non-ad-valorem revenues are also used.

The issuance of bonds provides a large amount of cash up-front that can be used for capital investment. However, most of the bonds are issued with 30-year maturity structures, which mean that a large portion of the state funding is actually used to pay the interest cost of the debt. For example, a certified professional sports facility in Florida that receives $2 million a year for 30 years pledges this $60 million to pay debt service on $30 million of bonds issued. So, the state's $60 million investment results in $30 million of up-front cash that can be used to construct or renovate a facility. The state's investment for spring training facilities is significantly less. In most cases, certified spring training facilities receive $0.5 million each year for 30 years, which typically results in about $7.5 million of cash available for the state's $15 million investment. In both programs, the amount of cash available varies up or down slightly by facility, depending on what interest rates were at the time bonds were issued.

Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services. Additionally, s. 212.20, F.S., contains statutory direction for the schedule of distributions for the professional sports franchise facility incentive programs.

Effect of the Bill

The bill amends s. 212.20, F.S., to specify that applicants who were not certified as a sports facility under the spring training franchises or the new or retained professional sports franchise programs before July 1, 2020, may not receive monthly distributions from DOR. The bill also deletes the provision authorizing distributions under the sports development program.

Tourist Development Taxes (s. 125.0104, F.S.)

Section 125.0104, F.S., authorizes the levy of five separate local option taxes on rental charges subject to the transient rentals tax under s. 212.03, F.S., to be used in various ways to promote tourism within the county. Generally, the revenues from these levies may be used for capital construction of tourist-

[29] EDR, *Return on Investment for the Florida Sports Foundation Grants and Related Programs*, p.28 (January 1, 2018).

related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the particular levy. There is a prohibition against any county levying a convention development tax from levying tourist development taxes at a rate of more than 2 percent; however, this prohibition does not apply to a county's levy of the Professional Sports Franchise Facility Tax and Duval County's levy of the Additional Professional Sports Franchise Facility Tax.

During the 2019-20 state fiscal year, 63 of the eligible 67 counties currently levying one or more of the tourist development taxes will realize an estimated $1 billion in revenue.[30]

Professional Sports Franchise Facility TDT (s. 125.0104(3)(l), F.S.)

In addition to any other tourist development tax imposed, a county may levy up to an additional 1 percent tax on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by a majority vote of the county's governing body. The tax proceeds are used to pay the debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. In addition, these proceeds can be used to promote tourism in the State of Florida, nationally and internationally.

The provisions in s. 125.0104(4)(a)–(d), F.S., regarding the preparation of the county tourist development plan, are not be applicable to this tax. In addition, the provision in s. 125.0104(3)(b), F.S., that prohibits any county authorized to levy a convention development tax from levying more than the 2 percent tourist development tax is not applicable to this tax.

During the 2019-20 state fiscal year, 44 of the eligible 67 counties currently levying this tax will realize an estimated $183 million in revenue.[31]

Additional Professional Sports Franchise Facility TDT (s. 125.0104(3)(n), F.S.)

The Additional Professional Sports Franchise Facility Tax may be levied at a rate up to 1 percent by a majority plus one vote of the governing board of the county. The tax can only be levied in counties that have imposed the Professional Sports Franchise Facility Tourist Development Tax. Generally, the proceeds can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and to promote and advertise tourism.

During the 2019-20 state fiscal year, 30 of the eligible 65 counties currently levying this tax will realize an estimated $147 million in revenue.[32]

Effect of the Bill

The bill amends paragraphs 125.0104(3)(l) & (n), F.S., to disallow a county from using the additional 1-percent taxes on certain costs related to the planning, design, or financing of a professional sports franchise facility or a retained spring training franchise facility.

The bill creates paragraph 125.0104(5)(f), F.S., to provide that Tourist Development Tax revenues may not be used to finance or construct any aspect of a facility that is or will be used by a sports franchise after July 1, 2020. The bill clarifies that lawful contracts entered into before this date are not affected.

[30] EDR, *2019 Local Government Financial Information Handbook*, p. 256.
[31] *Id. at* 267.
[32] *Id. at* 273.

Convention Development Taxes (s. 212.0305, F.S.)[33]

Certain counties or sub-parts of counties are authorized to levy convention development taxes on transient rental transactions. Duval County (as a county consolidated with a municipality), Miami-Dade County (as a charter county), and parts of Volusia County currently levy a convention development tax. Three of the five available levies are applicable to separate taxing districts in Volusia County. The levies may be authorized pursuant to an ordinance enacted by the county's governing body, and the tax rates are either two or three percent depending on the particular levy. Generally, the revenues may be used for construction of convention centers and other tourist-related facilities as well as tourist promotion; however, the authorized uses vary by levy.

In fiscal year 2019-2020, the three counties levying a convention development tax will realize an estimated $68.5 million in revenue.[34]

Effect of the Bill

The bill creates s. 212.0305(6), F.S., to provide that Convention Development Tax revenues may not be used to finance or construct any aspect of a facility that is or will be used by a sports franchise after July 1, 2020. The bill clarifies that lawful contracts entered into before this date are not affected.

Local Government Half-cent Sales Tax (s. 218.64, F.S.)

Authorized in 1982, the Local Government Half-cent Sales Tax Program generates the largest amount of revenue for local governments among the state-shared revenue sources currently authorized by the Legislature.[35] It distributes a portion of state sales tax revenue via three separate distributions to eligible county or municipal governments. Additionally, the program distributes a portion of communications services tax revenue to eligible local governments. Allocation formulas serve as the basis for these separate distributions. 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.[36]

Municipalities are authorized to spend their portion of the local government half-cent sales tax for:
- municipality-wide programs,
- reimbursing the state as required by the Sports Development Program, or
- municipality-wide property tax or municipal utility tax relief.

Counties are authorized to spend their portion of the local government half-cent sales tax for countywide tax relief or countywide programs. Subject to certain conditions, counties may also use up to $3 million annually of the local government half-cent sales tax for the following purposes:
- new or retained professional sports franchises under s. 288.1162, F.S. or a spring training franchise under s. 288.11621, F.S.
- a certified applicant as a motorsport entertainment complex under s. 288.1171, F.S., or
- reimbursing the state as required by the Sports Development Program.

Additionally, counties and municipalities are authorized to pledge proceeds of the local government half-cent sales tax for the payment of principal and interest on any capital project.

Effect of the Bill

The bill amends subsections 218.64(2) & (3), F.S., removing the authority for local governments to spend the half-cent sales tax on a motorsport entertainment complex or for reimbursements under the

[33] *Id. at* 119-120.
[34] *Id. at 121.*
[35] Ch. 82-154, Laws of Fla.
[36] EDR, *2019 Local Government Financial Information Handbook*, p. 57.

sports development program. The bill also specifies that a county can only use the half-cent sales tax on a new or retained professional sports franchise or spring training franchise facility that is certified prior to July 1, 2020.

Use of Government Land

Tax-exempt Status for Certain Infrastructure

Section 196.199, F.S., generally exempts all property of the state that is used for governmental purposes from ad valorem taxation. Additionally, property that is owned by the government but leased to a nongovernmental lessee is exempt from ad valorem taxation and the intangible tax when the lessee serves or performs a governmental, municipal, or public purpose or function, including:

> . . . The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission . . .[37]

Local Government Authority to Sell and Lease Land

Florida law provides broad authority to cities and counties to conduct governmental functions and render governmental services, except when expressly prohibited by law.[38] Such authority includes, but is not limited to, certain statutorily enumerated powers and all implied authority necessary to effectively exercise those express powers, including the authority to contract and to purchase, lease, sell, and exchange real or personal property.[39]

Counties and municipalities may also offer private entities below-market rate leases or deeds for real property for economic development purposes.

County Authority to Lease a Professional Sports Franchise

Section 125.35, F.S., authorizes the board of county commissioners to sell or lease real property belonging to the county under certain circumstances. Furthermore, counties are expressly authorized to:

> Lease a professional sports franchise facility financed by revenues received pursuant to s. 125.0104 or s. 212.20 which may include commercial development that is ancillary to the sports facility if the ancillary development property is part of or contiguous to the professional sports franchise facility. The board's authority to lease the above described ancillary commercial development in conjunction with a professional sports franchise facility lease applies only if at the time the board leases the ancillary commercial development, the professional sports franchise facility lease has been in effect for at least 10 years and such lease has at least an additional 10 years remaining in the lease term.

Alternatively, counties are authorized to adopt an ordinance prescribing the disposition standards and procedures for the county to use when selling or leasing property owned by the county.[40] At a minimum, such standards and procedures must provide for:

- Establishment of competition and qualification standards upon which disposition will be determined.

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[37] S. 196.012(6), F.S.
[38] *See* ss. 125.01 and 166.021, F.S.
[39] Ss. 125.01(3)(a) and 166.021(1), F.S. *See also* Art. VIII, s. 2, FLA. CONST.
[40] S. 125.35(3), F.S.

- Reasonable public notice of the intent to consider disposition of county property and the availability of copies of the standards. Reasonableness of the notice is to be determined by the efficacy and efficiency of the means of communication used.
- Identification of the form and manner by which an interested person may acquire county property.
- Types of negotiation procedures applicable to the selection of a person to whom county properties may be disposed.
- The manner in which interested persons will be notified of the board's intent to consider final action at a regular meeting of the board on the disposition of a property and the time and manner for making objections.
- Adherence in the disposition of real property to the governing comprehensive plan and zoning ordinances.

Effect of the Bill

The bill defines the following terms:

"Facility" means a stadium, arena, or other structure used by a sports franchise to host games or events, or any directly related property or structure, including practice facilities, offices, restaurants, concessions, retail or lodging facilities, onsite and offsite parking lots, garages, and other properties.

"Fair market value" means a negotiated price of at least the average of the values contained in two independent appraisals, performed by appraisers that meet certain minimum qualifications.

"Sports franchise" means a person or persons, sole proprietorship, corporation, limited liability company, partnership, or association that has been granted the contractual right to own or operate a professional sports team, or host a professional sporting event, in a specified location.

