



Ways and Means Committee

Tuesday, January 9, 2018

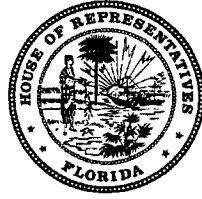
4:30 p.m. – 6:30 p.m.

Morris Hall

MEETING PACKET

The Florida House of Representatives

Ways and Means Committee



Richard Corcoran
Speaker

Paul Renner
Chair

AGENDA

January 9, 2018
4:30 p.m. – 6:30 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. Consideration of the following bills:
 - CS/HB 3 Economic Development and Tourism Promotion Accountability by Commerce Committee, Grant, M.
 - CS/HB 243 Charter County and Regional Transportation System Surtax by Transportation & Infrastructure Subcommittee, Avila, Perez
- IV. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 3 Economic Development and Tourism Promotion Accountability
SPONSOR(S): Commerce Committee, Grant and others
TIED BILLS: IDEN./SIM. BILLS:

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------|---------------------|-----------------|--|
| 1) Commerce Committee | 26 Y, 0 N, As CS | Willson | Hamon |
| 2) Ways & Means Committee | | Dugan <i>RD</i> | Langston <i>RL</i> |

SUMMARY ANALYSIS

To the extent authorized by state law, local governments have the authority to promote economic and tourism development within their jurisdictions. Many counties have both economic development agencies and tourist development agencies.

Tourist development agencies are primarily funded through county tourist development taxes, the proceeds of which may generally be used to promote and advertise tourism. For the 2016-17 fiscal year, the 62 counties levying a tourist development tax are estimated to collect approximately \$867 million in revenue.

Current law allows local jurisdictions to spend public funds to attract and retain business, and indicates that the use of public funds toward the achievement of such economic development goals constitutes a public purpose.

The bill defines:

- an "economic development agency" as any entity that receives public funds and is engaged in economic development activities on behalf of one or more local governmental entities.
- a "tourism promotion agency" as any entity that receives public funds to promote tourism development on behalf of one or more local government entities.

The bill imposes transparency and accountability requirements relating to the operation of the agencies defined above, including:

- Limiting travel and per diem expenses.
- Limiting public compensation and prohibiting publicly funded bonuses unless authorized by law.
- Providing that employees are subject to the Code of Ethics for Public Officers and Employees.
- Prohibiting an agency from spending funds on food, beverages, lodging, entertainment, or gifts for employees or board members, unless authorized pursuant to s. 112.061, F.S., or the bill.
- Prohibiting employees or board members from receiving food, beverages, lodging, entertainment or gifts paid for with agency funds or other specified sources.
- Requiring annual disclosure of certain information, including a detailed operating budget.
- Requiring contracts to contain performance standards, operating budgets and salary information.
- Requiring contracts valued over \$250,000 be submitted for review 14 days prior to execution.
- Providing that certain agency records are public record and not confidential or exempt.
- Providing that agencies which fail to comply with certain transparency and accountability requirements may not receive or expend public funds until regaining compliance.
- Requiring the Auditor General to audit certain agencies under certain circumstances.
- Providing criminal penalties for knowingly and willfully taking actions to avoid these requirements.
- Limiting the extent to which a private entity must comply with the bill, under certain circumstances.

The fiscal impact of the bill is indeterminate. See Fiscal Comments.

The bill provides an effective date of July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0003b.WMC.DOCX

DATE: 11/28/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Tourism and Economic Development

To the extent authorized by state law, local governments have the authority to promote economic and tourism development within their jurisdictions.¹

In order to promote tourism development in the state, the Legislature has authorized counties to levy a number of tourist development taxes, the proceeds of which may generally be used to:²

- Promote and advertise tourism in the State of Florida, nationally and internationally;
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency;
- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, auditoriums, aquariums, or museums within the boundaries of the county or subcounty special taxing district in which the tax is levied;³
- Promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;
- Pay the debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers; and
- Finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.

In order to promote economic development in the state, current law allows for the expenditure of “public funds to attract and retain business enterprises ...”⁴ The Legislature also provides explicit authority for counties and municipalities to “enhance and expand economic activity in the counties of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state; to enhance and preserve purchasing power and employment opportunities for the residents of this state; and to improve the welfare and competitive position of the state.”⁵

¹ Florida counties and municipalities are granted broad home rule authority. *See* Article VIII, sections 1 and 2 of the Florida Constitution; and s. 125.001(3), F.S., which provides a general law grant of expansive home rule authority to all Florida counties. Statutory preemptions and charter limitations impose limitations on this expansive authority. Additionally, article VII, section 1 of the Florida Constitution preempts all taxing authority (with the exception of ad valorem taxes) to the state.

² s. 125.0104(5)(a), F.S.; 125.0104(3)(l) and (n), F.S.

³ Also included in this category: publicly owned auditoriums operated by nonprofit organizations, and aquariums or museums owned and operated by nonprofit organizations.

⁴ s. 125.045, F.S., and s. 166.021(8), F.S.

⁵ The Florida Legislature’s Office of Economic and Demographic Research (EDR), Florida County & Municipal Economic Development Incentives: LFY 2014-15 Report (December 2016) *available at* <http://edr.state.fl.us/Content/local-government/reports/index.cfm#incentives-report>

Local Tourism Development

Florida law permits counties to impose local option taxes on rentals or leases of accommodations for a term of six months or less.⁶

The authorization for counties to tax contained in s. 125.0104, F.S., are collectively referred to as “tourist development taxes” or “bed taxes,” and consist of five separate, but related taxes, as follows:

1. Original 1 or 2 Percent Tax⁷
2. Additional 1 Percent Tax⁸
3. Professional Sports Franchise Facility/Convention Center Tax (up to 1% rate)⁹
4. Additional Professional Sports Franchise Facility Tax (up to 1% rate)¹⁰
5. High Tourism Impact Tax (1% rate)¹¹

(Each of the above taxes is explained in more detail below and numbered accordingly.)

A limited number of counties are also eligible to levy other similar taxes:

6. Convention development taxes (2% or 3% rate); or
7. A tourist impact tax (1% rate), subject to certain conditions.¹²

(These taxes are explained in more detail below, and numbered accordingly.)

A tourist development tax is charged by the person receiving the consideration for rent or lease at the time of payment, and this person is responsible for receiving, accounting for, and remitting any applicable tax to the Department of Revenue (DOR). The DOR keeps records showing the amount of taxes collected, including records disclosing the amount of taxes collected from each county in which a tax is levied and promulgates rules and publishes forms as necessary to enforce these taxes.¹³ Counties are also allowed to collect and administer the tax locally, and may retain up to three percent of collections to cover administrative costs. Local administration of the tax requires adoption of an ordinance, electing either to assume all responsibility for auditing the records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes or to delegate such authority to the DOR.¹⁴

Each county that levies a tourist development tax is required to have a Tourist Development Council, which is composed of nine members and appointed by the county governing board.¹⁵ The Tourist Development Council must be composed as follows:

- One member of the governing board of the county, designated by the chair of the governing board.

⁶ Section 125.0104(3)(a) provides that “every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, condominium or timeshare resort for a term of six months or less is exercising a taxable privilege, unless such person rents, leases, or lets for consideration any living quarters or accommodations that are exempt according to the provisions of ch. 212, F.S.

⁷ All 67 counties are eligible to levy this tax. In FY 2016-17, 62 counties levied it for an estimated \$352 million in revenue. EDR, 2016 Local Government Financial Information Handbook, p. 251.

⁸ 59 counties are eligible to levy this tax. In FY 2016-17, 48 counties levied it for an estimated \$146 million in revenue. *Id.* at 253.

⁹ All 67 counties are eligible to levy this tax. In FY 2016-17, 39 counties levied it for an estimated \$165 million in revenue. *Id.* at 257.

¹⁰ 65 counties are eligible to levy this tax. In FY 2016-17, 24 counties levied it for an estimated \$121 million in revenue. *Id.* at 263.

¹¹ Monroe, Orange, Osceola, Palm Beach, and Pinellas counties currently levy this tax, and will realize an estimated \$75 million in revenue during the 2016-17 local fiscal year. *Id.* at 259.

¹² See ss. 125.0108, F.S. and 212.0305, F.S.

¹³ s. 125.0104(3), F.S.

¹⁴ s. 125.0104(10), F.S.

¹⁵ s. 125.0104(4)(e), F.S.

- Two elected municipal officials, at least one of whom shall be from the most populous municipality in the county or special taxing district in which the tax is levied.
- Six persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax.

The Tourist Development Council has the following duties:

- Meet at least once each quarter;
- From time to time, make recommendations to the county governing board for the effective operation of the special projects or for uses of the tourist development tax revenue;
- Perform such other duties as may be prescribed by county ordinance or resolution;
- Continuously review expenditures of revenues from the tourist development trust fund;
- Receive quarterly expenditure reports from the county governing board or its designee; and
- Report unauthorized expenditures to the county governing board and the DOR.
- The governing board of the county and DOR are required to review the findings of the council and take appropriate administrative or judicial action to ensure compliance with the law.

Depending on a county's eligibility to levy, the tourist development tax rate applied to transient rental transactions varies from three percent to a maximum of six percent. While all counties are eligible to levy at least a three percent tourist development tax, not all counties exercise this option. The actual levies by counties related to tourist development range anywhere from two to six%. At least 43 counties do not currently impose the maximum tourist development tax rate available. For example, while Pinellas County levies six percent in tourist development taxes, nearby Pasco County levies two percent and Hardee County does not levy any tourist development taxes.¹⁶

During the 2016-17 fiscal year, the 62 counties¹⁷ levying a tourist development tax will collectively realize approximately \$867 million in revenue. For example, Hillsborough County levies a five percent tourist development tax and is estimated to collect approximately \$29.6 million in revenue; whereas Glades County levies a two percent tourist development tax and is estimated to collect approximately \$26,000 in revenue.

1. Original 1 or 2 Percent Tax Pursuant to s. 125.0104(3)(c), F.S.

All counties are eligible to levy the original 1 or 2 percent tax. The tax must be levied pursuant to an ordinance that also contains the enacted county tourist development plan, and the ordinance must be approved in a countywide referendum election or by a majority of voters in the subcounty special tax district affected by the tax.¹⁸ The initial levy of the tax is allowed only after a countywide referendum. However, after this initial referendum, certain increases are allowed upon the vote of the county's governing body.¹⁹

At least 60 days prior to the enactment of the ordinance levying the tax, the county's governing body must adopt a resolution establishing and appointing the members of the county tourist development council and indicating the county's intention to consider the enactment of an ordinance levying and imposing the tax.²⁰

The tourist development council, prior the enactment of the ordinance, must prepare and submit to the county's governing body for its approval a plan for tourist development.²¹ These provisions regarding

¹⁶ EDR, 2016 Local Government Financial Information Handbook, p. 246-247 (November 2016).

¹⁷ Calhoun, Hardee, Lafayette, Liberty, and Union Counties do not levy a tourist development tax.

¹⁸ s. 125.0104(6), F.S.

¹⁹ s. 125.0104(3)(c), F.S.

²⁰ ss. 125.0104(3)(1)4., 125.0104(3)(n)2., F.S., and 125.0104(3)(b), F.S.

²¹ s. 125.0104(4), F.S.

the establishment of a county tourist development council and the submission of a tourist development plan apply only to the original 1 or 2 percent tax pursuant to s. 125.0104(3)(c), F.S., the other additional levies are exempted from these requirements.

