

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill increases the responsibilities of the Governor’s Office of Tourism, Trade, and Economic Development and the Department of Revenue for the certification created by the bill. It also increases the responsibilities of the Department of Highway Safety and Motor Vehicles regarding the NASCAR license plate that is created. See details below.

Ensure Lower Taxes – The bill requires an annual distribution from sales tax revenues of \$1.2 million annually for 25 years to the certified applicant. The bill also provides for up to \$1.2 million annually that is generated from the sale of the license plate created in the bill to be used to offset sales tax distribution. See details below.

B. EFFECT OF PROPOSED CHANGES:

Background on Sales Tax Distribution to Sports Facilities & Certification of Facilities:

Distribution of Sales Tax Proceeds

Chapter 212, F.S., imposes a state sales and use tax of 6% on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles. Tax collections are deposited by the Department of Revenue (DOR) in the General Revenue Fund of the state and into a variety of trust funds benefiting state agencies and local governments.

Section 212.20, F.S., governs the distribution by DOR of tax revenues collected under the provisions of Chapter 212, F.S. Subsection (6) of that section requires DOR to distribute funds to certain qualified sports facilities.

Sales Tax Distributions to Sports Facilities – Capped Number, Payment & Lengths of Time

The Department of Revenue distributes tax revenues to professional sports franchise facilities and retained spring training franchise facilities that are certified by the Governor’s Office of Tourism, Trade, and Economic Development (OTTED) as meeting requirements set forth in s. 288.1162, F.S., to the Professional Golf Hall of Fame facility as certified pursuant to s. 288.1168, F.S., and to the International Game Fish Association World Center facility as certified pursuant to s. 288.1169, F.S. Each recipient receives a fixed monthly distribution that is set by statute.¹ The law caps the number of new and retained professional sports franchise facilities eligible for funding at eight and requires that at least five facilities for retained spring training franchises be certified. No other sports-related businesses or facilities are entitled to distributions from DOR of tax revenues collected pursuant to Chapter 212, F.S.

A professional sports franchise facility receives \$166,667 monthly for up to 30 years while a retained spring training franchise facility can receive up to \$41,667 monthly for up to 30 years. The Professional Golf Hall of Fame Facility (Golf Hall of Fame) receives \$166,667 monthly for up to 25 years, and the International Game Fish Association World Center (IGFA) facility receives \$83,333 monthly for up to 14 years. Both the Golf Hall of Fame and IGFA facilities were not eligible to receive funds until they were certified by OTTED as being open to the public.²

¹ See s. 212.20(6)(d)7.b.-d., F.S.

² Statutory language creating the certification for a Professional Golf Hall of Fame was in 1993; however, the facility was not certified as being open to the public until February 1998. The first distribution of revenues did not occur until March 1998. The statutory language for certification of the IGFA was added in 1996; however, the facility was not certified as being open to the public until February 2000. The first distribution of revenues did not occur until March 2000.

Criteria for Certification for Tax Distribution Eligibility

The criteria vary depending upon the type of sports facility that is certified. Generally, criteria will include such things as relationship with and support of a local unit of government, projections of paid attendance, and demonstration of being able to provide or having financial or other commitments to provide more than one-half of the costs incurred or related to the facility or its operation. Other requirements include such things as reviews, recertification, sanctions, and audits.

Designation of a NASCAR Hall of Fame:

There are a number of independent racing halls of fame in existence in the United States, but none are officially affiliated with NASCAR, Inc.

Request for Proposal

On January 3, 2005, NASCAR, Inc., invited five cities to present proposals for the development of a NASCAR Hall of Fame facility honoring NASCAR icons and create a memorial to the drivers, crew members, team owners, and other important figures who have impacted the sport. The deadline for submitting the completed request for proposal is May 31, 2005. The cities receiving the request for proposal were Daytona Beach, Charlotte, Atlanta, Talladega, Richmond and Kansas City, KS, and the state of Michigan.

The request for proposal is intentionally vague with no specific requirements for size, shape, or cost. However, these are the more specific proposal requirements: desirable location, permanent funding effort, a corporate entity/ management structure describing the formal relationship between NASCAR, Inc., and the city, marketing plan, and design/development team.