The bill creates s. 288.1163, F.S., providing for certain conditions relating to sports franchise facilities and public land. Specifically, the bill:

- Prohibits a sports franchise from constructing or improving a facility on land that is leased from the state or local government.
- Requires that the lease or sale of public land to a sports franchise for a sports facility must be at fair market value.
- Specifies that a facility that is owned, operated or leased by a sports franchise is not tax exempt.
- Provides that any new or amended contract include a provision requiring the sports franchise to pay off any outstanding governmental debt in the event that the sports franchise stops using the facility.
- Specifies that these provisions will not apply retroactively to existing contracts.

The bill deletes subparagraph 125.35(1)(b)3., F.S., authorizing counties to lease professional sports franchise facilities that are financed by revenues pursuant to ss. 125.0104 or s. 212.20, F.S.

The bill provides that any applications for certification under ss. 288.1162, 288.11621, 288.11625, 288.11631, or 288.1171, F.S., will be rescinded when the bill takes effect on July 1, 2020. Applicants that were certified before this date are not affected by the bill, and their contracts remain in full force and effect.

B. SECTION DIRECTORY:

Section 1 Amends s. 125.0104, F.S.; deleting provisions authorizing a county to impose a specified tax for debt service on bonds relating to sports franchise facilities and

professional sports franchises; prohibiting revenues generated by specified county taxes to be used for sports franchises after a certain date.

Section 2 Amends s. 125.35, F.S.; prohibiting a county from leasing specified professional sports franchise facilities; prohibiting revenues generated by convention development taxes to be used for sports franchises after a certain date.

Section 3 Amends s. 212.0305, F.S.; prohibiting revenues collected after a specified date to be used for sports franchise activities.

Section 4 Amends s. 212.205, F.S.; conforming a cross-reference.

Section 5 Amends s. 212.20, F.S.; conforming provisions to changes made by the act; removing a provision that distributes specified sales tax revenues to certain applicants.

Section 6 Amends s. 218.64, F.S.; conforming provisions to changes made by the act.

Section 7 Amends s. 288.0001, F.S.; deleting a provision requiring the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to provide an analysis regarding a sports development program.

Section 8 Repeals ss. 288.1162, 288.11621, 288.11625, 288.11631, and 288.1171, F.S., relating to professional sports franchises and their duties, spring training baseball franchises, sports development, and the retention of Major League Baseball spring training baseball franchises, respectively.

Section 9 Creates s. 288.11633, F.S.; prohibiting the lease of public lands for certain purposes related to sports franchises and their facilities; requiring the lease of a facility on public lands for certain purposes to be at fair market value; requiring a sports franchise to repay specified debt incurred by a local government related to construction of facilities; defining the terms "facility," "fair market value," and "sports franchise".

Section 10 Provides applicability.

Section 11 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill constrains state and local government funding mechanisms for certain private sector sports franchises and facilities.

D. FISCAL COMMENTS:

There is an indeterminate impact to state and local government expenditures because the bill constrains state and local government funding mechanisms for certain private sector sports franchises and facilities which reduce such expenditures in the future. Additionally, restriction of uses of certain local option taxes may result in fewer future levies of those taxes.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to sports franchises and facilities; amending s. 125.0104, F.S.; deleting provisions authorizing a county to impose a specified tax for debt service on bonds relating to sports franchise facilities and professional sports franchises; prohibiting revenues generated by specified county taxes to be used for sports franchises after a certain date; amending s. 125.35, F.S.; prohibiting a county from leasing specified professional sports franchise facilities; prohibiting revenues generated by convention development taxes to be used for sports franchises after a certain date; s. 212.0305, F.S.; prohibiting revenues collected after a specified date to be used for sports franchise activities; amending s. 212.205, F.S.; conforming a cross-reference; amending s. 212.20, F.S.; conforming provisions to changes made by the act; removing a provision that distributes specified sales tax revenues to certain applicants; amending s. 218.64, F.S.; conforming provisions to changes made by the act; amending s. 288.0001, F.S.; deleting a provision requiring the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to provide an analysis regarding a

sports development program; repealing ss. 288.1162, 288.11621, 288.11625, 288.11631, and 288.1171, F.S., relating to professional sports franchises and their duties, spring training baseball franchises, sports development, and the retention of Major League Baseball spring training baseball franchises, respectively; creating s. 288.11633, F.S.; prohibiting the lease of public lands for certain purposes related to sports franchises and their facilities; requiring the lease of a facility on public lands for certain purposes to be at fair market value; requiring a sports franchise to repay specified debt incurred by a local government related to construction of facilities; defining the terms "facility," "fair market value," and "sports franchise"; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (l) and (n) of subsection (3) of section 125.0104, Florida Statutes, are amended, and a new paragraph (f) is added to subsection (5) of that section, to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

(1) In addition to any other tax which is imposed pursuant to this section, a county may impose up to an additional 1-percent tax on the exercise of the privilege described in paragraph (a) by majority vote of the governing board of the county in order to:

~~1. Pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a professional sports franchise facility, or the acquisition, construction, reconstruction, or renovation of a retained spring training franchise facility, either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds.~~

1.~~2.~~ Pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a convention center, and to pay the planning and design costs incurred prior to the issuance of such bonds.

2.~~3.~~ Pay the operation and maintenance costs of a convention center for a period of up to 10 years. Only counties that have elected to levy the tax for the purposes authorized in subparagraph 1. ~~subparagraph 2.~~ may use the tax for the purposes enumerated in this subparagraph. Any county that elects to levy

the tax for the purposes authorized in subparagraph 1. ~~subparagraph 2.~~ after July 1, 2000, may use the proceeds of the tax to pay the operation and maintenance costs of a convention center for the life of the bonds.

3.~~4.~~ Promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

The provision of paragraph (b) which prohibits any county authorized to levy a convention development tax pursuant to s. 212.0305 from levying more than the 2-percent tax authorized by this section, and the provisions of paragraphs (4)(a)-(d), shall not apply to the additional tax authorized in this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph shall be the first day of the second month following approval of the ordinance by the governing board or the first day of any subsequent month as may be specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance.

(n) In addition to any other tax that is imposed under this section, a county that has imposed the tax under paragraph

(l) may impose an additional tax that is no greater than 1 percent on the exercise of the privilege described in paragraph (a) by a majority plus one vote of the membership of the board of county commissioners in order to~~:~~

~~1. Pay the debt service on bonds issued to finance:~~

~~a. The construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a new professional sports franchise as defined in s. 288.1162.~~

~~b. The acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.~~

~~2.~~ promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

~~A county that imposes the tax authorized in this paragraph may not expend any ad valorem tax revenues for the acquisition, construction, reconstruction, or renovation of a facility for which tax revenues are used pursuant to subparagraph 1.~~ The provision of paragraph (b) which prohibits any county authorized to levy a convention development tax pursuant to s. 212.0305 from levying more than the 2-percent tax authorized by this section shall not apply to the additional tax authorized by this paragraph in counties which levy convention development taxes pursuant to s. 212.0305(4)(a). Subsection (4) does not apply to the adoption of the additional tax authorized in this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph is the first day of the second month following approval of the ordinance by the board of county commissioners or the first day of any subsequent month specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of the ordinance.

(5) AUTHORIZED USES OF REVENUE.—

(f) Beginning July 1, 2020, revenues collected pursuant to this section may not be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, finance, refinance, make debt service payments for, or be used as collateral, pledge, or capital contribution for any project or

business arrangement involving a facility that is or will be used by a sports franchise as defined in s. 288.11633. Nothing in this paragraph impairs or affects the obligations or terms of any lawful contract entered into before July 1, 2020.

Section 2. Paragraph (b) of subsection (1) of section 125.35, Florida Statutes, is amended to read:

125.35 County authorized to sell real and personal property and to lease real property.—

(1)

(b) Notwithstanding paragraph (a), under terms and conditions negotiated by the board, the board of county commissioners may:

1. Negotiate the lease of an airport or seaport facility; or

2. Modify or extend an existing lease of real property for an additional term not to exceed 25 years, where the improved value of the lease has an appraised value in excess of $20 million.~~; or~~

~~3. Lease a professional sports franchise facility financed by revenues received pursuant to s. 125.0104 or s. 212.20 which may include commercial development that is ancillary to the sports facility if the ancillary development property is part of or contiguous to the professional sports franchise facility. The board's authority to lease the above described ancillary commercial development in conjunction with a professional sports~~

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~~franchise facility lease applies only if at the time the board leases the ancillary commercial development, the professional sports franchise facility lease has been in effect for at least 10 years and such lease has at least an additional 10 years remaining in the lease term.~~

Section 3. Subsection (6) is added to section 212.0305, Florida Statutes, to read:

212.0305 Convention development taxes; intent; administration; authorization; use of proceeds.—

(6) Beginning July 1, 2020, revenues collected pursuant to this section may not be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, finance, refinance, make debt service payments for, or be used as collateral, pledge, or capital contribution for any project or business arrangement involving a facility that is or will be used by a sports franchise as defined in s. 288.11633. Nothing in this subsection impairs or affects the obligations or terms of any lawful contract entered into before July 1, 2020.

Section 4. Section 212.205, Florida Statutes, is amended to read:

212.205 Sales tax distribution reporting.—By March 15 of each year, each person who received a distribution pursuant to s. 212.20(6)(d)6.b.-e. ~~s. 212.20(6)(d)6.b.-f.~~ in the preceding calendar year shall report to the Office of Economic and Demographic Research the following information:

(1) An itemized accounting of all expenditures of the funds distributed in the preceding calendar year, including amounts spent on debt service.

(2) A statement indicating what portion of the distributed funds have been pledged for debt service.

(3) The original principal amount and current debt service schedule of any bonds or other borrowing for which the distributed funds have been pledged for debt service.