The plan for tourist development must set forth the anticipated net tax revenue to be derived by the county for the two years following the tax levy as well as indicate the tax district in which the tourist development tax is proposed. In addition, the plan provides a list, in order of priority, of the proposed uses of the tax revenue by specific project or use as well as the approximate cost or expense allocation for each specific project or use. The governing body must adopt the county plan for tourist development as part of the ordinance levying the tax. Any changes to the plan after the levy has been enacted must be approved by the county's governing board.²²

The Original 1 or 2 Percent Tax pursuant to s. 125.0104, F.S., includes the following requirements and authorizations:

- County tourism promotion agencies are authorized to represent themselves to the public as "convention and visitors bureaus", "visitors bureaus", "tourist development councils", "vacation bureaus", or any other name or names specifically designated by ordinance.²³
- Make expenditures for transportation, lodging, meals, and other reasonable and necessary items and services for such persons, as determined by the head of the agency, in connection with the performance of promotional and other duties of the agency.
- Pay entertainment expenses only when authorized for meetings with travel writers, tour brokers, or other persons connected with the tourist industry.
- Ensure all travel and entertainment related expenditures in excess of \$10 are made pursuant to this subsection and are substantiated by paid bills; and complete detailed justification for all travel and entertainment-related expenditures made pursuant to this subsection are shown on the travel expense voucher or attached thereto.
- Ensure transportation and other incidental expenses, other than those provided in s. 112.061, F.S. only be authorized for officers and employees of the agency, other authorized persons, travel writers, tour brokers, or other persons connected with the tourist industry when authorized.
- Ensure that all other transportation and incidental expenses are as provided in s. 112.061, F.S.
- Ensure that operational or promotional advancements, as defined in s. 288.35(4), F.S., obtained pursuant to this subsection, shall not be commingled with any other funds.
- Ensure that foreign travel, the costs of per diem and incidental expenses of officers and employees of the agency and other authorized persons, is paid at the current rates as specified in the federal publication "Standardized Regulations (Government Civilians, Foreign Areas)."
- Ensure that only the actual reasonable and necessary costs of travel, meals, lodging, and incidental expenses of officers and employees of the agency and other authorized persons are paid when meeting with travel writers, tour brokers, or other persons connected with the tourist industry, and while attending or traveling in connection with travel or trade shows; and that with the exception of provisions concerning rates of payment, the provisions of s. 112.061, F.S. are applied to this type of travel.
- Undertake marketing research and advertising research studies and provide reservations services and convention and meetings booking services consistent with the authorized uses of revenue as set forth in s. 125.0104(5), F.S.

²² See s. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

²³ s. 125.0104(9)(e), F.S.

2. *Additional 1 Percent Tax Pursuant to Section 125.0104(3)(d), F.S.*²⁴

In addition to the original 1 or 2 percent tax authorized in s. 125.0104(3)(c), F.S., the county's governing body may levy an additional 1 percent tax on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by an extraordinary vote of the governing body for the purposes set forth in s. 125.0104(5), F.S., or referendum approval by the registered voters within the county or subcounty special district.

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. No county can levy this additional tax unless the county has imposed the 1 or 2 percent tax for a minimum of three years prior to the effective date of the levy and imposition of this additional tax. If the 1 or 2 percent tax is levied within a subcounty special district, then this additional tax can only be levied within the district.

Generally, the tax proceeds are used for capital construction of tourist related facilities, tourist promotion, and beach and shoreline maintenance.

During the 2016-17 local fiscal year, 48 of the eligible 59 counties currently levying this tax will realize an estimated \$146 million in revenue.

3. *Professional Sports Franchise Facility/Convention Center Tax Pursuant to s. 125.0104(3)(l), F.S.*²⁵

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 2016-17 local fiscal year, 39 of the eligible 67 counties currently levying this tax will realize an estimated \$165 million in revenue.

4. *Additional Professional Sports Franchise Facility Tax Pursuant to s. 125.0104(3)(n), F.S.*²⁶

In addition to any other tourist development tax imposed, a county that has levied the Professional Sports Franchise Facility Tax pursuant to s. 125.0104(3)(l), F.S., may levy an additional tax that is no greater than one percent on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by a majority plus one 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 or retained spring training franchise facilities and promote tourism.

The provisions in s. 125.0104(4), F.S., regarding the preparation of the county tourist development plan are not 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 this tax applies only to Miami-Dade and Volusia counties. Any county authorized to levy the Consolidated County Convention

²⁴ EDR, 2016 Local Government Financial Information Handbook, p. 253-255 (November 2016).

²⁵ *Id.* at 257.

²⁶ *Id.* at 263-264.

Development Tax (i.e., Duval County) pursuant to s. 212.0305(4)(a), F.S., may levy this tax. With the exception of Miami-Dade and Volusia counties, any county that has levied the Professional Sports Franchise Facility Tax pursuant to s. 125.0104(3)(l), F.S., is eligible to levy this tax.

During the 2016-17 local fiscal year, 24 of the eligible 65 counties currently levying this tax will realize an estimated \$121 million in revenue.

5. High Tourism Impact Tax Pursuant to s. 125.0104(3)(m), F.S.²⁷

In addition to any other tourist development tax imposed, a high tourism impact county may levy an additional one percent tax on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance adopted by an extraordinary vote of the county's governing body. The tax proceeds are used for one or more of the authorized uses pursuant to s. 125.0104(5), F.S. The provisions in s. 125.0104(4)(a)-(d), F.S., regarding the preparation of the county tourist development plan are not applicable to this tax.

A county is considered to be a high tourism impact county after the DOR has certified to the county that its sales subject to the tax exceeded \$600 million during the previous calendar year or were at least 18 percent of the county's total taxable sales under ch. 212, F.S., where the sales subject to the tax were a minimum of \$200 million. No county authorized to levy a convention development tax (i.e., Duval, Miami-Dade, and Volusia) is considered a high tourism impact county. Once a county receives this high tourism impact designation, it retains it for the period of time of the tax levy.

Monroe, Orange, Osceola, Palm Beach, and Pinellas counties currently levy this tax, and these counties will realize an estimated \$75 million in revenue during the 2016-17 local fiscal year. According to the DOR, three additional counties (Broward, Lee, and Walton) are either eligible or potentially eligible to levy the tax in 2016 due to sufficient sales in calendar year 2015. Broward County was certified by the DOR in June 2015 but has not been subsequently certified. Lee and Walton counties have not been formally certified by the DOR.

6. Tourist Impact Tax Pursuant to s. 125.0108, F.S.²⁸

Any county creating a land authority pursuant to s. 380.0663(1), F.S., may levy a one percent tax subject to referendum approval on transient rental facilities within the county area designated as an area of critical state concern pursuant to ch. 380, F.S. If the area(s) of critical state concern are greater than 50 percent of the county's total land area, the tax may be levied countywide. The tax proceeds are used to purchase property in the area of critical state concern and offset the loss of ad valorem taxes due to those land purchases.

Areas that have been statutorily designated as areas of critical state concern include the Big Cypress Area, primarily in Collier County; the Green Swamp Area, in central Florida; the Florida Keys Area, in south Florida; and the Apalachicola Bay Area, in Franklin County. Only Monroe County has created the land authority pursuant to s. 380.0663(1), F.S., and is therefore authorized to levy by ordinance the tax in the area or areas within the county designated as an area of critical state concern. During the 2016-17 local fiscal year, Monroe County will realize an estimated \$8.3 million in revenue.

7. Convention Development Taxes Pursuant to s. 212.0305, F.S.²⁹

Certain counties or sub-parts of counties are authorized to levy convention development taxes on transient rental transactions. Duval (as a county consolidated with a municipality), Miami-Dade (as a charter county), and parts of Volusia currently levy a convention development tax. Three of the five

²⁷ *Id.* at 259-260.

²⁸ *Id.* at 265-266.

²⁹ *Id.* at 123-124.

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 capital construction of convention centers and other tourist-related facilities as well as tourist promotion; however, the authorized uses vary by levy.

During the 2016-17 local fiscal year, the three counties levying a convention development tax will realize an estimated \$80 million in revenue.

Public records

In accordance with s. 125.0104(9)(d), F.S., "information given to a county tourism promotion agency which, if released, would reveal the identity of persons or entities who provide data or other information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution."

In addition, the following information held by a county tourism promotion agency, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Booking business records.³⁰
- Trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4), or any amendments thereto.
- A trade secret, as defined in s. 812.081, F.S., held by a county tourism promotion agency is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Use of state trade secret laws by businesses that contract with state and local tourist development agencies has recently come to the attention of Florida House of Representatives and House Speaker Richard Corcoran after requests for various contracts from state and local tourist development agencies were not fully answered because the contracts were being redacted based on trade secrets contained in the contracts. In 2016, House Speaker Richard Corcoran filed suit for the release of details of a contract that Visit Florida, the state's tourism promotion agency, had with the Miami rapper Pitbull to promote tourism in Florida.³¹ Visit Florida claimed that it was prohibited from releasing the details of the contract, including the amount Pitbull was paid, his official duties, the requirements for the state and even the name of his agent because they were declared "trade secrets."³²

Local Economic Development³³

To the extent granted or unrestricted by state law, local governments have the authority to promote economic development within their jurisdictions. Section 125.045, F.S., titled, "County economic development powers," finds that there is a "need to enhance and expand economic activity in the counties of this state by attracting and retaining manufacturing development, business enterprise

³⁰ Section 255.047(1)(a), F.S., provides that "Booking business records" means client calendars, client lists, exhibitor lists, and marketing files. The term does not include contract negotiation documents, lease agreements, rental rates, event invoices, event work orders, ticket sales information, box office records, attendance figures, payment schedules, certificates of insurance, accident reports, incident reports, or correspondence specific to a confirmed event.

³¹ Gray Rohrer, *House Speaker sues over Pitbull contract*, ORLANDO SENTINEL (Dec. 13, 2016), <http://www.orlandosentinel.com/news/politics/political-pulse/os-house-speaker-sues-pitbull-contract-story.html>

³² *Id.*

³³ EDR, Florida County & Municipal Economic Development Incentives: LFY 2014-15 Report (December 2016).

management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state; to enhance and preserve purchasing power and employment opportunities for the residents of this state; and to improve the welfare and competitive position of the state.”

Current law allows the governing body of a county to expend public funds to attract and retain business enterprises, and indicates that the use of public funds toward the achievement of such economic development goals constitutes a public purpose. A public purpose includes expending “public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.”

Florida law requires that a “contract between the governing body of a county or other entity engaged in economic development activities on behalf of the county and an economic development agency must require the agency or entity receiving county funds to submit a report to the governing body of the county detailing how county funds were spent and detailing the results of the economic development agency’s or entity’s efforts on behalf of the county.”³⁴ This report must be submitted annually to the governing body of the county, and the county must file a copy of the report with the Office of Economic and Demographic Research and post a copy of the report on the county’s website.

Types of Incentives for Economic Development

Counties and municipalities typically use the following types of economic development incentives:

*1. Direct Financial Incentives*³⁵

Direct financial incentives provide monetary assistance to a business from the local government or through a local government-funded economic development organization. This assistance is provided through grants, loans, equity investments, loan insurance, and loan guarantees. These programs generally address business financing needs but also may provide funding for workforce training, market development, modernization, and technology commercialization activities. Direct financial incentives are generally project specific, contingent on pre-award review and evaluation, and typically performance based. Direct financial incentives also include contributions in combination with state economic development incentives negotiated by the Florida Department of Economic Opportunity (DEO), such as Qualified Target Industry Tax Refund (QTI) or Quick Action Closing Fund (QACF), or in combination with other local governments.

*2. Indirect Financial Incentives*³⁶

Indirect financial incentives include grants and loans to local government entities, nonprofits, and organizations that are used to spur business investment or development. The recipients include communities, financial institutions, universities, community colleges, training providers, venture capital investors, and business incubators. In many cases, the funds are tied to one or more specific business locations or expansion projects. Other programs are used to address the general needs of the business community, including infrastructure, technical training, new and improved highway access, airport expansions, and other facilities. Funds are provided to the intermediaries in the form of grants, loans, and loan guarantees.

³⁴ s. 125.045, F.S.

³⁵ *Supra*, note 39.

³⁶ *Id.*

This type of incentive may also be used to leverage private investment in economic development. An example is linked deposit programs, in which local government funds are deposited in a financial institution in exchange for providing capital access or subsidized interest rates to qualified business borrowers. Indirect financial incentives are generally contingent on pre-award review and evaluation, and such incentives may be performance-based.

While many jurisdictions do business marketing and recruitment "in-house," some contract with a private Economic Development Organization (EDO) or contribute dues to a regional EDO that provides these services to local governments across a defined region.

3. Tax-Based and Fee-Based Incentives³⁷

Tax-based incentives use the tax code as the source of direct or indirect subsidy to qualified businesses. They tend to have longer lifespans and be less visible than direct financial or indirect financial incentives because they do not require an annual appropriation. In most instances, tax-based incentives are awarded upon verification of eligibility and may not be subject to pre-award review and evaluation like direct financial incentives.³⁸

Florida's counties and municipalities are limited in their ability to offer tax-based incentives, either for economic development or other purposes. With the exception of ad valorem taxes, Florida's Constitution preempts all taxing authority to the state. Local taxes authorized by the constitution or by the Legislature may only be levied pursuant to the specifications of the governing statute. Unless specifically authorized, relief from these local taxes (credits, exemptions, or refunds) may not be granted.