Daytona Beach

NASCAR's current headquarters are located in Daytona Beach. The city is the home of the Daytona International Speedway which hosts the Daytona 500, attracting the largest audience in motorsports and other major racing events throughout the year.

Daytona USA is a 60,000 square-foot interactive multi-million-dollar motorsports tourist attraction located at the speedway.

Specialty License Plates:

An organization seeking authorization to establish a new specialty license plate, including an annual use fee, must submit a request to the Department of Highway Safety and Motor Vehicles (DHSMV). The requirements for requests to establish specialty license plates with an annual use fee include the following:

- A request for the plate describing it in specific terms;
- The results of a professional, independent, and scientific sample survey of Florida residents indicating that 30,000 vehicle owners intend to purchase the plate at the increased cost;
- An application fee of up to \$60,000 defraying DHSMV's cost for reviewing the application, developing the new plate; and
- A marketing strategy for the plate and a financial analysis of anticipated revenues and planned expenditures.³

These requirements must be satisfied at least 90 days prior to the convening of the regular session of the Legislature.

³ See s. 320.08053(1), F.S.

If a proposed specialty plate fails to become law, DHSMV returns the application fee. If it passes and becomes law, the organization must submit the proposed art design for the specialty license plate to the department as prescribed as soon as practicable, but not more than 60 days after the act approving the plate becomes law.⁴

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege with the exception of owners or lessees of the following vehicles: those registered under the International Registration Plan, a commercial truck required to display two license plates pursuant to s. 320.0706, F.S., or a truck tractor. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute.⁵

The DHSMV shall begin production and distribution of each new specialty plate within 1 year after the approval by the Legislature. A specialty license plate annual use fee collected and distributed under Chapter 320, F.S., or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.05058 F.S., or to pay the cost of the audit or report required by s. 320.08062(1), F.S. A particular specialty license plate must be discontinued if the registrations fall below 1,000 for at least 12 consecutive months. A warning letter is sent to the sponsoring organization after the first month that the registrations are below 1,000.⁶

The Legislature has authorized 100 specialty license plates. To date, only three specialty license plates have been discontinued for lack of sales: Girl Scouts, Orlando Predators, and Tampa Bay Storm.

Sales of specialty license plates generated more than \$24 million in annual use fee revenues in 2002, and more than \$24.5 million in 2003. Since the program's inception in 1986, the DHSMV has collected annual use fees totaling more than \$225 million.⁷

Effects of Proposed Changes:

The bill provides for the use of General Revenue funds generated from the state sales tax to develop and operate the NASCAR Hall of Fame facility in Florida. The amount of the distribution authorized once the applicant has been certified as the NASCAR Hall of Fame facility pursuant to s. 288.1170, F.S., and is open to the public, is \$100,000 per month for 25 years for a total of \$30 million.

The bill authorizes OTTED to certify one applicant to be the NASCAR Hall of Fame facility. The conditions for certification for this facility are very similar to those required of the Professional Golf Hall of Fame facility. See the similarities and differences listed below between the Professional Golf Hall of Fame and the proposed facility for the NASCAR Hall of Fame as outlined in this bill.

Same Criteria for Professional Golf Hall of Fame and proposed NASCAR Hall of Fame

- Only facility of its kind in the United States recognized by specific organization.
- Operated by local government or if private sector contracted to construct or operate, then the land must be owned by local government.
- The applicant has financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the facility.
- Municipality or County has certified by resolution after public hearing declaring public purpose.
- Application is signed by an official senior executive of the applicant and is notarized.

⁴ See s. 320.08053(2), F.S.

⁵ See s. 320.08056, F.S.

⁶ See s. 320.08056(8)(a), F.S.

⁷ License plate revenues have not been released for 2004. The information was obtained from the Department of Highway Safety and Motor Vehicles.