Section 5. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and ss. 202.18(1)(b) and (2)(b) and 203.01(1)(a)3. is as follows:

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.9744

percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1. and 2., 0.0966 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

4. After the distributions under subparagraphs 1., 2., and 3., 2.0810 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3653 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall

receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal year on or before January 5th and continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or

relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 before July 1, 2000.

b. The department shall distribute $166,667 monthly to each applicant certified before July 1, 2020, as a facility for a new or retained professional sports franchise pursuant to s. 288.1162, Florida Statutes 2019. Up to $41,667 shall be distributed monthly by the department to each applicant that was certified before July 1, 2020, as a certified applicant as defined in s. 288.11621, Florida Statutes 2019 for a facility for a spring training franchise. However, not more than $416,670 may be distributed monthly in the aggregate to all certified applicants for facilities for spring training franchises. Distributions begin 60 days after such certification and continue for not more than 30 years, except as otherwise provided in s. 288.11621, Florida Statutes 2019. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.1162(5) or s. 288.11621(3), Florida Statutes 2019.

c. Beginning 30 days after notice by the Department of

Economic Opportunity to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made after certification and before July 1, 2000.

e. The department shall distribute up to $83,333 monthly to each applicant that was certified before July 1, 2020, as a certified applicant as defined in s. 288.11631, Florida Statutes 2019 for a facility used by a single spring training franchise, or up to $166,667 monthly to each applicant that was certified before July 1, 2020, as a certified applicant as defined in s. 288.11631, Florida Statutes 2019 for a facility used by more than one spring training franchise. Monthly distributions begin 60 days after such certification or July 1, 2016, whichever is later, and continue for not more than 20 years to each applicant that was certified before July 1, 2020, as a certified applicant

as defined in s. 288.11631, Florida Statutes 2019 for a facility used by a single spring training franchise or not more than 25 years to each applicant that was certified before July 1, 2020, as a certified applicant as defined in s. 288.11631, Florida Statutes 2019 for a facility used by more than one spring training franchise. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided in s. 288.11631(3), Florida Statutes 2019.

~~f. Beginning 45 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been approved by the Legislature and certified by the Department of Economic Opportunity under s. 288.11625 or upon a date specified by the Department of Economic Opportunity as provided under s. 288.11625(6)(d), the department shall distribute each month an amount equal to one-twelfth of the annual distribution amount certified by the Department of Economic Opportunity for the applicant. The department may not distribute more than $7 million in the 2014-2015 fiscal year or more than $13 million annually thereafter under this sub-subparagraph.~~

f.~~g. Beginning December 1, 2015, and ending June 30, 2016, the department shall distribute $26,286 monthly to the State Transportation Trust Fund.~~ Beginning July 1, 2016, the department shall distribute $15,333 monthly to the State

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Transportation Trust Fund.

7. All other proceeds must remain in the General Revenue Fund.

Section 6. Subsections (2) and (3) of section 218.64, Florida Statutes, are amended to read:

218.64 Local government half-cent sales tax; uses; limitations.—

(2) Municipalities shall expend their portions of the local government half-cent sales tax only for municipality-wide programs~~, for reimbursing the state as required pursuant to s. 288.11625,~~ or for municipality-wide property tax or municipal utility tax relief. All utility tax rate reductions afforded by participation in the local government half-cent sales tax shall be applied uniformly across all types of taxed utility services.

(3) Subject to ordinances enacted by the majority of the members of the county governing authority and by the majority of the members of the governing authorities of municipalities representing at least 50 percent of the municipal population of such county, counties may use up to $3 million annually of the local government half-cent sales tax allocated to that county if the money provides funds for ~~any of the following purposes:~~

~~(a) Funding~~ an ~~a certified~~ applicant that was certified before July 1, 2020, as a facility for a new or retained professional sports franchise under s. 288.1162, Florida Statutes 2019 or an applicant that was certified before July 1,

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2020, as a certified applicant as defined in s. 288.11621, Florida Statutes 2019 for a facility for a spring training franchise. It is the Legislature's intent that the provisions of s. 288.1162, Florida Statutes 2019, including, but not limited to, the evaluation process by the Department of Economic Opportunity except for the limitation on the number of certified applicants or facilities as provided in that section and the restrictions set forth in s. 288.1162(8), Florida Statutes 2019, shall apply to an application that was submitted for a facility before July 1, 2020, ~~applicant's facility~~ to be funded by local government as provided in this subsection.

~~(b) Funding a certified applicant as a "motorsport entertainment complex," as provided for in s. 288.1171. Funding for each franchise or motorsport complex shall begin 60 days after certification and shall continue for not more than 30 years.~~

~~(c) Reimbursing the state as required under s. 288.11625.~~

Section 7. Paragraphs (b) and (e) of subsection (2) of section 288.0001, Florida Statutes, are amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic

Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. VISIT Florida and its programs established or funded under ss. 288.122, 288.1226, 288.12265, and 288.124.

4. The Florida Sports Foundation and related programs established under ss. ~~288.1162, 288.11621,~~ 288.1166, 288.1167, 288.1168, 288.1169, and under former ss. 288.1162 and 288.11621 ~~and 288.1171~~.

~~(c) Beginning January 1, 2018, and every 3 years thereafter, an analysis of the Sports Development Program established under s. 288.11625.~~

Section 8. Sections 288.1162, 288.11621, 288.11625, 288.11631, and 288.1171, Florida Statutes, are repealed.

Section 9. Section 288.11633, Florida Statutes, is created to read:

288.11633 Sports franchise facilities; lease or sale of public land.—

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(1) Notwithstanding any other provision of law:

(a) A sports franchise may not construct, reconstruct, renovate, or improve a facility on land leased from the state or a political subdivision thereof.

(b) A lease of a facility on public land owned by the state or a political subdivision to a sports franchise must be at fair market value.

(c) A sale of public land owned by the state or a political subdivision for a sports franchise to construct, reconstruct, renovate, or improve a facility on such land must be at fair market value.

(d) A facility that is owned, operated, or leased by a sports franchise does not serve a tax-exempt purpose and is not exempt from taxation.

(2) On or after July 1, 2020, a contract or agreement, or a renewal of or an amendment to an existing contract or agreement, entered into between the state or a political subdivision and a sports franchise to fund the construction, reconstruction, renovation, or improvement of a facility must include a provision that requires the sports franchise to pay any outstanding debt incurred by the state or political subdivision to fund such construction, reconstruction, renovation, or improvement if the sports franchise permanently discontinues use of the facility.

(3) For purposes of this section, the term:

(a) "Facility" means a stadium, arena, or other structure used by a sports franchise to host games or events, or any directly related property or structure, including practice facilities, offices, restaurants, concessions, retail or lodging facilities, onsite and offsite parking lots, garages, and other properties.

(b) "Fair market value" means a negotiated price of at least the average of the values contained in two independent appraisals, performed by appraisers approved pursuant to s. 253.025(8).

(c) "Sports franchise" means a person or persons, sole proprietorship, corporation, limited liability company, partnership, or association that has been granted the contractual right to own or operate a professional sports team, or host a professional sporting event, in a specified location.

(4) Nothing in this section impairs any lawful contract entered into before July 1, 2020, without the consent of the parties.

Section 10. All applications for certification pending pursuant to s. 288.1162, s. 288.11621, s. 288.11625, s. 288.11631, or 288.1171, Florida Statutes, on July 1, 2020, are rescinded. Applicants or projects that were certified before July 1, 2020, and that continue to meet the criteria in effect before July 1, 2020, remain in full force and effect. In addition, any existing contracts or agreements authorized under

any of these programs continue in full force and effect in accordance with the statutory requirements in effect when the contract or agreement was executed or last modified. However, no further modifications, extensions, or waivers may be made or granted relating to such contracts or agreements except computations by the Department of Revenue of the income generated by or arising out of any qualifying project.

Section 11. This act shall take effect July 1, 2020.

PCB WTS 20-01

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB WTS 20-01 Intercollegiate Athlete Compensation and Rights
SPONSOR(S): Workforce Development & Tourism Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Workforce Development & Tourism Subcommittee		Willson MW	Barry MJB

SUMMARY ANALYSIS

The National Collegiate Athletic Association (NCAA) is a nonprofit organization whose voluntary membership includes colleges, universities, athletic conferences, and other affiliated organizations. The NCAA regulates intercollegiate athletic competitions in various sports across multiple divisions. As the governing body for the majority of intercollegiate athletic programs, the NCAA provides that its basic purpose is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports." NCAA rules prohibit student-athletes from being paid for the use of their names, images, and likenesses.

The bill authorizes intercollegiate athletes to earn compensation for their name, image, likeness, or persona (NILP). The bill seeks to preserve the integrity, quality, character, and amateur nature of intercollegiate athletics while maintaining a clear distinction between amateur and professional sports by:

- Providing that compensation for athletic performance or attendance at a particular institution remains prohibited.
- Allowing NILP compensation only if it is provided by a third party unaffiliated with the athlete's postsecondary educational institution.

The bill prohibits postsecondary educational institutions receiving state aid (Florida College System institutions, State University System institutions, and private colleges and universities) from:

- Preventing or unduly restricting an intercollegiate athlete from earning NILP compensation.
- Preventing or unduly restricting an intercollegiate athlete from obtaining professional representation for purposes of seeking NILP compensation.
- Revoking or reducing grant-in-aid awards for an intercollegiate athlete who earns compensation for his or her NILP.

The bill specifies that the terms of a contract for NILP compensation may not conflict with the terms of the intercollegiate athlete's team contract or extend beyond the time of the athlete's participation in an athletic program at a postsecondary educational institution.

In addition, the bill requires each postsecondary educational institution receiving state aid to:

- Provide intercollegiate athletes with health and disability insurance for the time it takes the athlete to recover from the sports-related injury and a death benefit of $25,000, subject to certain conditions.
- Maintain grant-in-aid for intercollegiate athletes until the athlete graduates, under certain circumstances.
- Conduct a financial and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years.