Of all the local taxes, only the following three taxes provide authority for county or municipal governments to offer relief³⁹ (i.e., tax exemptions) at the option of the respective local government:

- Economic Development Ad Valorem Tax Exemption: Article VII, Section 3 of the State Constitution and s. 196.1995, F.S., authorize counties and municipalities to grant, after referendum approval and passage of an ordinance, ad valorem tax relief from its respective levy to new or expanding businesses that meet certain job-creation and other requirements. The exemption is limited to 10 years and may be restricted to businesses located in a brownfield area or a former enterprise zone. In addition, the exemption is contingent on pre-award review and evaluation and approval by ordinance.
- Local Business Tax: Section 205.054, F.S., authorizes counties and municipalities to grant a general exemption of 50 percent for "any business, profession or occupation" with a permanent business location in an Enterprise Zone. However, this exemption essentially terminated on December 31, 2015, with the expiration of the Florida Enterprise Zone Act. Therefore, new exemptions are not authorized for any period beginning on or after December 31, 2015.⁴⁰
- Public Service Tax: Sections 166.231–.234, F.S., authorize municipalities and charter counties to grant exemptions from the tax on certain utilities or products in specific situations.

Fee-based incentives use "Home-Rule" revenues as the source of direct or indirect subsidy to qualified businesses. Unless limited by law, county and municipal governments have broad authority to levy proprietary fees, regulatory fees, and special assessments within their jurisdictions. Unless restricted by law or contract (e.g., bond provisions), local governments may also grant exemptions or waivers or

³⁷ *Id.*

³⁸ The constitutional Economic Development Ad Valorem Tax Exemption is the most prominent exception.

³⁹ Exemptions provide freedom from payment of taxes normally applied to specific business activities. Exemptions are technically distinguishable from credits (which provide a reduction in taxes due after verification that statutory or contractual terms have been met) and refunds (which typically provide a return of taxes paid after verification that statutory or contractual terms have been met).

⁴⁰ s. 205.054(6), F.S.

provide refunds or credits from these levies, either as an economic development incentive or for any other purpose. Proprietary Fees may include admissions fees, franchise fees, user fees, and utility fees. Regulatory Fees may include building permit fees, impact fees, inspection fees, and stormwater fees. While they may be collected like property taxes, special assessments are “based on the special benefit accruing to such property from such improvements when the improvements funded by the special assessment provide a benefit which is different in type or degree from benefits provided to the community as a whole.”⁴¹

4. Below Market Leases or Deeds for Real Property⁴²

Below market leases or deeds may be awarded to businesses as an incentive to remain, expand, or locate in a jurisdiction. These can be provided either directly by the local government or indirectly through an organization authorized by the local government.

Auditing

Auditor General

Section 11.45, F.S., defines the types of audits the Auditor General may conduct. That section requires certain state and local governmental audits to be conducted and specifies the frequency with which the audits must occur. The Auditor General also may conduct other audits determined to be appropriate.

Florida Single Audit Act

The Florida Single Audit Act, codified in s. 215.97, F.S., is designed to:

- Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects;
- Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities;
- Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities;
- Provide for identification of state financial assistance transactions in the state accounting records and recipient organization records;
- Promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and
- Ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities.

Pursuant to the Florida Single Audit Act, certain entities that meet the “audit threshold” requirements are subject to a state single audit or a project-specific audit. Currently, the “audit threshold” requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every two years, the Auditor General, after consulting with the Executive Office of the Governor, DFS, and all state awarding agencies, is required to review the threshold amount for requiring audits and may adjust the threshold amount.⁴³

Annual Financial Audit Reports

If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, an entity meeting certain requirements must have an annual

⁴¹ s. 170.01(2), F.S.

⁴² *Supra*, note 39.

⁴³ s. 215.97(2)(a), F.S.

financial audit of its accounts and records completed within nine months after the end of its fiscal year by an independent certified public accountant.⁴⁴ Section 218.39, F.S., specifies the minimum required information for the independent audits and provides for discussion between the governing body and the independent certified public accountant regarding certain specified conditions. If corrective action is required and has not been taken, the Legislative Auditing Committee can request a statement explaining why the corrective action has not been taken and take certain steps to determine whether the entity should be subject to further state action.⁴⁵

Local Governmental Entity Annual Financial Reports

Section 218.32, F.S., requires local governmental entities that are required to provide for an audit under s. 218.39, F.S., to submit an audit report and annual financial report to the Department of Financial Services (DFS) within 45 days after completion of the audit report, but no later than nine months after the end of the fiscal year. The annual financial report must be signed by the chair of the governing body and the chief financial officer of the local governmental entity. The law also specifies the information that must be included in the report.

In addition, DFS is required to file a verified report with the Governor, Legislature, Auditor General, and Special District Accountability Program of the DEO showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.⁴⁶

Per Diem and Travel Expenses

Section 112.061, F.S., establishes standard travel reimbursement rates applicable to all public officers, public employees, and other individuals whose travel is authorized and paid for by a public agency.⁴⁷ All travel must be authorized by the head of the agency, or his or her designated representative, from whose funds the travel expenses are paid. In addition, travel expenses must be limited to those necessarily incurred in the performance of a public purpose authorized by law to be performed by the agency. Current law establishes the following three categories of travel:

- Class A – Continuous travel of 24 hours or more away from official headquarters.
- Class B – Continuous travel of less than 24 hours that involves overnight absence from official headquarters.
- Class C – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.

Currently, Florida allows \$80 per diem for Class A and B travel. If expenses exceed \$80, the state will pay a maximum of \$36 (\$6 for breakfast, \$11 for lunch, and \$19 for dinner) in addition to the actual expenses for lodging at a single-occupancy rate supported by paid bills. Class C travel is not reimbursed on a per diem basis, but instead for each meal during which the travel occurred.

The 2016-17 budget implementing bill created a limit on the amount of actual expenses for lodging that may be reimbursed under certain circumstances. The bill provided that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed \$150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit. This limit was also included in the 2017-18 budget

⁴⁴ s. 218.39(1), F.S.

⁴⁵ s. 11.40(2), F.S.

⁴⁶ s. 218.32(2), F.S.

⁴⁷ s. 112.061(1), F.S. The term “public agency” is defined as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law. Section 112.061(2)(a), F.S.

implementing bill, which further specified that a “meeting” for purposes of the limit does not include travel activities for conducting an audit, examination, inspection, or investigation or travel activities related to a litigation or emergency response. This limit is in effect until July 1, 2018.

Agency - Definition

Section 119.011, F.S., provides that “agency” means “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Counties and Municipalities⁴⁸

Online Posting of Governmental Budgets

Counties⁴⁹ and municipalities⁵⁰ are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption.⁵¹ Current law does not specify how long these documents must remain available on the website.

Reporting Requirements

An agency or entity that contracts with and receives county or municipal government funds for economic development purposes is required to submit a report to the local government concerning the usage of the local funds, and the local government in turn is required to post a copy of the report on its own website.

Local governments are also required to provide the Office of Economic and Demographic Research (EDR) with details regarding their economic development incentives in excess of \$25,000 granted during the previous fiscal year.⁵² EDR annually collects this data from local governments through an online survey, coupled with follow-up communications as necessary. The survey questions are guided by four categories of incentives: direct financial incentives of monetary assistance, indirect incentives in the forms of grants and loans, fee-based or tax-based incentives, and below-market rate leases or deeds for real property. EDR compiles the economic development incentives provided by the local governments in a manner that shows the total of each class of incentives into a report and provides the report to the President of the Senate, Speaker of the House of Representatives, and the DEO.

House Bill 1A (2017)

The Florida Tourism Industry Marketing Corporation dba VISIT Florida (VF) is a nonprofit corporation established by the Florida Legislature to execute tourism promotion and marketing services, functions, and programs for the state. Enterprise Florida, Inc. (EFI) is a nonprofit corporation established by the Legislature to serve as the state’s main economic development organization.

During the 2017 Special Session, the House passed transparency and accountability provisions for Visit Florida and Enterprise Florida in HB 1A (2017) that went into effect July 1, 2017. The bill requires that all contracts with VF and EFI contain certain information, performance standards, budgets, and

⁴⁸ *Supra*, note 39.

⁴⁹ s. 129.03, F.S.

⁵⁰ s. 166.241, F.S.

⁵¹ ss. 129.06(2)(f)2.; 166.241(5); and 189.016(7), F.S.

⁵² *Id.*

travel and entertainment expenses. It also limits travel expenditures, lodging expenses, public compensation and bonuses of employees, and limiting expenditures on employees and board members for food, beverages, lodging, entertainment or gifts.

Specifically, the bill requires any entity that partnered with VF or EFI that receives more than 50 percent of their revenue from VF or EFI, or tourist development taxes, including ss. 125.0104, 125.0108, or 212.0305, F.S., to report additional financial data, including the salaries of employees and board members, the operating budget of the partner entity, funds expended by the partner entity on EFI or VF's behalf, and travel and entertainment expenditures. It also limits expenditures on, and gifts from, employees of local tourist or economic development agencies that receive revenue from tourist development taxes.

In addition, the bill requires VF and EFI to submit proposed contracts worth \$750,000 or more for 14-day legislative notice and review under s. 216.177, F.S., and upon objection by the chair and vice chair of the Legislative Budget Commission or Speaker and Senate President, the contract may not be executed, and to post the following information online:

- A plain language version of any contract that is estimated to exceed \$35,000;
- Any agreement entered into between VF or EFI and any other entity, including a local government, private entity, or nonprofit entity, that receives public funds or funds from a tax imposed pursuant to ss. 125.0104, 125.0108, or 212.0305, F.S.;
- Contracts, financial data, and other information;
- Video recordings of each board meeting;
- A detailed report of expenditures following each marketing event paid for with VF or EFI's funds, within 10 business days after the event;
- An annual itemized accounting of the total amount of funds spent by any third party on behalf of VF or EFI, any board member, or employee; and
- An annual itemized accounting of the total amount of travel and entertainment expenditures.

After the passage of HB 1A, the transparency and accountability of local economic and tourist development agencies drew the attention of the Florida House of Representatives and House Speaker Richard Corcoran.⁵³ News reports indicated that many tourist development agencies across the state cut ties with VF and had refused to renew their collective marketing agreements with VF.⁵⁴ Upon learning of this, Speaker Corcoran wrote to twelve such agencies⁵⁵ and stated, "Rather than following Visit Florida's lead and embrace the financial transparency and accountability measures currently in use by Visit Florida, local tourism agencies have instead opted to remove themselves from partnership agreements with Visit Florida in a vain effort to hide taxpayer-financed activities from the public. The fact that these tourist development agencies are so concerned about what this financial information would reveal is further evidence that immediate oversight is necessary."⁵⁶

Other Recent Transparency and Accountability Issues

Over the past year, the Florida House has made numerous requests for information to state and local tourist development agencies asking for more transparency regarding their spending of tax dollars.⁵⁷ In their responses, some tourist development agencies indicated that contracts were either being redacted based on trade secrets contained in the contracts or that the contracts were not readily

⁵³ Gray Rohrer, *House Speaker sues over Pitbull contract*, ORLANDO SENTINEL (Dec. 13, 2016),

<http://www.orlandosentinel.com/news/politics/political-pulse/os-house-speaker-sues-pitbull-contract-story.html>

⁵⁴ Jennifer Sorentrue, *Tourism group backed VisitFlorida, now cuts ties with state agency*, PALM BEACH POST, (Sept.2, 2017),

[http://www.mypalmbeachpost.com/business/tourism-group-backed-visitflorida-now-cuts-ties-with-state-](http://www.mypalmbeachpost.com/business/tourism-group-backed-visitflorida-now-cuts-ties-with-state-agency/9cLnr0COrvr9DCL6huD2rL/)

[agency/9cLnr0COrvr9DCL6huD2rL/](http://www.mypalmbeachpost.com/business/tourism-group-backed-visitflorida-now-cuts-ties-with-state-agency/9cLnr0COrvr9DCL6huD2rL/)

⁵⁵ Arek Sarkissian, *House leader wants answers from local tourism agencies on spending*, TALLAHASSEE DEMOCRAT (Aug. 25, 2017),

<http://www.tallahassee.com/story/news/politics/2017/08/25/house-leader-wants-answers-local-tourism-agencies-spending/599158001/>

⁵⁶ *Id.*

⁵⁷ *Id.*

available because the contracts were not directly entered into by local county officials, but were entered into between non-profit or private organizations acting on behalf of local government entities.

In 2017, certain news organizations made requests for information related to certain expenditures and possible conflicts of interests on tourist development boards that did not receive a prompt response. Although they ultimately responded to the Florida House, the contracts raised concerns about possible conflicts of interest related to contracts with companies or organizations who also serve on the tourist development boards.⁵⁸

Effect of the Proposed Changes

The bill duplicates many of the accountability and transparency requirements put in place by HB 1A for Visit Florida and Enterprise Florida, and imposes those same requirements on local economic and tourist development agencies.