- Funds may be used for the public purpose of paying for the construction, reconstruction, renovation, or operation of the facility, or to pay or pledge for payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds issued for the construction, reconstruction, or renovation of the facility or for the reimbursement of such costs or the refinancing of bonds issued for such purpose.
- OTTED shall notify the applicant and the executive director of the Department of Revenue by official letter regarding the certification of the applicant. The applicant shall then have 5 years from such certification to open the facility to the public.
- The Department of Revenue is authorized to audit the distribution and expenditure of these funds.
- Every ten years, OTTED must recertify that the facility is open and meeting the minimum projections for attendance or sales tax revenue.

Differences in Criteria for Professional Golf Hall of Fame and proposed NASCAR Hall of Fame

Professional Golf Hall of Fame	NASCAR Hall of Fame
Must show a projected paid attendance of more than <i>300,000</i> annually.	<i>350,000 annually</i>
There is an independent analysis or study approved by OTTED that demonstrates that the project will generate more than <i>\$2 million annually</i> in sales or use taxes on the use and operation of the facility (under chapter 212).	<i>\$1.2 million annually</i>
Beginning 30 days after notice by OTTED to the Department of Revenue that the certified facility is open to the public, the bill requires a monthly distribution to the applicant of <i>\$166,667 from general revenue for 300 months (\$2 million annually up to 25 years for a total of \$50 million)</i> .	<i>\$100,000 monthly for 300 months (\$1.2 million annually up to 25 years for a total of \$30 million).</i>
Must provide \$2 million annually in national and international media promotion of the facility, Florida, and tourism in Florida. Also provides that failure on the part of the organization to provide the required annual advertising shall result in the termination of funding as provided in s. 212. 20, F.S. In lieu of termination of funds, the facility can increase advertising funding to \$2.5 million annually.	<i>10% of the NASCAR specialty license plate annual use fee is to be used for advertising stock car auto racing and 15% of these fees are to be used for generic advertising upon provisional and final certification as determined by OTTED.</i> <i>No penalty provision for failure to comply with advertising or other provisions of the bill.</i>
	<i>Creates a NASCAR specialty license plate upon City of Daytona Beach designation as the site for the NASCAR Hall of Fame facility and provisional certification by OTTED. Proceeds are to offset tax distributions, provide for advertising of racing in the state and for other purposes noted above in the discussion on advertising, pay licensing and royalty fees, and fund children's charities in state. See details below.</i>

As described above, 30 days after the City of Daytona Beach is designated as the site for the official NASCAR Hall of Fame facility and provisional certification is granted by OTTED, the bill authorizes the development of a NASCAR specialty license plate under s. 320.08056, F.S., notwithstanding the

provisions of s. 320.08053, F.S. The bill also requires the DHSMV to collect an annual use fee of \$25 for the NASCAR license plate.

The applicant is required to submit an application fee not to exceed \$60,000 as determined and charged by DHSMV to defray department costs. The bill directs the proceeds from the annual use fee to be distributed from DHSMV to the Department of Revenue (DOR) and NASCAR, Inc.

The purpose of the license plate annual use fee is to use the majority of the fee to offset the amount of monthly tax disbursements distributed by DOR. This allows for the NASCAR Hall of Fame facility to be paid for by the fans or interested citizens.

The \$25.00 annual use fee distribution is as follows:

- 85% or \$21.25

Up to \$1.2 million per year must be distributed from DHSMV to DOR to offset the monthly tax disbursements. If any funds are generated above the \$1.2 million, those excess funds are to be distributed to a not-for-profit entity organized for the purpose of operating and maintaining the NASCAR Hall of Fame facility. This entity must use those funds for facility operation, maintenance, and capital improvement.

- 10% or \$2.50

This amount must be distributed from DHSMV to NASCAR, Inc., for advertising stock car auto racing in Florida. Of those funds, 15% are to be used for generic advertising for Florida Tourism. Advertising funds are to be distributed in accordance with provisional and final certification as determined by OTTED.

- 5% or \$1.25

This amount shall be distributed to NASCAR, Inc., to pay for licensing and royalty fees, and to provide funds to a Florida-based children's charity designated by NASCAR, Inc., and approved by OTTED.

C. SECTION DIRECTORY:

Section 1 amends s. 212.20(6)(d), F.S.; providing for distribution of revenue to NASCAR Hall of Fame facility.