The bill will have an indeterminate fiscal impact on certain postsecondary educational institutions.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

National Collegiate Athletic Association

The National Collegiate Athletic Association (NCAA) is a nonprofit organization whose voluntary membership includes colleges, universities, athletic conferences, and other affiliated organizations. The NCAA regulates intercollegiate athletic competitions in various sports across three divisions (Division I, Division II, and Division III). As the governing body for the majority of intercollegiate athletic programs, the NCAA provides that its basic purpose is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports."[1]

The NCAA issues and enforces rules governing athletic competitions among its member schools. The rules are developed by a member-led governance system in which members introduce and vote on proposed rules. The rules for student-athletes vary by division. In general, the NCAA's amateurism rules prohibit student-athletes from being paid for their athletic abilities, including being paid for commercial endorsements if the reason for being chosen for the commercial endorsement is because of the student's athletic ability. This prohibition includes compensation for the use of a student-athlete's name, image, and likeness in live games, telecast, videogames, and other footage.

Student-athletes are allowed to receive scholarships, or "grants-in-aid," which may cover tuition and fees, room and board, required course-related books, food, and cash stipends to help defray the actual cost of attending school. However, NCAA rules prohibit a student's grant-in-aid from exceeding the cost of attendance at their school.[2]

The NCAA, along with member colleges and universities, award nearly $3.5 billion in athletic scholarships every year to more than 180,000 student-athletes. According to the NCAA, they also provide almost $100 million each year to support student-athletes' academic pursuits and assist them with the basic needs of college life, such as a computer, clothing or emergency travel expenses.[3]

Florida Intercollegiate Athletic Programs

In Florida, 13 schools participate in NCAA Division I athletics, of which 7 compete in the Football Bowl Subdivision, 4 compete in the Football Championship Subdivision, and 2 do not field football teams. There are 13 NCAA Division II athletic programs located in the state, and no NCAA Division III athletic programs. Additionally, Florida is home to 25 institutions participating in the National Junior College Athletic Association (NJCAA), 10 institutions participating in the National Association of Intercollegiate Athletics (NAIA), and 3 institutions participating in the National Christian College Athletic Association (NCCAA).

[1] NCAA Bylaw 1.3.1. https://web3.ncaa.org/lsdbi/reports/getReport/90008 (last visited Jan. 23, 2020).
[2] NCAA Bylaw 2.13.
[3] NCAA, *Finances*, https://www.ncaa.org/about/resources/finances (last visited Jan. 23, 2020).

NCAA Division I Intercollegiate Athletic Programs[4]

Institution Name	Classification	Total Undergraduates	Total Expenses	Total Revenue
Florida State University	FBS	29,187	$ 167,054,375.00	$ 177,512,950.00
University of Florida	FBS	30,887	$ 157,240,476.00	$ 157,240,476.00
University of Miami	FBS	10,134	$ 94,723,980.00	$ 94,723,980.00
University of Central Florida	FBS	39,685	$ 60,069,492.00	$ 60,069,492.00
University of South Florida	FBS	24,342	$ 51,710,233.00	$ 51,710,233.00
Florida International University	FBS	26,210	$ 31,172,655.00	$ 38,240,735.00
Florida Atlantic University	FBS	15,907	$ 27,662,831.00	$ 27,662,831.00
Stetson University	FCS	2,998	$ 19,391,731.00	$ 19,391,731.00
Jacksonville University	FCS	2,174	$ 17,180,946.00	$ 17,180,946.00
Florida Gulf Coast University	(no football)	10,821	$ 15,037,882.00	$ 15,037,882.00
Bethune-Cookman University	FCS	3,751	$ 14,397,984.00	$ 14,397,984.00
University of North Florida	(no football)	10,147	$ 11,835,623.00	$ 12,546,853.00
FAMU	FCS	6,852	$ 9,922,955.00	$ 9,922,955.00

Florida Postsecondary Education System

There are various forms of financial assistance available to students in Florida's postsecondary intuitions.[5] These include:[6]

- Gift Aid: Type of financial assistance that does not have to be paid back.
- Grant: A type of student financial assistance, usually based on financial need, designed to assist with educational costs and which has no repayment conditions.
- Loan: A type of student financial assistance that must be repaid.
- Scholarship: A type of student financial assistance based on specific criteria which does not have to be repaid.

Florida Statutes identify a number of publicly funded academic, need, and workforce based scholarships.[7] However, athletic scholarships are not provided for in Florida Statutes. Individual schools award athletic scholarships and grants-in-aid to student athletes.[8] This financial assistance may not exceed the cost of attendance.[9] "Cost of attendance" is defined as the average cost for a student to attend a postsecondary institution for one academic year, which includes the cost of tuition and fees, books and supplies, room and board, transportation, and personal expenses.[10] In Florida's State University System, the average cost of attendance per semester in the 2019-20 school year was $11,232.[11]

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[4] *See generally*, U.S. Department of Education, *Equity in Athletics Data Analysis*, https://ope.ed.gov/athletics/#/customdata/search (last visited Jan. 23, 2020).

[5] Office of Student Financial Assistance, *Financial Aid Terms and Definitions*, https://www.floridastudentfinancialaidsg.org/pdf/TermsAndDefinitions.pdf (last visited Jan. 23, 2020). "Post-secondary institution" is defined as an institution providing educational training opportunities beyond the high school level and awarding degrees, diplomas, or certificates.

[6] *Id.*

[7] *See* ss. 1009.40-1009.894, F.S.

[8] NCAA Recruiting Facts, http://www.ncaa.org/sites/default/files/Recruiting%20Fact%20Sheet%20WEB.pdf. (last visited Jan. 23, 2020).

[9] NCAA Bylaw 15.01.6.1.

[10] Office of Student Financial Assistance, *supra* at 2.

[11] State University System of Florida, *2019-2020 Cost of Attendance*, https://www.flbog.edu/wp-content/uploads/Cost-Attendance-2019-20-FINAL.pdf. (last visited Jan. 23, 2020).

State University System of Florida Fall/Spring Cost of Attendance On-Campus for Full-Time Undergraduate Florida Residents 2019-20						
University	Tuition & Fees	Books & Supplies	Room & Board	Transportation	Other Expenses	Total
FAMU	$4,554	$1,138	$10,986	$1,356	$5,398	$23,432
FAU	5,432	1,248	11,950	2,172	5,210	26,012
FGCU	6,118	1,200	9,672	1,700	1,700	20,390
FIU	6,558	1,350	11,136	2,202	2,612	23,858
FLPoly	4,940	1,200	11,471	2,000	2,000	21,611
FSU	5,666	1,000	10,780	1,180	3,830	22,456
NCF	6,916	1,200	9,529	1,100	2,170	20,915
UCF	5,954	1,200	10,010	1,866	3,104	22,134
UF	6,380	850	10,220	1,110	2,650	21,210
UNF	6,590	1,200	9,720	2,823	1,247	21,580
USF St. Petersburg	5,821	1,100	11,836	1,600	2,500	22,857
USF Tampa	6,410	1,100	11,836	1,600	2,500	23,446
UWF	6,360	1,600	10,062	1,800	2,300	22,122
Average Cost per Semester:	**$2,988**	**$592**	**$5,354**	**$866**	**$1,432**	**11,232**

Source: Annual Survey of SUS Institutions

Notes: Costs that make up the "Other Expense" category can include but are not limited to the following: clothing maintenance/laundry, computer/cell phone, student health insurance, and other personal costs.

USF-Sarasota Manatee is not included in this table because this institution does not have residential students.

NCAA Report on 2018 Division I Revenues and Expenses[12]

In 2018, over 1,100 NCAA schools spent more than $18 billion on athletics while generating only $10.3 billion in revenues. Of the total expenditures in 2018, $3.5 billion went toward financial aid for student-athletes and $3.4 billion was spent on coaches' compensation. In total, only 29 athletic departments had revenues that exceeded expenditures - all of them Power 5 schools[13] - with an average surplus of $9.3 million. In 2018, Power 5 schools accounted for 73% of all NCAA revenues and 43% of total spending. As a whole, Division I schools accounted for 97% of all NCAA revenues and 83% of spending.

In 2018, median athletic expenses exceeded revenues by $2.6 million at Power 5 schools, approximately $22 million at non-Power 5 Division I schools, and $13.3 million at Division I schools without football.[14] Expenses exceeded revenues at every FCS institution as well.[15] Schools subsidize athletic deficits with student activity fees, direct support from the university, and other means.

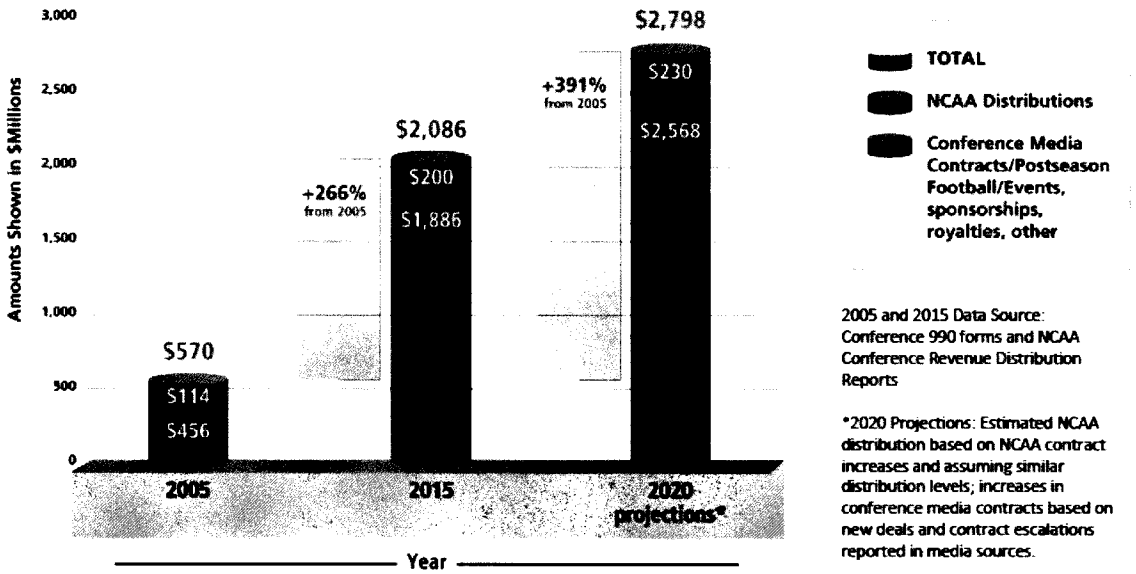
[12] NCAA, *Finances of Intercollegiate Athletics,* http://www.ncaa.org/about/resources/research/finances-intercollegiate-athletics (last visited Jan. 23, 2020).