The bill creates s. 288.0751, F.S., defining an “economic development agency” as any entity that receives public funds and is engaged in economic development activities on behalf of one or more local governmental entities.

The bill creates s. 288.12261, F.S., defining a “tourism promotion agency” as any entity that receives public funds to promote tourism development on behalf of one or more local governmental entities.

The bill imposes the following transparency and accountability measures on both tourism promotional agencies and economic development agencies:

- Requiring that officers and board members file an annual disclosure when they, or their interests, benefit from the expenditure of agency funds, under certain circumstances.
- Prohibiting compensation for board members.
- Limiting employee compensation and benefits from public funds to what is authorized for the Governor (the Governor’s salary for Fiscal Year 2016-17 is \$130,273), and prohibiting bonuses or severance pay for employees from public funds unless authorized by law.
- Providing that agencies comply with the per diem and travel expenses imposed on state employees under s. 112.061, F.S.; and limiting lodging reimbursement to \$150, with certain exceptions.
- Providing that officers and employees are subject to the Code of Ethics for Public Officers and Employees standards under s. 112.313, F.S.
- Requiring that agencies avoid, neutralize, or mitigate significant potential organizational conflicts of interest before entering into certain contracts.
- Prohibiting agency from spending funds on food, beverages, lodging, entertainment, or gifts for employees or board members, unless authorized pursuant to s. 112.061, F.S., or the bill.
- Prohibiting agency employees or board members from accepting or receiving food, beverages, lodging, entertainment, or gifts from persons, vendors, or other entities doing business with the agency, unless such food, beverage, lodging, entertainment, or gift is available to similarly situated members of the general public.
- Requiring that all agency contracts contain certain information, including performance standards, a project budget, the value of services provided, and projected travel and entertainment expenses for employees and board members under certain circumstances.
- Requiring that contracts valued at \$250,000 or more be submitted to the board of the appropriate local government entity and published on that entity’s website at least 14 days before execution of the contract. If the contract is rejected by a majority vote, the agency may not execute any similar contract without first obtaining a majority vote in favor of such contract. An economic development agency may not enter into multiple related contracts to avoid this requirement.

⁵⁸ Gabrielle Russon, *Florida House Speaker demands information from Visit Orlando*, ORLANDO SENTINEL (Oct. 3, 2017), <http://www.orlandosentinel.com/news/politics/political-pulse/os-visit-orlando-letter-corcoran-20171003-story.html>

- Requiring that an agency submit to the governing board of the county, within 30 days after the end of its fiscal year, a complete and detailed report setting forth all public and private financial data, and publish such report on its website, including:
 - The total amount of revenue received from public and private sources.
 - The operating budget.
 - The total amount of salary, benefits, and other compensation provided by the agency to its officers, employees, or agents, regardless of the funding source.
 - An itemized account of all expenditures, including all travel and entertainment expenditures.
- Requiring the agency to post the following information on their website:
 - All contracts valued at \$5,000 or more, within 5 business days after execution.
 - All contracts, information, and financial data that is submitted to the governing board of the county, within 5 business days after submission.
 - Video recordings of each board meeting, within 3 business days after the meeting.
 - A detailed report of expenditures following each marketing event paid for with agency funds, within 10 business days after the event.
 - An annual itemized account of the total amount of funds spent by a third party on behalf of the agency, its board members, or its employees.
 - An annual itemized account of the total amount of travel and entertainment expenditures.
- Providing that any record required by the bill, including, but not limited to, a contract or agreement, is a public record and is not confidential or exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, and must be produced in full in accordance with the bill or upon request.
- Requiring that agencies maintain and provide online access to all of the information required under the bill, and that the DEO publish and maintain an online directory of the agencies and their websites.
- Providing that agencies which fail to comply with certain transparency and accountability requirements of the bill may not receive or expend public funds until regaining compliance.
- Requiring that the Auditor General:
 - Audit all tourism promotion agencies in counties that annually receive more than \$30 million in tourism development funds (Biennially).
 - Randomly select and audit at least two economic development agencies and two tourism promotion agencies in counties receiving less than \$30 million per year (Annually).
- Providing that it is a second degree misdemeanor to knowingly and willfully make a materially false or misleading statement, provide false or misleading information, fail to report certain information, or structure an organization or agreement to avoid the requirements of this section.
- Limiting the extent to which a private entity must comply with the bill, under certain circumstances.

The bill imposes the following transparency and accountability measures on tourism promotional agencies ONLY:

- Prohibits the expenditure of funds for the direct benefit of a single corporation or business entity.
- Authorizing the Governor or Chief Financial Officer to suspend or prohibit the distribution of tourist development taxes when an agency fails to comply with the transparency and accountability requirements of the bill.

The bill provides that certain reports and other information that is already required under s. 125.0104(4), F.S., also be published and made available online.

B. SECTION DIRECTORY:

Section 1 Amends s. 11.45, F.S., authorizing the Auditor General to audit certain accounts and records.

Section 2 Creates s. 288.0751, F.S., defining “economic development agency” and providing certain transparency and accountability requirements related to the operation of such an agency; requiring the Auditor General to conduct certain audits; and providing penalties.

- Section 3 Creates s. 288.12261, F.S., defining “tourism promotion agency” and providing certain transparency and accountability requirements related to the operation of such an agency; requiring the Auditor General to conduct certain audits; and providing penalties.
- Section 4 Amends s. 125.0104, F.S., requiring the governing boards of certain counties to review specified documents and to provide online access to certain information.
- Section 5 Amends s. 288.1226, F.S., revising financial data required to be included in an annual report.
- Section 6 Amends s. 288.904, F.S., revising financial data required to be included in an annual report.
- Section 7 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

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 an indeterminate but likely insignificant negative fiscal impact on any entity which meets the definition of an “economic development agency” or a “tourism promotion agency”, as a result of any additional workload to meet the reporting and accountability requirements of the bill.

Similarly, the bill may have an indeterminate positive fiscal impact on agencies which meet the above definitions to the extent that it limits expenditures relating to travel reimbursement or compensation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 14, 2017, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Clarifies that certain public financial disclosures are required for board members of agencies that are not part of county or municipal government, and specifying that county employees and public officers continue to be subject to state ethics requirements.
- Clarifies the authority and duties of the Auditor General concerning economic development agencies and tourism promotion agencies.
- Clarifies that certain contracts be submitted to and posted on the website of the appropriate local jurisdiction.
- Clarifies certain definitions.

The bill analysis is drafted to the committee substitute as passed by the Commerce Committee.

1 A bill to be entitled
2 An act relating to economic development and tourism
3 promotion accountability; amending s. 11.45, F.S.;
4 authorizing the Auditor General to audit certain
5 accounts and records; creating ss. 288.0751 and
6 288.12261, F.S.; providing definitions; providing
7 requirements for the operation of economic development
8 agencies and tourism promotion agencies, respectively;
9 requiring specified persons to file an annual
10 disclosure of certain interests; providing
11 requirements for such disclosure; requiring board
12 members to serve without compensation; authorizing per
13 diem and travel expenses for certain persons paid from
14 specified funds; prohibiting specified persons from
15 receiving public compensation in excess of a certain
16 amount; prohibiting certain performance bonuses and
17 severance pay; subjecting certain persons to a
18 specified code of ethics; requiring such agencies to
19 take certain actions regarding a significant potential
20 conflict of interest; limiting lodging expenses for
21 certain persons; providing an exception; prohibiting
22 the expenditure of agency funds on certain items;
23 prohibiting specified persons from accepting certain
24 items from specified entities; prohibiting a tourism
25 promotion agency from expending funds that directly

26 benefit only one business entity; requiring certain
27 contracts to include specified information; requiring
28 a governing body of a local governmental entity to
29 publish certain proposed contracts on such entity's
30 website and approve certain contracts; requiring such
31 agencies to submit a report of financial data to a
32 governing board of a county; specifying that certain
33 records are public records; requiring such agencies to
34 provide online access to certain information;
35 prohibiting such agencies from receiving or expending
36 public funds; requiring the Auditor General to conduct
37 certain audits; authorizing the Governor or Chief
38 Financial Officer to cease distributing certain tax
39 revenues to certain noncompliant tourism promotion
40 agencies; providing that it is unlawful to knowingly
41 and willfully make false or misleading statements,
42 provide false or misleading information, fail to
43 report certain information, or purposefully avoid
44 specified requirements; providing penalties; providing
45 applicability; amending s. 125.0104, F.S.; requiring
46 the governing board of a county to review certain
47 proposed contracts and certifications relating to
48 potential conflicts of interest and mitigation plans;
49 requiring the governing board of a county that imposes
50 a tourist development tax to provide online access to

51 certain information; amending ss. 288.1226 and
 52 288.904, F.S.; revising financial data required to be
 53 included in an annual report; conforming provisions to
 54 changes made by the act; providing an effective date.

55

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

57

58 Section 1. Paragraphs (y) and (z) are added to subsection
 59 (3) of section 11.45, Florida Statutes, to read:

60 11.45 Definitions; duties; authorities; reports; rules.—

61 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The
 62 Auditor General may, pursuant to his or her own authority, or at
 63 the direction of the Legislative Auditing Committee, conduct
 64 audits or other engagements as determined appropriate by the
 65 Auditor General of:

66 (y) The accounts and records pertaining to the use of
 67 funds from a tax imposed pursuant to s. 125.0104, s. 125.0108,
 68 or s. 212.0305 for tourism development or promotion by a local
 69 governmental entity, nonprofit organization, or for-profit
 70 organization, including a tourism promotion agency as defined in
 71 s. 288.12261 or a program or entity created by a tourism
 72 promotion agency.

73 (z) The accounts and records pertaining to:

74 1. An economic development agency of a county or
 75 municipality, including an economic development agency as

76 defined in s. 288.0751 or a program or entity created by an
 77 economic development agency;

78 2. If the county or municipality does not have an economic
 79 development agency, the county or municipal officers or
 80 employees assigned to promote the general business interests,
 81 industrial interests, or related responsibilities of the county
 82 or municipality; or

83 3. If authorized by the state, a municipality, or a county
 84 to promote the general business interests, industrial interests,
 85 or related responsibilities of the state, municipality, or
 86 county, a private agency, person, partnership, corporation, or
 87 business entity.

88 Section 2. Section 288.0751, Florida Statutes, is created
 89 to read:

90 288.0751 Local economic development agencies.-

91 (1) DEFINITION.-For purposes of this section, the term
 92 "economic development agency" means an entity, including, but
 93 not limited to, an agency as defined in s. 119.011, that
 94 receives public funds and is engaged in economic development
 95 activities on behalf of one or more local governmental entities.

96 (a) An economic development agency may include any local
 97 governmental entity or any entity under contract with one or
 98 more local governmental entities to promote economic development
 99 activities on behalf of such local governmental entity or
 100 entities through the expenditure of public funds.

101 (b) Enterprise Florida, Inc., and the Department of
 102 Economic Opportunity are not considered economic development
 103 agencies.

104 (2) OPERATION.—An economic development agency must operate
 105 in accordance with the following:

106 (a) Each officer and member of the board of directors of
 107 an economic development agency who is not otherwise required to
 108 file a financial disclosure pursuant to chapter 112 must file an
 109 annual disclosure describing the nature of his or her interests
 110 or the nature of the interests of his or her principals,
 111 including corporate parents and subsidiaries of his or her
 112 principals, when such interests benefit from the expenditure of
 113 economic development agency funds. The disclosure must be placed
 114 on the website of the economic development agency and included
 115 in the minutes of each meeting of the board of directors of the
 116 economic development agency when such expenditures are discussed
 117 or voted upon.

118 (b) Board members shall serve without compensation, but
 119 are entitled to receive reimbursement for per diem and travel
 120 expenses pursuant to s. 112.061. Such expenses must be paid out
 121 of funds of the economic development agency.

122 (c) Officers, employees, or agents, including the
 123 president or chief executive officer, may not receive
 124 compensation for employment from public funds, pursuant to such
 125 contract, that exceeds the salary and benefits authorized to be

126 paid to the Governor. Any payments of performance bonuses or
 127 severance pay to officers, employees, or agents from public
 128 funds are prohibited unless specifically authorized by law.

129 (d) An economic development agency must comply with the
 130 per diem and travel expense provisions of s. 112.061.

131 (e) Officers and employees are subject to the Code of
 132 Ethics for Public Officers and Employees standards under s.
 133 112.313.