Section 2 creates s. 288.1170, F.S.; authorizing OTTED to conduct initial application review for NASCAR Hall of Fame facility; establishing certification criteria and process; specifying use of funds and criteria for receipt; providing for an audit; requiring recertification.

Section 3 creates s. 320.0856(4)(eee), F.S.; requiring an annual use fee for a NASCAR license plate.

Section 4 creates s. 320.08058(57), F.S.; requiring development of a NASCAR license plate, specifying payment of an application fee and distribution of annual use fee of the license plate.

Section 5 provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local Government Revenue: \$1.2 million recurring positive impact per year.

(upon certification and open to the public)

See "Fiscal Comments."

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent the facility lures additional out-of-state visitors who would not otherwise visit the area where the facility is located, the facility will have a positive impact on the local economy. However, the facility will compete for entertainment dollars that could otherwise be spent on entities that are not the beneficiaries of state funding.

Additional advertising dollars will be spent on stock car auto racing in the state as well as on generic Florida tourism. This could have a positive impact on areas of the state with racing venues. Depending on the generic advertising, other areas of the state and venues could be positively impacted.

Those persons electing to purchase a NASCAR license plate would be required to pay a \$25 annual use fee in addition to the license taxes and fees that are due annually.

D. FISCAL COMMENTS:

From the date of certification, the facility has 5 years to open to the public and notify OTTED. The Department of Revenue will begin distribution 30 days after OTTED certifies that the facility is open to the public. It is uncertain which fiscal year the funds will be distributed due to completion of the facility, and certification by OTTED on the facility being open to the public.

When the facility is certified as being open to the public, a monthly distribution of \$100,000 for up to 300 months is to begin (*totaling \$30 million*). There is, therefore, an annual negative impact of (\$1.2) million to General Revenue once certified. The new facility, however, is supposed to generate at least \$1.2 million annually in sales tax revenues. Additionally, 85% of the \$25.00 annual use fee for the NASCAR specialty license plate created by the bill, up to \$1.2 million annually, is to be used to offset the monthly tax distribution. At this time it is not known how many specialty license plates will be sold nor when the annual fee will reach \$1.2 million.

The bill increases OTTED's responsibilities related to the certification and recertification process. OTTED has been contacted regarding providing information on costs to be incurred by the certification. No information has been provided.

The bill increases DOR's duties related to the distribution and auditing of funds to the facility.

The bill increases DHSMV's duties related the development and distribution of the NASCAR license plate. The department stated that the \$60,000 application fee will adequately defray any costs associated with the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The facility does not begin receiving monthly tax disbursements from DOR until the facility is certified and open to the public. Department of Revenue and DHSMV have been contacted regarding this issue. It is recommended that DHSMV and DOR determine the mechanism for holding these fees and distributing them to the proper place until the facility is open to the public. DHSMV currently distributes the annual use fees of other professional sports team's license plates.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2005, the bill sponsor offered a strike all amendment and the Tourism Committee passed HB 887 with a committee substitute. The committee substitute differs from the original bill in the following ways:

- Decreases monthly tax distributions from \$250,000 to \$100,000.
- Reduces projected annual paid attendance from 500,000 to 350,000.
- Corrects a reference to reflect that OTTED approves methodology of independent analysis or study demonstrating the amount of revenues generated by taxes of the NASCAR Hall of Fame facility.
- Reduces the amount of tax-generated revenues required from \$2 million to \$1.2 million to reflect what is to be distributed to the facility.
- Adds language for applicant to provide ½ the cost incurred or related to the improvement and development of the facility.
- Deletes specific certification requirement providing \$2 million in media promotion.
- Includes contingency language to reflect effective date dependant upon designation.
- Adds a provision for a NASCAR license plate, notwithstanding certain requirements in s. 320.08053, F.S., and an annual use fee to be collected and distributed. Majority of distribution of annual use fee for tag is to offset the \$1.2 million in sales tax distribution by DOR to the facility. The license tag is contingent upon the City of Daytona Beach being designated as the NASCAR Hall of Fame site and provisional certification by OTTED.
- Title is changed to include the license plate development and distribution.
- A "Whereas" clause is added to provide rationale for a NASCAR license plate.