[13] In 2014, the NCAA granted certain autonomy to five athletic conferences and their 65 member institutions, known as the "autonomy" or "Power 5" conferences. NCAA Bylaw 5.3.2.1. The "Power 5" or "autonomy" conferences are comprised by the Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference and Southeastern Conference. Power 5 schools compete in the Football Bowl Subdivision (FBS) and they generate the most revenue (from ticket sales, broadcast rights, NCAA and conference distributions, etc.) in college athletics.

[14] NCAA, *Finances of Intercollegiate Athletics*, http://www.ncaa.org/about/resources/research/finances-intercollegiate-athletics (last visited Jan. 23, 2020).

[15] *Id.*

Revenues for Autonomous 5 Conferences
(ACC, Big 10, Big 12, PAC-12, SEC)



Source: Knight Commission on Intercollegiate Athletics[16]

Amateurism

Notwithstanding the substantial revenues involved in intercollegiate athletics today, amateurism remains central to the NCAA model. The NCAA Constitution states:

> The Principle of Amateurism. Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.[17]

The NCAA Constitution further specifies that, relating to "amateur status," an individual loses amateur status and is not eligible for intercollegiate competition in a particular sport if the individual:

> (a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
> (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
> (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;
> (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations;
> (e) Competes on any professional athletics team per Bylaw 12.02.12, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1;
> (f) After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or

[16] Knight Commission on Intercollegiate Athletics, *Finances of College Sports* https://www.knightcommission.org/wp-content/uploads/2016/10/2015-conferencerevenues.pdf (last visited Jan. 23, 2020).
[17] NCAA Bylaw 2.9.

(g) Enters into an agreement with an agent.[18]

Notably, the NCAA lacks a clear or consistent definition for the term "amateurism." Courts have observed that the NCAA's definition is "malleable, changing frequently over time in significant and contradictory ways" and have even gone so far as to say that amateurism is not "a core principle of the NCAA."[19] Examples of permissible income under NCAA rules include:

- NCAA rules allow two-sport athletes to be paid professionals in one sport while competing in a different college sport, such as Kyle Parker's $1.4 million baseball signing bonus while serving as Clemson's quarterback in 2010.
- University of Texas swimmer Joseph Schooling received a $740,000 bonus from Singapore for winning a gold medal at the 2016 Olympics.
- Tennis players can receive up to $10,000 per year in prize money (and additional cash on a per-event basis) before or during college.
- College football players can receive bowl gifts up to $550 in value, which can involve players selecting high-tech electronics from a gift suite or receiving a Visa gift card.
- Schools have student-assistance funds to help athletes financially, including insurance policies for elite athletes who want to protect their professional futures.[20]
- Student-athletes are permitted to accept Pell grants above and beyond their cost of attendance.[21]

However, a University of Central Florida football kicker was recently ruled ineligible by the NCAA because of the income that he receives from his monetized YouTube channel.[22]

Name, Image, and Likeness

Individuals have a property right in their name, image, and likeness.[23] However, the NCAA prohibits student-athletes from being paid for the use of their names, images, and likenesses.[24] Many student-athletes generate significant value in their name, image, and likeness and could receive significant compensation for them in an open market.[25] In recent years, the NCAA's policy of prohibiting student-athletes from receiving compensation for the use of their names, images, and likenesses has attracted legal challenges, which alleged that the NCAA's prohibition is an unlawful restraint of trade and violates antitrust laws.

In general, federal and state antitrust laws are intended to promote and foster competition in the marketplace and prevent anticompetitive mergers and business practices. The NCAA and its member institutions have traditionally been viewed by the courts as different from professional leagues, and for

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[18] NCAA Bylaw 12.1.2.

[19] *O'Bannon v. National Collegiate Athletic Ass'n*, 802 F.3d 1049, 1058-9 (9th Cir. 2015).

[20] Jon Solomon, *The History Behind the Debate Over Paying NCAA Athletes* (April 23, 2018), https://www.aspeninstitute.org/blog-posts/history-behind-debate-paying-ncaa-athletes (last visited Jan. 23, 2020).

[21] *O'Bannon*, 802 F.3d at 1059.

[22] Katherine Mannion, *NCAA Amateurism Rules Promote Integrity at a Price,* JURIS Magazine (Oct 21, 2017). http://sites.law.duq.edu/juris/2017/10/21/ncaa-amateurism-rules-promote-integrity-at-a-price (last visited Jan. 23, 2020).

[23] Gabe Feldman, *The NCAA and "Non-Game Related" Student-Athlete Name, Image and Likeness Restrictions,* Knight Commission on Intercollegiate Athletics (May 2016) at 3. https://www.knightcommission.org/wp-content/uploads/2008/10/feldman_nil_white_paper_may_2016.pdf (last visited Jan. 24, 2020).
The "right of publicity" is intended to assure an individual the right to own, protect, and commercially exploit his or her name, likeness, or persona. This right is part of the common law right of privacy now codified in s. 540.08, F.S. *See*, Robert C. Sanchez, *Unauthorized Appropriation of an Individual's Name or Likeness-Florida's Appellate Courts and 540.0*, Florida Bar Journal Vol. 72, No. 7, at 57. (Jul./Aug. 1998).

[24] *O'Bannon*, 802 F.3d at 1052.

[25] Feldman, *supra* at 3.

this reason have been allowed to implement certain restrictions on competition that many argue are necessary for intercollegiate athletics to exist.[26]

In *O'Bannon v. NCAA*, the U.S. Court of Appeals for the Ninth Circuit found that student-athletes may be injured as a result of the NCAA rules excluding athletes from the market for their names, images, and likenesses, but concluded that the NCAA is only required to "permit its schools to provide up to the cost of attendance to their student athletes."[27]

Recent Developments

On September 11, 2019, the California Legislature passed SB 206, the "Fair Pay to Play Act", the first law of its kind in the U.S. allowing college student-athletes to benefit financially from their name, image and likeness, beginning January 1, 2023.

On the same day, the NCAA Board of Governors responded, in part: "We urge the state of California to reconsider this harmful and, we believe, unconstitutional bill and hope the state will be a constructive partner in our efforts to develop a fair name, image and likeness approach for all 50 states."[28] When SB 206 was signed into law a few weeks later, the NCAA released a statement which acknowledged the need for changes in its approach to the name, image, and likeness rights of its student-athletes.[29]

On October 29, 2019, the NCAA's top governing board voted unanimously to permit students participating in athletics the opportunity to benefit from the use of their name, image and likeness in a manner consistent with the collegiate model.[30] Specifically, the board stated that modernization should occur within the following principles and guidelines:

- Assure student-athletes are treated similarly to non-athlete students unless a compelling reason exists to differentiate.
- Maintain the priorities of education and the collegiate experience to provide opportunities for student-athlete success.
- Ensure rules are transparent, focused and enforceable and facilitate fair and balanced competition.
- Make clear the distinction between collegiate and professional opportunities.
- Make clear that compensation for athletic performance or participation is impermissible.
- Reaffirm that student-athletes are students first and not employees of the university.
- Enhance principles of diversity, inclusion and gender equity.
- Protect the recruiting environment and prohibit inducements to select, remain at, or transfer to a specific institution.[31]

Athlete Agents

Background

The licensing and regulation of athlete agents in Florida is a state government function administered by the Department of Business and Professional Regulation (DBPR). DBPR processes licenses and

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[26] Feldman, *supra* at 3.
[27] *O'Bannon,* 802 F.3d at 1079.
[28] NCAA, *NCAA responds to California Senate Bill 206* (Sept. 11, 2019) http://www.ncaa.org/about/resources/media-center/news/ncaa-responds-california-senate-bill-206 (last visited Jan. 23, 2020).
[29] NCAA, *NCAA statement on Gov. Newsom signing SB 206* (Sept. 30, 2019) http://www.ncaa.org/about/resources/media-center/news/ncaa-statement-gov-newsom-signing-sb-206 (last visited Jan. 23, 2020).
[30] NCAA, *Board of Governors starts process to enhance name, image and likeness opportunities* (Oct. 29, 2019) http://www.ncaa.org/about/resources/media-center/news/board-governors-starts-process-enhance-name-image-and-likeness-opportunities (last visited Jan. 23, 2020).
[31] *Id.*

responds to consumer complaints and inquiries in addition to monitoring activities and compliance within the athlete agent industry.

An "athlete agent" is a person:

- who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or
- who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or
- who, with any promoter, markets or attempts to market the student athlete's athletic ability or athletic reputation.[32]

The term "athlete agent" includes all employees and other persons acting on behalf of an athlete agent who participate in the activities included under this subsection. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

A "student athlete" is any student who:

- resides in Florida and participates or formally intends to participate in a college or university's intercollegiate athletics; or
- does not reside in Florida, but participates or formally intends to participate in a Florida college or university's intercollegiate athletics.[33]

An "agent contract" is the contract or agreement in which a student athlete authorizes an athlete agent to represent the student in the marketing of the student's athletic ability or athletic reputation.[34] In order to be valid, such contract is specifically required to include any fees paid to the agent and indicate how such fee is calculated. The athlete agent is also required to follow certain procedures during the contracting process, such as alerting the athletic director of the educational institution of the existence of the agent contract. The contracts are generally voidable by the student athlete within 14 days of execution.[35]

In order to be licensed as an athlete agent, an applicant must be at least 18 years of age, of good moral character, and have completed the application form with fingerprints for a background check. Applicants must remit to DBPR an initial application fee of $250, an initial licensure fee of $375, an unlicensed activity fee of $5, and a biennial renewal fee of $220.[36]

Athlete agents must establish and maintain complete business and financial records. The athlete agent is required to "save each entry into a financial or business record for at least 5 years from the date of entry."[37] DBPR has the right to full inspection of such records and may exercise its subpoena powers to obtain the financial and business records of an athlete agent.