134 (f) An economic development agency must avoid, neutralize,
 135 or mitigate significant potential organizational conflicts of
 136 interest before it enters into a contract. If the economic
 137 development agency elects to mitigate a significant potential
 138 organizational conflict of interest, an adequate mitigation
 139 plan, including organizational, physical, and electronic
 140 barriers, shall be developed and the head of the economic
 141 development agency must certify that the award is in the best
 142 interests of the county and submit such certification to the
 143 governing board of the county within 3 business days after
 144 entering into the contract.

145 (g) Lodging expenses for an employee or board member may
 146 not exceed \$150 per day, excluding taxes, unless the economic
 147 development agency is participating in a negotiated group rate
 148 discount or the economic development agency provides
 149 documentation of at least three comparable alternatives
 150 demonstrating that such lodging at the required rate is not

151 available. However, an employee or board member may expend his
 152 or her own funds for any lodging expenses in excess of \$150 per
 153 day.

154 (h) Economic development agency funds may not be expended
 155 for food, beverages, lodging, entertainment, or gifts for
 156 employees or board members, unless authorized pursuant to s.
 157 112.061 or this section. Employees or board members may not
 158 accept or receive food, beverages, lodging, entertainment, or
 159 gifts from persons, vendors, or other entities doing business
 160 with the economic development agency unless such food, beverage,
 161 lodging, entertainment, or gift is available to similarly
 162 situated members of the general public.

163 (3) TRANSPARENCY.—

164 (a) All contracts entered into by an economic development
 165 agency shall include:

- 166 1. The purpose of the contract.
- 167 2. Specific performance standards and responsibilities for
 168 each entity.
- 169 3. A detailed project or contract budget, if applicable.
- 170 4. The value of any services provided.
- 171 5. The projected travel and entertainment expenses for
 172 employees and board members, if applicable.

173 (b) A proposed contract with an estimated total contract
 174 value of \$250,000 or more must be submitted to the governing
 175 body of the local governmental entity on whose behalf the

176 contracted activity will occur and published on such entity's
 177 website at least 14 days before the contract is executed. If the
 178 governing body of the local governmental entity rejects such
 179 proposed contract by a majority vote held during the 14-day
 180 period, the economic development agency may not execute such
 181 proposed contract or any substantially similar contract without
 182 obtaining a majority vote of the governing body of the local
 183 governmental entity in favor of such contract. An economic
 184 development agency may not enter into multiple related contracts
 185 to avoid the requirements of this paragraph.

186 (c)1. An economic development agency shall submit to the
 187 governing board of the county, within 30 days after the end of
 188 its fiscal year, a complete and detailed report setting forth
 189 all public and private financial data of the economic
 190 development agency, and shall publish such report on its
 191 website.

192 2. The financial data shall include:

193 a. The total amount of revenue received from public and
 194 private sources.

195 b. The operating budget.

196 c. The total amount of salary, benefits, and other
 197 compensation provided by the economic development agency to its
 198 officers, employees, or agents, regardless of the funding
 199 source.

200 d. An itemized account of all expenditures, including all
 201 travel and entertainment expenditures.

202 (d) The following information must be posted on the
 203 website of each economic development agency:

204 1. All contracts with a total contract value of \$5,000 or
 205 more. Such contracts must be posted within 5 business days after
 206 execution.

207 2. All contracts, information, and financial data
 208 submitted to the governing board of the county. Such contracts,
 209 information, and data must be posted within 5 business days
 210 after submission.

211 3. Video recordings of each board meeting. Such recordings
 212 must be posted within 3 business days after the meeting.

213 4. A detailed report of expenditures following each
 214 marketing event paid for with economic development agency funds.
 215 Such report must be posted within 10 business days after the
 216 event.

217 5. An annual itemized account of the total amount of funds
 218 spent by a third party on behalf of the economic development
 219 agency, its board members, or its employees.

220 6. An annual itemized account of the total amount of
 221 travel and entertainment expenditures.

222 (e) Notwithstanding any provision of law to the contrary,
 223 a record required under this section, including, but not limited
 224 to, a contract or agreement, is a public record and is not

225 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of
 226 the State Constitution. Such record shall be produced in full in
 227 accordance with this section or upon request.

228 (f) An economic development agency shall maintain and
 229 provide online access to all of the information required under
 230 this subsection. Each economic development agency shall provide
 231 the Department of Economic Opportunity with the specific website
 232 address where the required information is published and
 233 maintained online, and the Department of Economic Opportunity
 234 shall publish and maintain a single online directory which lists
 235 each economic development agency and the specific website
 236 address where such required information may be located.

237 (g) An economic development agency that fails to comply
 238 with the transparency and accountability requirements of this
 239 subsection may not receive or expend public funds until it
 240 becomes fully compliant.

241 (4) AUDITS.—The Auditor General shall annually select at
 242 least two economic development agencies that received public
 243 funds in the previous year and conduct audits, as defined in s.
 244 11.45, to verify that funds were expended as required by this
 245 section and to verify that transparency and accountability
 246 requirements were met. If the Auditor General determines that
 247 funds were not expended as required by this section, he or she
 248 shall immediately report such findings to the Governor, the

249 President of the Senate, and the Speaker of the House of
 250 Representatives.

251 (5) PENALTIES.—It is unlawful for a person to knowingly
 252 and willfully make a materially false or misleading statement,
 253 provide false or misleading information, fail to report certain
 254 information, or structure an organization or agreement to avoid
 255 the requirements of this section. A person who violates this
 256 section commits a misdemeanor of the first degree, punishable as
 257 provided in s. 775.082 or s. 775.083.

258 (6) APPLICABILITY.—A private entity that meets the
 259 definition of an economic development agency under subsection
 260 (1) due solely to the existence of a contract between the
 261 private entity and an economic development agency to engage in
 262 economic development activities is required to comply with this
 263 section only in connection with the performance of its
 264 obligations and the expenditure of funds pursuant to such
 265 contract. This section shall not be construed to require the
 266 private entity to report or conform its other business practices
 267 or activities to the provisions of this section, provided such
 268 practices or activities are not directly related to or funded by
 269 such contract.

270 Section 3. Section 288.12261, Florida Statutes, is created
 271 to read:

272 288.12261 Tourism promotion agencies.—

273 (1) DEFINITION.—For purposes of this section, the term
 274 "tourism promotion agency" means an entity, including, but not
 275 limited to, an agency as defined in s. 119.011, that receives
 276 public funds to promote tourism development on behalf of one or
 277 more local governmental entities.

278 (a) A tourism promotion agency may include any local
 279 governmental entity or any entity under contract with one or
 280 more local governmental entities to promote tourism development
 281 on behalf of such local governmental entity or entities through
 282 the expenditure of public funds.

283 (b) For purposes of this section, the Florida Tourism
 284 Industry Marketing Corporation and the Department of Economic
 285 Opportunity are not considered tourism promotion agencies.

286 (2) OPERATION.—A tourism promotion agency must operate in
 287 accordance with the following:

288 (a) Each officer and member of the board of directors of a
 289 tourism promotion agency who is not otherwise required to file a
 290 financial disclosure pursuant to chapter 112 must file an annual
 291 disclosure describing the nature of his or her interests or the
 292 interests of his or her principals, including corporate parents
 293 and subsidiaries of his or her principal, when such interests
 294 benefit from the expenditure of tourism promotion agency funds.
 295 The disclosure must be placed on the website of the tourism
 296 promotion agency and included in the minutes of each meeting of

297 the board of directors of the tourism promotion agency when such
 298 expenditures are discussed or voted upon.

299 (b) Board members shall serve without compensation, but
 300 are entitled to receive reimbursement for per diem and travel
 301 expenses pursuant to s. 112.061. Such expenses must be paid out
 302 of funds of the tourism promotion agency.

303 (c) Officers, employees, or agents, including the
 304 president or chief executive officer, may not receive
 305 compensation for employment from public funds, pursuant to such
 306 contract, that exceeds the salary and benefits authorized to be
 307 paid to the Governor. Any payments of performance bonuses or
 308 severance pay to officers, employees, or agents from public
 309 funds are prohibited unless specifically authorized by law.

310 (d) A tourism promotion agency must comply with the per
 311 diem and travel expense provisions of s. 112.061.

312 (e) Officers and employees are subject to the Code of
 313 Ethics for Public Officers and Employees standards under s.
 314 112.313.

315 (f) A tourism promotion agency must avoid, neutralize, or
 316 mitigate significant potential organizational conflicts of
 317 interest before it enters into a contract. If the tourism
 318 promotion agency elects to mitigate a significant potential
 319 organizational conflict of interest, an adequate mitigation
 320 plan, including organizational, physical, and electronic
 321 barriers, shall be developed and the head of the tourism

322 promotion agency must certify that the award is in the best
 323 interests of the county and submit such certification to the
 324 governing board of the county within 3 business days after
 325 entering into the contract.

326 (g) Lodging expenses for an employee or board member may
 327 not exceed \$150 per day, excluding taxes, unless the tourism
 328 promotion agency is participating in a negotiated group rate
 329 discount or the tourism promotion agency provides documentation
 330 of at least three comparable alternatives demonstrating that
 331 such lodging at the required rate is not available. However, an
 332 employee or board member may expend his or her own funds for any
 333 lodging expenses in excess of \$150 per day.

334 (h) Tourism promotion agency funds may not be expended for
 335 food, beverages, lodging, entertainment, or gifts for employees
 336 or board members, unless authorized pursuant to s. 112.061 or
 337 this section. Employees or board members may not accept or
 338 receive food, beverages, lodging, entertainment, or gifts from
 339 persons, vendors, or other entities doing business with the
 340 tourism promotion agency unless such food, beverage, lodging,
 341 entertainment, or gift is available to similarly situated
 342 members of the general public.

343 (i) A tourism promotion agency shall not expend public or
 344 private funds that directly benefit only one business entity.

345 (3) TRANSPARENCY.—

346 (a) All contracts entered into by a tourism promotion
 347 agency shall include:
 348 1. The purpose of the contract.
 349 2. Specific performance standards and responsibilities for
 350 each entity.
 351 3. A detailed project or contract budget, if applicable.
 352 4. The value of any services provided.
 353 5. The projected travel and entertainment expenses for
 354 employees and board members, if applicable.
 355 (b) A proposed contract with an estimated total contract
 356 value of \$250,000 or more must be submitted to the governing
 357 board of the county and published on the county's website at
 358 least 14 days before the contract is executed. If the governing
 359 board of the county rejects such proposed contract by a majority
 360 vote held during the 14-day period, the tourism promotion agency
 361 may not execute such proposed contract or any substantially
 362 similar contract without obtaining a majority vote of the
 363 governing body of the county in favor of such contract. A
 364 tourism promotion agency may not enter into multiple related
 365 contracts to avoid the requirements of this paragraph.
 366 (c)1. A tourism promotion agency shall submit to the
 367 governing board of the county, within 30 days after the end of
 368 its fiscal year, a complete and detailed report setting forth
 369 all public and private financial data of the tourism promotion
 370 agency, and shall publish such report on its website.

- 371 2. The financial data shall include:
- 372 a. The total amount of revenue received from public and
- 373 private sources.
- 374 b. The operating budget.
- 375 c. The total amount of salary, benefits, and other
- 376 compensation provided by the tourism promotion agency to its
- 377 officers, employees, or agents, regardless of the funding
- 378 source.
- 379 d. An itemized account of all expenditures, including all
- 380 travel and entertainment expenditures.
- 381 (d) The following information must be posted on the
- 382 website of each tourism promotion agency:
- 383 1. All contracts with a total contract value of \$5,000 or
- 384 more. Such contracts must be posted within 5 business days after
- 385 execution.
- 386 2. All contracts, information, and financial data
- 387 submitted to the governing board of the county. Such contracts,
- 388 information, and data must be posted within 5 business days
- 389 after submission.
- 390 3. Video recordings of each board meeting. Such recordings
- 391 must be posted within 3 business days after the meeting.
- 392 4. A detailed report of expenditures following each
- 393 marketing event paid for with the funds of the tourism promotion
- 394 agency. Such report must be posted within 10 business days after
- 395 the event.

396 5. An annual itemized account of the total amount of funds
 397 spent by a third party on behalf of the tourism promotion
 398 agency, its board members, or its employees.

399 6. An annual itemized account of the total amount of
 400 travel and entertainment expenditures.

401 (e) Notwithstanding any provision of law to the contrary,
 402 a record required under this section, including, but not limited
 403 to, a contract or agreement, is a public record and is not
 404 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of
 405 the State Constitution. Such record shall be produced in full in
 406 accordance with this section or upon request.