Athlete agents are subject to disciplinary action for violating practice requirements set forth in statute. Violations include:

- commingling money or property of another person with the athlete agent's money or property,[38]
- committing mismanagement or misconduct which causes financial harm to a student athlete or college or university,[39] and

[32] S. 468.452(2), F.S.
[33] S. 468.452(5), F.S.
[34] S. 468.452(1), F.S.
[35] S. 468.454, F.S.
[36] R. 61-24.004, F.A.C.
[37] S. 468.4565, F.S.
[38] S. 468.456(1)(d), F.S.
[39] S. 468.456(1)(h), F.S.

- Violating or aiding and abetting another person to violate the rules of the athletic conference or collegiate athletic association governing a student athlete or student athlete's college or university.[40]

An unlicensed person is generally prohibited from acting as an athlete agent.[41] Section 468.453(3), F.S., allows an unlicensed individual to act as an athlete agent if:

- a student athlete or person acting on the athlete's behalf initiates communication with the individual; and
- within 7 days after an initial act as an athlete agent, the individual submits an application for licensure.

In Fiscal Year 2018-2019, there were 321 licensed athlete agents in Florida. DBPR received 2 complaints related to athlete agents, but did not take any disciplinary action.[42]

NCAA Athletic Injury Insurance Requirements and Options[43]

Primary Basic Medical Insurance

The NCAA requires member institutions to certify that student-athletes in intercollegiate sports are insured for athletically related injuries[44] sustained while participating in "covered events."[45] A "covered event" includes:

- Any intercollegiate sports activity, including team travel, competition, practices and conditioning sessions during the playing season;
- An NCAA-sanctioned competition in which the insured person is an official competitor; or
- Practice and conditioning sessions that are authorized, organized or directly supervised by athletics department personnel at the member institution other than during the playing season. Such sessions must occur on campus or at approved off-campus facilities as part of an intercollegiate athletics activity. For insured student-athletes or prospective student-athletes who compete in individual sports, off-campus intercollegiate athletics activities must be authorized by athletics department personnel at the participating school and take place at approved locations.[46]

The required insurance must be able to satisfy the deductible of the NCAA Catastrophic Injury Insurance Program.[47] The NCAA also requires that the institution provide medical coverage for at least two years following either graduation or separation of the student-athlete from the institution, whichever occurs first.[48] Compliant insurance may be provided by:

- Parents' or guardians' insurance coverage;
- The student-athlete's personal insurance coverage; or

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[40] S. 468.456(1)(k), F.S.
[41] S. 468.4561, F.S.
[42] Florida Department of Business and Professional Regulation, *2018-2019 Annual Report*, pp.19, 90.
[43] http://www.ncaa.org/about/resources/insurance/ncaa-student-athlete-medical-insurance-legislation (last visited?)
[44] Athletically related injuries are injuries that are a direct result of participation in a covered event. NCAA Bylaw 3.2.4.9.2.
[45] For NCAA Championships, the NCAA provides basic athletics-injury, catastrophic-injury, and accidental death and dismemberment insurance for participants. NCAA Bylaws 31.7.4.2 (Div. III) and 31.7.4.3 (Div. I and Div. II).
[46] NCAA Bylaw 3.2.4.9.3.
[47] The NCAA Catastrophic Injury Insurance Program begins coverage after the cost of the injury has reached a minimum $75,000, for institutions participating in the NCAA Group Basic Accident Medical Program, or a minimum $90,000 for injuries to covered student-athletes from institutions that are not participating in the NCAA Group Basic Accident Medical Program. NCAA, *NCAA Catastrophic Injury Insurance Program, Benefit Summary for the Period of 8/1/19 through 7/31/21*, https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2019-21INS_NCAACatastrophicBenefitSummary.pdf, (last visited Jan. 23, 2020).
[48] NCAA Bylaw 16.4.1. Each institution has the discretion to determine the method by which it will provide medical care, the method by which it determines whether an injury is athletically related and any policy deemed necessary for implementing the medical care.

- The institutions insurance program.

In the event that the student-athlete is uninsured or has insurance that does not meet the NCAA requirement, the NCAA sponsors two insurance products for coverage of the student-athlete. These products are voluntary and separately underwritten for each institution by the Mutual of Omaha insurance company.

The NCAA Group Basic Accident Medical Program is an insurance product sponsored by the NCAA for member institutions to secure group coverage of their student-athletes. This program is coordinated with the NCAA Catastrophic Injury Insurance Program to offer access to the NCAA's catastrophic injury benefits at a lower deductible. The premium for the Group Basic program is paid by the member institution and the student-athlete participates as a member of the institution's group. The NCAA also sponsors the NCAA Primary Accident Program for uninsured student-athletes whose institution does not provide a group insurance option for their student-athletes. Both the Group Basic and Primary Accident programs offer insurance plans that can be tailored to desired benefit and cost levels, i.e., minimum coverages, Health Maintenance Organizations, Preferred Provider Networks, varying deductibles and copays, selected sub-limits,[49] etc. The premiums and costs vary depending on the details of the policy purchased.

NCAA Catastrophic Injury Insurance Program[50]

The NCAA sponsors a catastrophic injury insurance program for active member institutions. This program is offered to member institutions at no additional cost. The insurance covers any student-athlete who is catastrophically injured while participating in a covered intercollegiate athletic activity. The policy has a $90,000 deductible ($75,000 for those institutions that participate in the NCAA Group Basic Accident Medical Program) and provides benefits in excess of any other valid and collectible insurance. Any student-athlete injury with medical expenses exceeding the applicable deductible will trigger the program's coverage.

The NCAA Catastrophic Injury Insurance Program covers students who are athletes, coaches, managers, trainers, and cheerleaders who are catastrophically injured in a covered event.[51] This program provides a $20 million maximum benefit with specified annual or service limits on selected

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[49] A sub-limit is a limitation in an insurance policy stating the coverage maximum of a particular type of benefit, but is lower than and contributes to the overall policy limit. https://www.merriam-webster.com/legal/sublimit (last visited Jan. 26, 2020). For example, the NCAA Catastrophic Injury Insurance Program has maximum lifetime coverage amount of $20,000,000. Within that coverage are annual sub-limits of $100,000 for Custodial Care and Home Health Care and $250,000 for Combined Private Duty Nursing, Custodial Care, and Home Health Care. NCAA, *NCAA Catastrophic Injury Insurance Program, Benefit Summary for the Period of 8/1/19 through 7/31/21*, https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2019-21INS_NCAACatastrophicBenefitSummary.pdf, (last visited Jan. 23, 2020). Once the sub-limit is reached, no additional reimbursement is available for that period, even if the policy's maximum overall coverage limit has not been reached.

[50] *See* http://www.ncaa.org/about/resources/insurance/ncaa-catastrophic-injury-insurance-program; http://www.ncaa.org/about/resources/insurance; http://www.ncaa.org/about/resources/insurance/ncaa-student-athlete-medical-insurance-legislation; http://www.ncaa.org/about/resources/insurance/ncaa-insurance-legislation-faqs (last visited?)
See also Nicole Kline, *Bridging the NCAA's Accident Insurance Coverage Gaps? A Deep Dive into the Uncertainties of Injury Coverage in College Contact Sports, and the Impact that has on Athletes' Future Physical and Financial Comfort*, 31 J.L. & Health 55 (2018) *available at* https://engagedscholarship.csuohio.edu/jlh/vol31/iss1/7 (last visited?)

[51] The NCAA's catastrophic insurance policy goes into more detail on various defined terms than the NCAA Constitution does. Please refer to NCAA's benefit summary of the catastrophic injury insurance program for definitions of important terms. NCAA, *NCAA Catastrophic Injury Insurance Program, Benefit Summary for the Period of 8/1/19 through 7/31/21*, https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2019-21INS_NCAACatastrophicBenefitSummary.pdf, (last visited Jan. 23, 2020).

benefit types. It provides various benefits, including medical, dental, rehabilitation, custodial care, disability (cash payments),[52] and death[53] related to the covered catastrophic injury.

Coverage Behavior at NCAA Division I Institutions

In 2016, the NCAA reported on a survey it conducted of head athletic trainers at NCAA Division I institutions.[54] Seventy percent (232 institutions from 32 separate conferences) were reported to have responded to the survey. Notable findings include:

Insurance Coverage

- 68 percent of schools have a primary insurance requirement;
  - If the student-athlete was uninsured, 70 percent provided insurance to them;
- On average, more than 400 student-athletes were covered per institution, regardless of the method of coverage chosen by the institution;
- Methods of Coverage:
  - 67 percent purchase insurance;
  - 23 percent self-insure;
  - 6 percent require the student-athlete to obtain personal coverage; and
  - 4 percent make alternate financial arrangements.[55]
- Insurance purchasers (about 155 institutions):
  - Nearly 60 percent had policy premiums between $100,000 and $500,000;
  - 45 percent had insurance deductibles between $0.00 and $1,000;
  - More than 75 percent provided a benefit period of 104 weeks; and
  - 87 percent of accidental insurance policies had no sub-limits;
- Self-insurers (about 53 institutions):
  - 72 percent stated student-athletes and families bear no costs;
  - 59 percent provided a benefit period of 104 weeks; and
  - 85 percent had no sub-limits.
- Student-athlete sourced personal coverage (about 14 institutions), these institutions:
  - Do not review the student-athlete's policies;
  - Provide guidance to the student-athlete regarding deductibles; and
  - Verify the student-athlete's personal coverage.

Costs for Injuries not Covered by Insurance

- 84 percent covered 100 percent of the uninsured injury cost through the athletic program;
- Out of pocket costs to the institution for uninsured injuries varied from a few hundred dollars to millions of dollars; and
- 86 percent reported that the student-athlete had no out of pocket expenses for uninsured injuries.

Other Coverages

- 56 percent covered illness/medical that is unrelated to athletic program activities, most through student health centers.

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[52] The minimum total disability benefit is $400 per month for the first 12 months and $2700 per month for each month thereafter. The minimum partial disability benefit is $270 per month for the first 12 months and $1,800 per month for each month thereafter. Total disability and partial disability under the catastrophic injury insurance program is based upon physical function loss combined with impacts on activities of daily living. It is not based on a vocational standard. *Id.*

[53] The death benefit is $25,000. *Id.*

[54] NCAA, *NCAA Division I Student-Athlete Insurance Coverage Overall Findings – February 2016*, https://www.ncaa.org/sites/default/files/2016DI-SA-Insurance-Survey_20160525.pdf (last visited Jan. 23, 2020).

[55] The nature of the alternate financial arrangements was not specified.

- 31 percent provide coverage for athletic related injuries after the student-athlete leaves school or exhausts her or his NCAA athletic eligibility (duration not specified), while another 43 percent provide coverage under certain conditions (conditions not specified); and
- 87 percent do not provide enhancements to basic coverage like additional death benefits or higher policy limits.

NCAA Exceptional Student-Athlete Disability Insurance Program[56]

In the early 1990s, the NCAA began a program to allow student-athletes with favorable professional prospects to protect their anticipated high future earnings from potential loss due to injury. The NCAA Exceptional Student-Athlete Disability Insurance Program began with participants in football and men's basketball and over the course of the decade expanded to include baseball, men's hockey, and women's basketball.

To qualify, the student-athlete must have NCAA athletic eligibility remaining in the applicable sport and have demonstrated professional potential, as follows:

- Football – selection in the first two rounds of the upcoming National Football League draft;
- Basketball – selection in the first round of the upcoming National Basketball Association or Women's National Basketball Association, as applicable;
- Baseball – selection in the first round of the upcoming Major League Baseball draft;
- Men's Hockey – selection in the first two rounds of the upcoming National Hockey League draft; or
- Other Sports – underwritten on a case-by-case basis.

If the student-athlete is determined to be eligible, she or he is deemed eligible for a premium finance loan. The loan must be repaid when the student-athlete signs a professional contract, a claim is made for a covered injury, or the coverage expires and the loan comes due.

The following maximum coverages apply:

- Football – $10 million;
- Men's Basketball – $10 million;
- Women's Basketball – $250,000;
- Baseball – $5 million;
- Men's Hockey – $3 million; or
- Other Sports – underwritten on a case-by-case basis.

This program only insures against total disability;[57] it does not provide benefits based on partially reduced professional earning capacity (i.e., if the insured signs a professional athletic performance

[56] NCAA, *Exceptional Student-Athlete Disability Insurance Program*, http://www.ncaa.org/about/resources/insurance/exceptional-student-athlete-disability-insurance-program (last visited Jan. 24, 2020).

[57] Accidental death coverage is included in the coverage with a benefit equal to the coverage premium. Additional accidental death coverage up to the maximum total disability coverage is provided for an additional premium.

contract in any amount, there is no coverage). The insured student-athlete must prove permanent total disability, based on specified criteria,[58] or qualify for a presumptive disability benefit.[59]

Effect of the Bill

Compensation for Name, Image, Likeness, or Persona

The bill authorizes intercollegiate athletes to earn compensation for their name, image, likeness, or persona (NILP).[60] The bill seeks to preserve the integrity, quality, character, and amateur nature of intercollegiate athletics while maintaining a clear distinction between amateur intercollegiate athletics and professional sports by:

- Providing that compensation for athletic performance or attendance at a particular institution remains prohibited.
- Allowing NILP compensation only if it is provided by a third party unaffiliated with the athlete's postsecondary educational institution.

The bill prohibits postsecondary educational institutions receiving state aid (Florida College System institutions, State University System institutions, and private colleges and universities) from:

- Preventing or unduly restricting an intercollegiate athlete from earning NILP compensation.
- Preventing or unduly restricting an intercollegiate athlete from obtaining professional representation for purposes of seeking NILP compensation.
    - For such professional representation, an intercollegiate athlete may retain an athlete agent licensed in Florida or an attorney licensed and in good standing with the Florida Bar.
- Revoking or reducing grant-in-aid awards for an intercollegiate athlete who earns compensation for his or her NILP.

The bill specifies that the terms of a contract for NILP compensation may not conflict with the terms of the intercollegiate athlete's team contract or extend beyond the time of the athlete's participation in an athletic program at a postsecondary educational institution. Athletes under 18 years of age must have any such contract reviewed by a court.

Additionally, the bill allows an athlete agent, or attorney, to represent an intercollegiate athlete in securing compensation for use of her or his name, image, likeness, and persona under s. 1006.72, F.S., regardless of athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary.

Insurance Requirements and Scholarship Protection

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[58] Permanent total disability is established when the following criteria are met:

1. The student-athlete's disability results from an injury or sickness.
2. The student-athlete's injury or sickness occurs while the policy is in force.
3. The student-athlete is under the regular care of a qualified physician.
4. The student-athlete is unable to engage in sporting activity at the professional level.
5. The applicable elimination period has elapsed (12 months).
6. The student-athlete's total disability prevents the signing of any employment contract with any professional team as a professional athlete in the applicable sporting activity.

Id.

[59] Permanent total disability is presumed when the student-athlete's disability has been medically determined to be the result of entire and irrecoverable loss of sight of both eyes or hearing in both ears; total and irrecoverable loss of use of one hand or one foot; quadriplegia; or paraplegia and that the disability is thus preventing the student-athlete from ever participating in the applicable sporting activity at the professional level. *Id.*

[60] The bill includes the term "persona" to more broadly protect an intercollegiate athlete's right of publicity. "Persona" is defined as "the personality that a person ... projects in public." *The Merriam-Webster.com Dictionary,* https://www.merriam-webster.com/dictionary/persona (last visited Jan. 26, 2020).

In addition, the bill requires each postsecondary educational institution receiving state aid to:

- Provide intercollegiate athletes with health and disability insurance for the duration of the time it takes the athlete to recover from the sports-related injury and a death benefit of $25,000. Injuries must be timely reported and the right to benefits ends if no benefits are necessary for 2 years.
- Maintain grant-in-aid (i.e., scholarships) for intercollegiate athletes for:
  - Up to one academic year or until the athlete completes their primary undergraduate degree, whichever is shorter, when the athlete has exhausted athletic eligibility.
  - Up to five academic years or until the athlete completes their primary undergraduate degree, whichever is shorter, when the athlete is determined to be medically ineligible to participate in athletics due to an injury that occurred while participating in an athletic program.
- Conduct a financial and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years.

The bill directs the Board of Governors and the State Board of Education to adopt regulations and rules to implement the provisions of the bill.

B. SECTION DIRECTORY:

Section 1 Creates s. 1006.72, F.S.; providing legislative findings; providing definitions; authorizing certain intercollegiate athletes to earn compensation for their names, images, likenesses, and personas; providing requirements for such compensation; requiring postsecondary educational institutions to maintain certain insurance for intercollegiate athletes; requiring the Board of Governors and the State Board of Education to adopt regulations and rules; prohibiting a postsecondary educational institution from preventing or unduly restricting intercollegiate athletes from obtaining specified representation; requiring athlete agents and attorneys to meet specified requirements; etc.

Section 2 Amends s. 468.453, F.S.; providing requirements for certain athlete agents.

Section 3 Providing for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a negative, indeterminate fiscal impact on certain postsecondary educational institutions to the extent that additional funds are spent to meet certain insurance requirements as required in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs the Board of Governors and the State Board of Education to adopt regulations and rules to implement the provisions of s. 1006.72, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to intercollegiate athlete compensation and rights; creating s. 1006.72, F.S.; providing legislative findings; providing definitions; authorizing certain intercollegiate athletes to earn compensation for their names, images, likenesses, and personas; providing requirements for such compensation; prohibiting postsecondary educational institutions from adopting or maintaining rules, regulations, standards, or other requirements that prevents or unduly restricts intercollegiate athletes from earning specified compensation; providing that certain compensation does not affect certain intercollegiate athlete eligibility; prohibiting a postsecondary educational institution from compensating intercollegiate athletes or prospective intercollegiate athletes for their names, images, likenesses, or personas; prohibiting a postsecondary educational institution from preventing or unduly restricting intercollegiate athletes from obtaining specified representation; requiring athlete agents and attorneys to meet specified requirements; providing that specified aid for intercollegiate athletes is not considered compensation; prohibiting the revocation of certain aid as a result of intercollegiate athletes

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earning certain compensation; providing approval requirements for certain contracts for compensation for intercollegiate athletes who are minors; providing contract requirements; prohibiting intercollegiate athletes from entering into contracts for specified compensation that conflict with terms of her or his team contract; providing intercollegiate athlete contract disclosure requirements; requiring postsecondary educational institutions to maintain certain insurance for intercollegiate athletes; providing requirements for such insurance; requiring postsecondary educational institutions to provide specified grant-in-aid to intercollegiate athletes under certain circumstances and provide a specified workshop; providing requirements for such grant-in-aid and workshop; providing applicability; prohibiting the use of state funds for specified purposes; providing requirements for reporting certain injuries and claims for benefits related to certain injuries; providing requirements for certain disability compensation benefits; prohibiting a postsecondary educational institution from membership in specified associations, conferences, or organizations; requiring the Board of Governors and the State Board of Education to adopt regulations and rules, respectively; amending s.