407 (f) A tourism promotion agency shall maintain and provide
 408 online access to all of the information required under this
 409 subsection and s. 125.0104(4)(f). Each tourism promotion agency
 410 shall provide the Department of Economic Opportunity with the
 411 specific website address where the required information is
 412 published and maintained online, and the Department of Economic
 413 Opportunity shall publish and maintain a single online directory
 414 which lists each tourism promotion agency and the specific
 415 website address where such required information may be located.

416 (g) A tourism promotion agency that fails to comply with
 417 the transparency and accountability requirements of this
 418 subsection may not receive or expend public funds until it
 419 becomes fully compliant.

420 (4) AUDITS.—

421 (a) For any county that annually receives \$30,000,000 or
 422 more from taxes imposed pursuant to s. 125.0104, s. 125.0108, or
 423 s. 212.0305, the Auditor General shall, biennially, conduct an
 424 audit, as defined in s. 11.45, of all tourism promotion agencies
 425 in such county to verify that funds were expended as required by
 426 this section and to verify that transparency and accountability
 427 requirements were met. If the Auditor General determines that
 428 funds were not expended as required by this section, he or she
 429 shall immediately notify the Department of Revenue, which may
 430 pursue recovery of the funds under the laws and rules governing
 431 the assessment of taxes.

432 (b) The Auditor General shall annually select at least two
 433 counties that in the previous year received less than
 434 \$30,000,000 from taxes imposed pursuant to s. 125.0104, s.
 435 125.0108, or s. 212.0305 and conduct audits, as defined in s.
 436 11.45, of all tourism promotion agencies in the county to verify
 437 that funds were expended as required by this section and to
 438 verify that transparency and accountability requirements were
 439 met. If the Auditor General determines that funds were not
 440 expended as required by this section, he or she shall
 441 immediately notify the Department of Revenue, which may pursue
 442 recovery of the funds under the laws and rules governing the
 443 assessment of taxes.

444 (5) ENFORCEMENT.—The Governor or Chief Financial Officer
 445 may at any time order the Department of Revenue or the local

446 official to whom the tax is remitted to cease and desist
447 distributing any taxes levied under s. 125.0104, s. 125.0108, or
448 s. 212.0305 based on a tourism promotion agency's failure to
449 comply with this section.

450 (6) PENALTIES.—It is unlawful for a person to knowingly
451 and willfully make a materially false or misleading statement,
452 provide false or misleading information, fail to report certain
453 information, or structure an organization or agreement to avoid
454 the requirements of this section. A person who violates this
455 section commits a misdemeanor of the first degree, punishable as
456 provided in s. 775.082 or s. 775.083.

457 (7) APPLICABILITY.—A private entity that meets the
458 definition of a tourism promotion agency under subsection (1)
459 due solely to the existence of a contract between the private
460 entity and a tourism promotion agency to promote tourism
461 development is required to comply with this section only in
462 connection with the performance of its obligations and the
463 expenditure of funds pursuant to such contract. This section
464 shall not be construed to require the private entity to report
465 or conform its other business practices or activities to the
466 provisions of this section, provided such practices or
467 activities are not directly related to or funded by such
468 contract.

469 Section 4. Paragraph (e) of subsection (4) of section
 470 125.0104, Florida Statutes, is amended, and paragraph (f) is
 471 added to that subsection, to read:

472 125.0104 Tourist development tax; procedure for levying;
 473 authorized uses; referendum; enforcement.—

474 (4) ORDINANCE LEVY TAX; PROCEDURE.—

475 (e) The governing board of each county which levies and
 476 imposes a tourist development tax under this section shall
 477 appoint an advisory council to be known as the "... (name of
 478 county)... Tourist Development Council." The council shall be
 479 established by ordinance and composed of nine members who shall
 480 be appointed by the governing board. The chair of the governing
 481 board of the county or any other member of the governing board
 482 as designated by the chair shall serve on the council. Two
 483 members of the council shall be elected municipal officials, at
 484 least one of whom shall be from the most populous municipality
 485 in the county or subcounty special taxing district in which the
 486 tax is levied. Six members of the council shall be persons who
 487 are involved in the tourist industry and who have demonstrated
 488 an interest in tourist development, of which members, not less
 489 than three nor more than four shall be owners or operators of
 490 motels, hotels, recreational vehicle parks, or other tourist
 491 accommodations in the county and subject to the tax. All members
 492 of the council shall be electors of the county. The governing
 493 board of the county shall have the option of designating the

494 chair of the council or allowing the council to elect a chair.
 495 The chair shall be appointed or elected annually and may be
 496 reelected or reappointed. The members of the council shall serve
 497 for staggered terms of 4 years. The terms of office of the
 498 original members shall be prescribed in the resolution required
 499 under paragraph (b). The council shall meet at least once each
 500 quarter and, from time to time, shall make recommendations to
 501 the county governing board for the effective operation of the
 502 special projects or for uses of the tourist development tax
 503 revenue and perform such other duties as may be prescribed by
 504 county ordinance or resolution. The council shall continuously
 505 review expenditures of revenues from the tourist development
 506 trust fund and shall receive, at least quarterly, expenditure
 507 reports from the county governing board or its designee.
 508 Expenditures which the council believes to be unauthorized shall
 509 be reported to the county governing board and the Department of
 510 Revenue. The governing board and the department shall review the
 511 findings of the council and take appropriate administrative or
 512 judicial action to ensure compliance with this section. The
 513 county governing board shall review a proposed contract with an
 514 estimated total contract value of \$250,000 or more. The county
 515 governing board may reject such proposed contract by a majority
 516 vote before the execution of such contract. The county governing
 517 board must review all certifications by the head of a tourism
 518 promotion agency related to potential conflicts of interest and

519 mitigation plans ~~The changes in the composition of the~~
 520 ~~membership of the tourist development council mandated by~~
 521 ~~chapter 86-4, Laws of Florida, and this act shall not cause the~~
 522 ~~interruption of the current term of any person who is a member~~
 523 ~~of a council on October 1, 1996.~~

524 (f) The governing board of a county that levies and
 525 imposes a tourist development tax under this section shall
 526 publish and make the following information available online:

527 1. The approved tourist development plan, including the
 528 approximate cost or expense allocation for each specific project
 529 or special use.

530 2. Any substantial amendments to the tourist development
 531 plan.

532 3. The tax district in which the tourist development tax
 533 is levied.

534 4. A prioritized list of the proposed uses of the tax
 535 revenue by specific project or special use.

536 5. The quarterly expenditure reports from the county
 537 governing board or its designee.

538 Section 5. Paragraph (c) of subsection (13) of section
 539 288.1226, Florida Statutes, is amended to read:

540 288.1226 Florida Tourism Industry Marketing Corporation;
 541 use of property; board of directors; duties; audit.-

542 (13) TRANSPARENCY.-

543 (c)1. Any entity that in the previous fiscal year received
 544 more than 50 percent of its revenue from the corporation ~~or~~
 545 ~~taxes imposed pursuant to s. 125.0104, s. 125.0108, or s.~~
 546 ~~212.0305, and that partners with the corporation or participates~~
 547 ~~in a program, cooperative advertisement, promotional~~
 548 ~~opportunity, or other activity offered by or in conjunction with~~
 549 ~~the corporation,~~ shall annually on July 1 report all public and
 550 private financial data to the Governor, the President of the
 551 Senate, and the Speaker of the House of Representatives, and
 552 include such report on its website.

553 2. The financial data shall include:

554 a. The total amount of revenue received from public and
 555 private sources.

556 b. The operating budget ~~of the partner entity.~~

557 c. The total amount of salary, benefits, and other
 558 compensation provided by the entity to its officers, employees,
 559 board members, or agents, regardless of the funding source
 560 ~~Employee and board member salary and benefit details from public~~
 561 ~~and private funds.~~

562 d. An itemized account of all expenditures, including all
 563 travel and entertainment expenditures, by the ~~partner~~ entity on
 564 the behalf of, or coordinated for the benefit of, the
 565 corporation, its board members, or its employees.

566 e. ~~Itemized travel and entertainment expenditures of the~~
 567 ~~partner entity.~~

568 Section 6. Paragraph (c) of subsection (6) of section
 569 288.904, Florida Statutes, is amended to read:

570 288.904 Funding for Enterprise Florida, Inc.; performance
 571 and return on the public's investment.—

572 (6)

573 (c)1. Any entity that in the previous fiscal year received
 574 more than 50 percent of its revenue from Enterprise Florida,
 575 Inc., ~~or a tax imposed pursuant to s. 125.0104, s. 125.0108, or~~
 576 ~~s. 212.0305, and that partners with Enterprise Florida, Inc., in~~
 577 ~~a program or other activity offered by or in conjunction with~~
 578 ~~Enterprise, Florida, Inc.,~~ shall annually on July 1 report all
 579 public and private financial data to the Governor, the President
 580 of the Senate, and the Speaker of the House of Representatives,
 581 and include such report on its website.

582 2. The financial data shall include:

583 a. The total amount of revenue received from public and
 584 private sources.

585 b. The operating budget ~~of the partner entity.~~

586 c. The total amount of salary, benefits, and other
 587 compensation provided by the entity to its officers, employees,
 588 board members, or agents, regardless of the funding source
 589 ~~Employee and board member salary and benefit details from public~~
 590 ~~and private funds.~~

591 d. An itemized account of all expenditures, including all
 592 travel and entertainment expenditures, by the ~~partner~~ entity on

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2018

593 | the behalf of, or coordinated for the benefit of, Enterprise
594 | Florida, Inc., its board members, or its employees.

595 | e. ~~Itemized travel and entertainment expenditures of the~~
596 | ~~partner entity.~~

597 | Section 7. This act shall take effect July 1, 2018.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|-----------------------|-------|-------|
| ADOPTED | ___ | (Y/N) |
| ADOPTED AS AMENDED | ___ | (Y/N) |
| ADOPTED W/O OBJECTION | ___ | (Y/N) |
| FAILED TO ADOPT | ___ | (Y/N) |
| WITHDRAWN | ___ | (Y/N) |
| OTHER | _____ | |

1 Committee/Subcommittee hearing bill: Ways & Means Committee
 2 Representative Grant, M. offered the following:

3
 4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraphs (y) and (z) are added to subsection
 7 (3) of section 11.45, Florida Statutes, to read:

8 11.45 Definitions; duties; authorities; reports; rules.—

9 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The
 10 Auditor General may, pursuant to his or her own authority, or at
 11 the direction of the Legislative Auditing Committee, conduct
 12 audits or other engagements as determined appropriate by the
 13 Auditor General of:

14 (y) The accounts and records pertaining to the use of
 15 funds from a tax imposed pursuant to s. 125.0104, s. 125.0108,
 16 or s. 212.0305 for tourism development or promotion by a local

COMMITTEE/SUBCOMMITTEE AMENDMENT

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17 governmental entity, nonprofit organization, or for-profit
18 organization, including a tourism promotion agency as defined in
19 s. 288.12261 or a program or entity created by a tourism
20 promotion agency.

21 (z) The accounts and records pertaining to:

22 1. An economic development agency of a county or
23 municipality, including an economic development agency as
24 defined in s. 288.0751 or a program or entity created by an
25 economic development agency;

26 2. The county or municipal officers or employees assigned
27 to promote the general business interests, industrial interests,
28 or related responsibilities of the county or municipality; or

29 3. A private agency, person, partnership, corporation, or
30 business entity authorized by the state, a municipality, or a
31 county to promote the general business interests, industrial
32 interests, or related responsibilities of the state,
33 municipality, or county.

34 Section 2. Section 288.0751, Florida Statutes, is created
35 to read:

36 288.0751 Local economic development agencies.—

37 (1) DEFINITIONS.—For purposes of this section:

38 (a) "Economic development agency" means an entity,
39 including, but not limited to, an agency as defined in s.
40 119.011, that receives public funds and is engaged in economic

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41 development activities on behalf of one or more local
42 governmental entities.

43 1. An economic development agency may include any local
44 governmental entity or any entity under contract with one or
45 more local governmental entities to promote economic development
46 activities on behalf of such local governmental entity or
47 entities through the expenditure of public funds. An economic
48 development agency may also include any private agency, person,
49 partnership, corporation or business entity authorized by a
50 county or municipality to promote the general business or
51 industrial interests of that county or municipality.

52 2. Enterprise Florida, Inc., and the Department of Economic
53 Opportunity are not considered economic development agencies.

54 (b) "Local governmental entity" means the county or
55 municipality on whose behalf the economic development agency
56 engages in economic development activity.

57 (c) "Economic development activities" means:

58 1. Developing or improving local infrastructure, issuing
59 bonds to finance or refinance the cost of capital projects for
60 industrial or manufacturing plants, or leasing or conveying real
61 property, as part of an economic incentive agreement for one or
62 more businesses.

63 2. Making grants to private enterprises for the expansion
64 of businesses existing in the community or the attraction of new
65 businesses to the community.

COMMITTEE/SUBCOMMITTEE AMENDMENT

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Amendment No. 1

66 3. Participation in trade shows and prospecting missions.

67 4. Expenditures for the design of strategic plans for
68 economic development activities.

69 5. Expenditures for marketing and research services,
70 including marketing specific sites for business and industry
71 development or recruitment, and responding to inquiries from
72 business and industry concerning the development of specific
73 sites.

74 6. Economic development incentives, including:

75 a. Direct financial incentives of monetary assistance
76 provided to a business. Such incentives include, but are not
77 limited to, grants, loans, equity investments, loan insurance
78 and guarantees, and training subsidies.

79 b. Indirect incentives in the form of grants and loans
80 provided to businesses and community organizations that provide
81 support to businesses or promote business investment or
82 development.

83 c. Fee-based or tax-based incentives, including, but not
84 limited to, credits, refunds, exemptions, and property tax
85 abatement or assessment reductions.

86 d. Below-market rate leases or deeds for real property.

87
88 For the purposes of this section, activities such as the
89 development, maintenance, and improvement of infrastructure and
90 public safety, as well as other traditional functions of local

Amendment No. 1

91 government which benefit the public at large or otherwise
92 provide an indirect or incidental benefit to the development of
93 the local economy, are not considered "economic development
94 activities."

95 (2) OPERATION.—An economic development agency must operate
96 in accordance with the following:

97 (a) Each director, officer and member of the board of
98 directors of an economic development agency who is not otherwise
99 required to file a financial disclosure pursuant to ch. 112 must
100 file an annual disclosure pursuant to s. 112.3145, as a "local
101 officer." Directors, officers and members of the board of
102 directors are considered local officers and the local
103 governmental entity shall be considered their agency.

104 (b) Directors, officers and board members of an agency
105 must disclose to the board any activity that may reasonably be
106 construed to be a conflict of interest. A rebuttable presumption
107 of a conflict of interest exists if any of the following occurs
108 without prior notice to the economic development agency's board:

109 1. A director, officer, board member or a relative of a
110 director, officer, or board member enters into a contract for
111 goods or services with the agency.

112 2. A director, officer, or board member, or a relative of a
113 director, officer, or board member, holds an interest in a
114 corporation, limited liability corporation, partnership, limited
115 liability partnership, or other business entity that conducts

COMMITTEE/SUBCOMMITTEE AMENDMENT

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116 business with the agency or proposes to enter into a contract or
117 other transaction with the agency.

118 (c) If a director, officer, or board member, or a relative
119 of a director, officer, or board member, proposes to engage in
120 an activity that is a conflict of interest, as described in
121 subsection (b), the proposed activity must be listed on, and all
122 contracts and transactional documents related to the proposed
123 activity must be attached to, the meeting agenda for the
124 consideration of the contract. The disclosure must be placed on
125 the website of the economic development agency and included in
126 the minutes of each meeting of the board of directors of the
127 economic development agency during which such contracts or
128 expenditures are discussed or voted upon.

129 (d) A director, officer, or board member, or a relative of
130 a director or an officer, who is a party to, or has an interest
131 in, an activity that is a possible conflict of interest, as
132 described in subsection (b), may attend the meeting at which the
133 activity is considered by the board and is authorized to make a
134 presentation to the board regarding the activity. After the
135 presentation, the director, officer, or board member, or the
136 relative of the director, officer, or board member must leave
137 the meeting during the discussion of, and the vote on, the
138 activity. A director, officer or board member who is a party to,
139 or has an interest in, the activity must recuse themselves from
140 the vote.

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141 (e) As used in this section, the term "relative" means a
142 relative as that term is defined in s. 726.102.

143 (f) Board members shall serve without compensation, but
144 are entitled to receive reimbursement for per diem and travel
145 expenses pursuant to s. 112.061. Any ordinance adopted pursuant
146 to s. 112.061(14) may apply to economic development agencies and
147 their board members, officers and employees in that county but
148 only if such ordinance applies uniformly to all travel by county
149 employees. Such expenses must be paid out of the funds of the
150 economic development agency.

151 (g) Officers, employees, or agents, including the
152 president or chief executive officer, may not receive
153 compensation from public funds for the performance of economic
154 development-related duties, responsibilities, or services in an
155 amount that exceeds the annual compensation of the chief
156 administrative or executive officer or employee of the local
157 governmental entity on whose behalf such duties,
158 responsibilities, or services are performed. Any payments of
159 performance bonuses or severance pay to officers, employees, or
160 agents from public funds are prohibited unless specifically
161 authorized by law.

162 (h) An economic development agency must comply with the
163 per diem and travel expense provisions of s. 112.061. Any
164 ordinance adopted pursuant to s. 112.061(14) may apply to
165 economic development agencies and their board members, officers

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166 and employees but only if such ordinance applies uniformly to
167 all travel by county employees.

168 (i) Officers and employees are subject to s. 112.313.

169 However, any contract between an economic development agency and
170 a political subdivision, local governmental entity, or another
171 economic development agency to perform economic development
172 activities are not deemed to violate s. 112.313(3) or (7).

173 (j) An economic development agency not otherwise subject
174 to s. 287.057 must avoid, neutralize, or mitigate significant
175 potential organizational conflicts of interest before it enters
176 into a contract. If the economic development agency elects to
177 mitigate a significant potential organizational conflict of
178 interest, an adequate mitigation plan, including organizational,
179 physical, and electronic barriers, shall be developed and the
180 head of the economic development agency must certify that the
181 award is in the best interests of the local governmental entity
182 and submit such certification to the governing board of the
183 local governmental entity within 3 business days after entering
184 into the contract.

185 (k) Lodging expenses for an employee or board member may
186 not exceed \$150 per day, excluding taxes, unless the economic
187 development agency is participating in a negotiated group rate
188 discount or the economic development agency provides
189 documentation of at least three comparable alternatives
190 demonstrating that such lodging at the required rate is not

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191 available. However, an employee or board member may expend his
192 or her own funds for any lodging expenses in excess of \$150 per
193 day.

194 (1) Economic development agency funds may not be expended
195 for food, beverages, lodging, entertainment, or gifts for
196 employees or board members, unless authorized pursuant to s.
197 112.061 or this section. Employees or board members may not
198 accept or receive food, beverages, lodging, entertainment, or
199 gifts from persons, vendors, or other entities doing business
200 with the economic development agency unless such food, beverage,
201 lodging, entertainment, or gift is available to similarly
202 situated members of the general public.

203
204 Nothing in this section is intended to limit the applicability
205 of ch. 112 to any person already subject to such provisions.

206 (3) TRANSPARENCY.—

207 (a) All contracts entered into by an economic development
208 agency shall include:

209 1. The purpose of the contract.

210 2. Specific performance standards and responsibilities for
211 each entity.

212 3. A detailed project or contract budget, if applicable.

213 4. The value of any services provided.

214 5. The projected travel and entertainment expenses for
215 employees and board members, if applicable.

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216 (b) A proposed contract with an estimated total contract
217 value of \$250,000 or more must be submitted to the local
218 governmental entity and published on such entity's website at
219 least 14 days before the contract is executed. If the governing
220 body of the local governmental entity rejects such proposed
221 contract by a majority vote held during the 14-day period, the
222 economic development agency may not execute such proposed
223 contract or any substantially similar contract without obtaining
224 a majority vote of the governing body of the local governmental
225 entity in favor of such contract. An economic development agency
226 may not enter into multiple related contracts to avoid the
227 requirements of this paragraph. If the local governmental
228 entity's governing board does not take action on the proposed
229 contract within the 14 day time period, the contract is
230 authorized to be executed.

231 (c)1. An economic development agency shall submit to the
232 governing board of the local governmental entity, within 30 days
233 of the end of its fiscal year, a complete and detailed report
234 setting forth all public and private financial data of the
235 economic development agency, and shall publish such report on
236 its website.

237 2. The financial data shall include:

238 a. The total amount of revenue received from public and
239 private sources.

240 b. The operating budget.

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241 c. The total amount of salary, benefits, and other
242 compensation provided by the economic development agency to its
243 officers, employees, or agents, regardless of the funding
244 source.

245 d. An itemized account of all expenditures, including all
246 travel and entertainment expenditures.

247 (d) The following information must be posted on the
248 website of each economic development agency:

249 1. All contracts with a total contract value of \$5,000 or
250 more. Such contracts must be posted within 5 business days after
251 execution.

252 2. All contracts, information, and financial data
253 submitted to the governing board of the local governmental
254 entity. Such contracts, information, and data must be posted
255 within 5 business days after submission.

256 3. Video recordings of each board meeting. Such recordings
257 must be posted within 3 business days after the meeting.

258 4. A detailed report of expenditures following each
259 marketing event paid for with economic development agency funds.
260 Such report must be posted within 14 days after the event.

261 5. An annual itemized account of the total amount of funds
262 spent by a third party on behalf of the economic development
263 agency, its board members, or its employees.

264 6. An annual itemized account of the total amount of
265 travel and entertainment expenditures.

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266 (e) Notwithstanding any provision of law to the contrary,
267 a record required under this section, including, but not limited
268 to, a contract or agreement, is a public record and is not
269 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of
270 the State Constitution, except as provided in s. 288.075(5), and
271 s. 288.075(6)(a)1. and 2.. Such record shall be produced in full
272 in accordance with this section or upon request.

273 (f) An economic development agency shall maintain and
274 provide online access to all of the information required under
275 this subsection. Each economic development agency shall provide
276 the Department of Economic Opportunity with the specific website
277 address where the required information is published and
278 maintained online, and the Department of Economic Opportunity
279 shall publish and maintain a single online directory which lists
280 each economic development agency and the specific website
281 address where such required information may be located.

282 (g) An economic development agency that fails to comply
283 with the transparency and accountability requirements of this
284 subsection may not receive or expend public funds until it
285 becomes fully compliant.

286 (4) AUDITS.—The Auditor General shall annually select at
287 least two economic development agencies that received public
288 funds in the previous year and conduct audits, as defined in s.
289 11.45, to verify that funds were expended as required by this
290 section and to verify that transparency and accountability

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291 requirements were met. If the Auditor General determines that
292 funds were not expended as required by this section, he or she
293 shall immediately report such findings to the Governor, the
294 President of the Senate, and the Speaker of the House of
295 Representatives.

296 (5) PENALTIES.—It is unlawful for a person to knowingly
297 and willfully make a materially false or misleading statement,
298 provide false or misleading information, fail to report required
299 information, or structure an organization or agreement to avoid
300 the requirements of this section. A person who violates this
301 section commits a misdemeanor of the first degree, punishable as
302 provided in s. 775.082 or s. 775.083.

303 (6) APPLICABILITY.—A private entity that meets the
304 definition of an economic development agency under subsection
305 (1) due solely to the existence of a contract between the
306 private entity and an economic development agency to engage in
307 economic development activities is required to comply with this
308 section only in connection with the performance of its
309 obligations and the expenditure of funds pursuant to such
310 contract. This section shall not be construed to require the
311 private entity to report or conform its other business practices
312 or activities to the provisions of this section, provided such
313 practices or activities are not directly related to or funded by
314 such contract. An entity that does not receive any public funds
315 for economic development activity is not subject to this

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316 section, as long as the entity does not concurrently employ or
317 use the services of a local governmental entity employee for
318 economic development activities.

319 (7) ENFORCEMENT.—The local governmental entity shall cease
320 and desist from transferring or providing public funds to any
321 economic development agency that fails to comply with this
322 section.

323 Section 3. Section 288.12261, Florida Statutes, is created
324 to read:

325 288.12261 Tourism promotion agencies.—

326 (1) DEFINITION.—For purposes of this section, the term
327 "tourism promotion agency" means an entity, including, but not
328 limited to, an agency as defined in s. 119.011, that receives
329 public funds to promote tourism development on behalf of one or
330 more local governmental entities. For the purpose of this
331 section, to "promote tourism development" includes the use of
332 public funds to promote or perform the activities described in
333 subsection 125.0104(5).

334 (a) A tourism promotion agency may include any local
335 governmental entity or any entity under contract with one or
336 more local governmental entities to promote tourism development
337 on behalf of such local governmental entity or entities through
338 the expenditure of public funds.

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339 (b) For purposes of this section, the Florida Tourism
340 Industry Marketing Corporation and the Department of Economic
341 Opportunity are not considered tourism promotion agencies.

342 (c) "Local governmental entity" means the county or
343 municipality on whose behalf the tourism promotion agency
344 engages in tourism promotion activity.