468.453, F.S.; providing requirements for certain athlete agents; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1006.72, Florida Statutes, is created to read:

1006.72 Intercollegiate athlete compensation and rights.—The Legislature finds that intercollegiate athletics provide intercollegiate athletes with significant educational opportunities. However, participation in intercollegiate athletics should not infringe upon an intercollegiate athlete's ability to earn compensation for her or his name, image, likeness, or persona. An intercollegiate athlete must have an equal opportunity to control and profit from the commercial use of her or his name, image, likeness, and persona and be protected from unauthorized appropriation and commercial exploitation of her or his right to publicity, including her or his name, image, likeness, and persona. Moreover, an intercollegiate athlete's inability to participate in intercollegiate athletics due to an injury should not impair her or his future health or academic success.

(1) DEFINITIONS.—As used in this section, the term:

(a) "Athletic program" means an intercollegiate athletic program at a postsecondary educational institution.

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(b) "Disability insurance" means insurance covering disability compensation benefits for an intercollegiate athlete participating in an athletic program.

(c) "Health insurance" means primary health insurance covering injuries resulting from the intercollegiate athlete's participation in an athletic program that provides for all medically necessary treatment and care until the intercollegiate athlete is restored to her or his condition before the injury.

(d) "Injury" means an injury sustained by an intercollegiate athlete while participating in an athletic program's activities.

(e) "Insurance" means health insurance and disability insurance.

(f) "Intercollegiate athlete" means a student who participates in an athletic program. The term includes a former intercollegiate athlete who suffered an injury.

(g) "Partial disability" means the intercollegiate athlete's incapacity because of the injury to earn full-time wages.

(h) "Physician" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a podiatric physician licensed under chapter 461, or an optometrist licensed under chapter 463.

(i) "Postsecondary educational institution" means a state university, a Florida College System institution, or a private

college or university receiving aid under chapter 1009.

(j) "Total disability" means an intercollegiate athlete's inability to earn wages because of an injury.

(2) INTERCOLLEGIATE ATHLETES' COMPENSATION AND RIGHTS AND POSTSECONDARY EDUCATIONAL INSTITUTIONS RESPONSIBILITIES.—

(a) An intercollegiate athlete at a postsecondary educational institution may earn compensation for her or his name, image, likeness, or persona, as long as the compensation is commensurate with the market value of the services provided. To preserve the integrity, quality, character, and amateur nature of intercollegiate athletics and to maintain a clear separation between amateur intercollegiate athletics and professional sports, such compensation may not be provided in exchange for athletic performance or attendance at a particular institution and may only be provided by a third party unaffiliated with the intercollegiate athlete's postsecondary educational institution.

(b) A postsecondary educational institution may not adopt or maintain a contract, rule, regulation, standard, or other requirement that prevents or unduly restricts an intercollegiate athlete from earning compensation for the use of her or his name, image, likeness, or persona. Earning such compensation may not affect the intercollegiate athlete's grant-in-aid or athletic eligibility.

(c) A postsecondary educational institution may not

compensate a current or prospective intercollegiate athlete for her or his name, image, likeness, or persona.

(d) A postsecondary educational institution may not prevent or unduly restrict an intercollegiate athlete from obtaining professional representation by an athlete agent or attorney engaged for the purpose of securing compensation for her or his name, image, likeness, or persona. Pursuant to s. 468.453(8), an athlete agent representing an intercollegiate athlete for purposes of securing compensation for her or his name, image, likeness, or persona must be licensed under part IX of chapter 468. An attorney representing an intercollegiate athlete for purposes of securing compensation for her or his name, image, likeness, or persona must be a member in good standing of The Florida Bar.

(e) Grant-in-aid, including cost of attendance, awarded to an intercollegiate athlete by a postsecondary educational institution is not compensation for the purposes of this subsection, and may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining professional representation under this subsection.

(f) An intercollegiate athlete under the age of 18 years must have any contract for compensation for her or his name, image, likeness, or persona approved under ss. 743.08 and 743.09.

(g) An intercollegiate athlete's contract for compensation

for her or his name, image, likeness, or persona may not violate this subsection.

(h) An intercollegiate athlete may not enter into a contract for compensation for her or his name, image, likeness, or persona if a term of the contract conflicts with a term of the intercollegiate athlete's team contract. A postsecondary educational institution asserting a conflict under this paragraph must disclose each relevant contract term that conflicts with the team contract to the intercollegiate athlete or her or his representative.

(i) An intercollegiate athlete who enters into a contract for compensation for her or his name, image, likeness, or persona shall disclose the contract to the postsecondary educational institution at which she or he is enrolled, in a manner designated by the institution.

(j) The duration of a contract for representation of an intercollegiate athlete or compensation of an intercollegiate athlete's name, image, likeness, or persona may not extend beyond her or his participation in an athletic program at a postsecondary educational institution.

(k) Each postsecondary educational institution shall:

1.a. Maintain for each intercollegiate athlete health insurance and disability insurance that meets the requirements of sub-subparagraphs c. and d., respectively, by:

I. Verifying that the intercollegiate athlete is provided

the benefits required by this section by her or his own insurance or insurance provided by an immediate family member;

II. Providing insurance covering the intercollegiate athlete;

III. Participating in an insurance program, which provides at least the benefits required by this section, offered by an intercollegiate athletics sanctioning body or intercollegiate athletics association of which the postsecondary educational institution is a member; or

IV. Any combination of sub-sub-subparagraphs I.-III.

b. If the intercollegiate athlete's insurance under sub-sub-subparagraph I. lapses or does not provide the required medical benefits, the postsecondary educational institution must provide coverage under sub-sub-subparagraph II. or sub-sub-subparagraph III., or a combination thereof, beginning with the first dollar of a claim. If coverage is secured under sub-sub-subparagraph I., any deductible, copay, or coinsurance amounts must be paid by the postsecondary educational institution. If coverage is secured under sub-sub-subparagraph II. or sub-sub-subparagraph III., or a combination thereof, the entire premium and any deductible, copay, or coinsurance amounts must be paid by the postsecondary educational institution.

c. Health insurance under sub-subparagraph a. must include dental benefits for dental conditions related to the injury, medically necessary emergency and nonemergency medical

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transportation, professional and nonprofessional attendant care, prosthetics, orthotics, durable medical equipment, and medically necessary physical rehabilitation and vocational rehabilitation benefits.

d. Disability insurance under sub-subparagraphs a. must provide at least $400 per month for the first 12 months of total disability and $2,700 per month for each month of total disability beyond the first 12 months of total disability; at least $270 per month for the first 12 months of partial disability and $1,800 per month for each month of partial disability beyond the first 12 months of partial disability; and a death benefit of at least $25,000.

2. Provide an intercollegiate athlete who was receiving athletic related grant-in-aid and is in good standing, an equivalent grant-in-aid for:

a. Up to one academic year or until the intercollegiate athlete completes her or his primary undergraduate degree, whichever is shorter, if the intercollegiate athlete has exhausted athletic eligibility.

b. Up to five academic years or until the intercollegiate athlete completes her or his primary undergraduate degree, whichever is shorter, if the intercollegiate athlete suffered an injury, and an independent physician with a specialty appropriate to each applicable injury determines that she or he is medically ineligible to participate in intercollegiate

athletics.

3. Conduct a financial literacy and life skills workshop for a minimum of 5 hours at the beginning of the intercollegiate athlete's first and third academic years. The workshop shall, at a minimum, include information concerning financial aid, debt management, and a recommended budget for full and partial grant-in-aid intercollegiate athletes based on the current academic year's cost of attendance. The workshop shall also include information on time management skills necessary for success as an intercollegiate athlete and available academic resources.

(3) LIMITATIONS.-

(a) This section does not require the medical treatment of a preexisting medical condition except to the extent that the preexisting medical condition is aggravated by the injury or treatment of the preexisting medical condition is medically necessary to the treatment of the injury.

(b) State funds may not be used to comply with the requirements of this section.

(c) An injury must be reported by the earlier of the 30th day after occurrence of the injury, the 30th day after the intercollegiate athlete knew or should have known that an injury existed, or 2 years after the intercollegiate athlete separates from the postsecondary educational institution.

(d) An intercollegiate athlete's claim for benefits related to an injury is barred after 2 years after the report of

injury or 2 years after provision of compensable medical treatment, whichever is later.

(e) For a former intercollegiate athlete receiving disability compensation benefits under this section who is earning wages while receiving such benefits or is determined by a functional capacity expert to be capable of earning wages, beginning 12 months after the date of the injury, the benefit shall be reduced by an amount equal to one half of the former intercollegiate athlete's after tax earnings in excess of the base amount. The base amount shall be $1,000 for the first 12 months the reduction provided by this paragraph is applied and shall increase by 2.5 percent annually thereafter. If the former intercollegiate athlete is determined by a functional capacity expert to have a wage earning capacity, but is not earning wages, the disability compensation benefit shall be reduced by one-half for any period more than 12 months after the date of the injury that the former intercollegiate athlete is not earning wages, unless the former intercollegiate athlete documents her or his employment search, which must include at least four employment applications submitted monthly.

(4) PROHIBITION OF MEMBERSHIP.—A postsecondary educational institution may not be a member of any association, conference, or organization that requires its members to comply with bylaws, regulations, or policies that are inconsistent with this section.

(5) REGULATIONS AND RULES.—The Board of Governors and the State Board of Education shall adopt regulations and rules, respectively, to implement this section.

Section 2. Subsections (8) and (9) are added to section 468.453, Florida Statutes, to read:

468.453 Licensure required; qualifications; license nontransferable; service of process; temporary license; license or application from another state.—

(8) Notwithstanding subsection (3), a person must hold a valid license as an athlete agent to act as an athlete agent representing an intercollegiate athlete for purposes of contracts authorized under s. 1006.72.

(9) Notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary, an athlete agent may represent an intercollegiate athlete in securing compensation for use of her or his name, image, likeness, and persona under s. 1006.72.

Section 3. This act shall take effect July 1, 2020.