345 (2) OPERATION.—A tourism promotion agency must operate in
346 accordance with the following:

347 (a) Each director, officer and member of the board of
348 directors of a tourism promotion agency who is not otherwise
349 required to file a financial disclosure pursuant to ch. 112 must
350 file an annual disclosure pursuant to s. 112.3145, as a "local
351 officer." Directors, officers and members of the board of
352 directors are considered local officers and the local
353 governmental entity shall be considered their agency.

354 (b) Directors, officers and board members of an agency
355 must disclose to the board any activity that may reasonably be
356 construed to be a conflict of interest. A rebuttable presumption
357 of a conflict of interest exists if any of the following occurs
358 without prior notice to the board:

359 1. A director, officer, board member or a relative of a
360 director, officer, or board member enters into a contract for
361 goods or services with the agency.

362 2. A director, officer, or board member, or a relative of a
363 director, officer, or board member, holds an interest in a

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364 corporation, limited liability corporation, partnership, limited
365 liability partnership, or other business entity that conducts
366 business with the agency or proposes to enter into a contract or
367 other transaction with the agency.

368 (c) If a director, officer, or board member, or a relative
369 of a director, officer, or board member, proposes to engage in
370 an activity that is a conflict of interest, the proposed
371 activity must be listed on, and all contracts and transactional
372 documents related to the proposed activity must be attached to,
373 the meeting agenda related to the consideration of the contract.
374 The disclosure must be placed on the website of the tourism
375 promotion agency and included in the minutes of each meeting of
376 the board of directors of the tourism promotion agency when such
377 expenditures or contracts are discussed or voted upon.

378 (d) A director, officer, or board member, or a relative of
379 a director or an officer, who is a party to, or has an interest
380 in, an activity that is a possible conflict of interest, may
381 attend the meeting at which the activity is considered by the
382 board and is authorized to make a presentation to the board
383 regarding the activity. After the presentation, the director,
384 officer, or board member, or the relative of the director,
385 officer, or board member must leave the meeting during the
386 discussion of, and the vote on, the activity. A director,
387 officer or board member who is a party to, or has an interest
388 in, the activity must recuse himself or herself from the vote.

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389 (e) As used in this section, the term "relative" means a
390 relative as that term is defined in s. 726.102.

391 (f) Board members shall serve without compensation, but
392 are entitled to receive reimbursement for per diem and travel
393 expenses pursuant to s. 112.061. Any ordinance adopted pursuant
394 to s. 112.061(14) may apply to tourist promotion agencies and
395 their board members, officers and employees but only if such
396 ordinance applies uniformly to all travel by county employees.
397 Such expenses must be paid out of funds of the tourism promotion
398 agency.

399 (g) Officers, employees, or agents, including the
400 president or chief executive officer, may not receive
401 compensation from public funds for the performance of tourism
402 promotion-related duties, responsibilities, or services in an
403 amount that exceeds the annual compensation of the chief
404 administrative or executive officer or employee of the local
405 governmental entity on whose behalf such duties,
406 responsibilities, or services are performed. Any payments of
407 performance bonuses or severance pay to officers, employees, or
408 agents from public funds are prohibited unless specifically
409 authorized by law.

410 (h) A tourism promotion agency must comply with the per
411 diem and travel expense provisions of s. 112.061. Any ordinance
412 adopted pursuant to s. 112.061(14) may apply to tourist
413 development agencies and their board members, officers and

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414 employees but only if such ordinance applies uniformly to all
415 travel by county employees.

416 (i) Officers and employees are subject to. 112.313.

417 However, any contract between the tourism promotion agency and
418 the political subdivision, local governmental entity, or another
419 tourism promotion agency, to perform tourism promotion
420 activities is not deemed to violate s. 112.313(3) or (7).

421 (j) A tourism promotion agency not otherwise subject to s.
422 287.057 must avoid, neutralize, or mitigate significant
423 potential organizational conflicts of interest before it enters
424 into a contract. If the tourism promotion agency elects to
425 mitigate a significant potential organizational conflict of
426 interest, an adequate mitigation plan, including organizational,
427 physical, and electronic barriers, shall be developed and the
428 head of the tourism promotion agency must certify that the award
429 is in the best interests of the county and submit such
430 certification to the governing board of the county within 3
431 business days after entering into the contract.

432 (k) Lodging expenses for an employee or board member may
433 not exceed \$150 per day, excluding taxes, unless the tourism
434 promotion agency is participating in a negotiated group rate
435 discount or the tourism promotion agency provides documentation
436 of at least three comparable alternatives demonstrating that
437 such lodging at the required rate is not available. However, an

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438 employee or board member may expend his or her own funds for any
439 lodging expenses in excess of \$150 per day.

440 (1) Tourism promotion agency funds may not be expended for
441 food, beverages, lodging, entertainment, or gifts for employees
442 or board members, unless authorized pursuant to s. 112.061 or
443 this section. Employees or board members may not accept or
444 receive food, beverages, lodging, entertainment, or gifts from
445 persons, vendors, or other entities doing business with the
446 tourism promotion agency unless such food, beverage, lodging,
447 entertainment, or gift is available to similarly situated
448 members of the general public.

449 (m) A tourism promotion agency shall not expend public or
450 private funds that directly benefit only one business entity.

451

452 Nothing in this section is intended to limit the applicability
453 of ch. 112 to any person already subject to such provisions.

454 (3) TRANSPARENCY.—

455 (a) All contracts entered into by a tourism promotion
456 agency shall include:

457 1. The purpose of the contract.

458 2. Specific performance standards and responsibilities for
459 each entity.

460 3. A detailed project or contract budget, if applicable.

461 4. The value of any services provided.

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462 5. The projected travel and entertainment expenses for
463 employees and board members, if applicable.

464 (b) A proposed contract with an estimated total contract
465 value of \$250,000 or more must be submitted to the local
466 governmental entity and published on such entity's website at
467 least 14 days before the contract is executed. If the governing
468 board rejects such proposed contract by a majority vote held
469 during the 14-day period, the tourism promotion agency may not
470 execute such proposed contract or any substantially similar
471 contract without obtaining a majority vote of the governing body
472 of the local governmental entity in favor of such contract. A
473 tourism promotion agency may not enter into multiple related
474 contracts to avoid the requirements of this paragraph. If the
475 local governmental entity's governing board does not take action
476 on the proposed contract within the 14 day time period, the
477 contract is authorized to be executed.

478 (c)1. A tourism promotion agency shall submit to the
479 governing board of the local governmental entity, within 30 days
480 after the end of its fiscal year, a complete and detailed report
481 setting forth all public and private financial data of the
482 tourism promotion agency, and shall publish such report on its
483 website.

484 2. The financial data shall include:

485 a. The total amount of revenue received from public and
486 private sources.

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487 b. The operating budget.

488 c. The total amount of salary, benefits, and other
489 compensation provided by the tourism promotion agency to its
490 officers, employees, or agents, regardless of the funding
491 source.

492 d. An itemized account of all expenditures, including all
493 travel and entertainment expenditures.

494 (d) The following information must be posted on the
495 website of each tourism promotion agency:

496 1. All contracts with a total contract value of \$5,000 or
497 more. Such contracts must be posted within 5 business days after
498 execution.

499 2. All contracts, information, and financial data
500 submitted to the governing board of the local governmental
501 entity. Such contracts, information, and data must be posted
502 within 5 business days after submission.

503 3. Video recordings of each board meeting. Such recordings
504 must be posted within 3 business days after the meeting.

505 4. A detailed report of expenditures following each
506 marketing event paid for with the funds of the tourism promotion
507 agency. Such report must be posted within 14 days after the
508 event.

509 5. An annual itemized account of the total amount of funds
510 spent by a third party on behalf of the tourism promotion
511 agency, its board members, or its employees.

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512 6. An annual itemized account of the total amount of
513 travel and entertainment expenditures.

514 (e) Notwithstanding any provision of law to the contrary,
515 a record required under this section, including, but not limited
516 to, a contract or agreement, is a public record and is not
517 confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of
518 the State Constitution, except as provided in s.
519 125.0104(9)(d)1., and (d)2.a.. Such record shall be produced in
520 full in accordance with this section or upon request.

521 (f) A tourism promotion agency shall maintain and provide
522 online access to all of the information required under this
523 subsection and s. 125.0104(4)(f). Each tourism promotion agency
524 shall provide the Department of Economic Opportunity with the
525 specific website address where the required information is
526 published and maintained online, and the Department of Economic
527 Opportunity shall publish and maintain a single online directory
528 which lists each tourism promotion agency and the specific
529 website address where such required information may be located.

530 (g) A tourism promotion agency that fails to comply with
531 the transparency and accountability requirements of this
532 subsection may not receive or expend public funds until it
533 becomes fully compliant.

534 (4) AUDITS.—

535 (a) For any county that annually receives \$30,000,000 or
536 more from taxes imposed pursuant to s. 125.0104, s. 125.0108, or

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537 s. 212.0305, the Auditor General shall, biennially, conduct an
538 audit, as defined in s. 11.45, of all tourism promotion agencies
539 in such county to verify that funds were expended as required by
540 this section and to verify that transparency and accountability
541 requirements were met. If the Auditor General determines that
542 funds were not expended as required by this section, he or she
543 shall immediately notify the Department of Revenue, which may
544 pursue recovery of the funds under the laws and rules governing
545 the assessment of taxes.

546 (b) The Auditor General shall annually select at least two
547 counties that in the previous year received less than
548 \$30,000,000 from taxes imposed pursuant to s. 125.0104, s.
549 125.0108, or s. 212.0305 and conduct audits, as defined in s.
550 11.45, of all tourism promotion agencies in the county to verify
551 that funds were expended as required by this section and to
552 verify that transparency and accountability requirements were
553 met. If the Auditor General determines that funds were not
554 expended as required by this section, he or she shall
555 immediately notify the Department of Revenue, which may pursue
556 recovery of the funds under the laws and rules governing the
557 assessment of taxes.

558 (5) ENFORCEMENT.—The Governor or Chief Financial Officer
559 may at any time order the Department of Revenue or the local
560 official to whom the tax is remitted to cease and desist
561 distributing any taxes levied under s. 125.0104, s. 125.0108, or

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562 s. 212.0305 based on a tourism promotion agency's failure to
563 comply with this section.

564 (6) PENALTIES.—It is unlawful for a person to knowingly
565 and willfully make a materially false or misleading statement,
566 provide false or misleading information, fail to report required
567 information, or structure an organization or agreement to avoid
568 the requirements of this section. A person who violates this
569 section commits a misdemeanor of the first degree, punishable as
570 provided in s. 775.082 or s. 775.083.

571 (7) APPLICABILITY.—A private entity that meets the
572 definition of a tourism promotion agency under subsection (1)
573 due solely to the existence of a contract between the private
574 entity and a tourism promotion agency to promote tourism
575 development is required to comply with this section only in
576 connection with the performance of its obligations and the
577 expenditure of funds pursuant to such contract. This section
578 shall not be construed to require the private entity to report
579 or conform its other business practices or activities to the
580 provisions of this section, provided such practices or
581 activities are not directly related to or funded by such
582 contract. An entity that does not receive any public funds for
583 tourism promotion development is not subject to this section, as
584 long as the entity does not concurrently employ or use the
585 services of a local governmental entity employee for tourism
586 promotion development.

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587 Section 4. Paragraph (e) of subsection (4) of section
588 125.0104, Florida Statutes, is amended, and paragraph (f) is
589 added to that subsection, to read:

590 125.0104 Tourist development tax; procedure for levying;
591 authorized uses; referendum; enforcement.—

592 (4) ORDINANCE LEVY TAX; PROCEDURE.—

593 (e) The governing board of each county which levies and
594 imposes a tourist development tax under this section shall
595 appoint an advisory council to be known as the "... (name of
596 county) ... Tourist Development Council." The council shall be
597 established by ordinance and composed of nine members who shall
598 be appointed by the governing board. The chair of the governing
599 board of the county or any other member of the governing board
600 as designated by the chair shall serve on the council. Two
601 members of the council shall be elected municipal officials, at
602 least one of whom shall be from the most populous municipality
603 in the county or subcounty special taxing district in which the
604 tax is levied. Six members of the council shall be persons who
605 are involved in the tourist industry and who have demonstrated
606 an interest in tourist development, of which members, not less
607 than three nor more than four shall be owners or operators of
608 motels, hotels, recreational vehicle parks, or other tourist
609 accommodations in the county and subject to the tax. All members
610 of the council shall be electors of the county. The governing
611 board of the county shall have the option of designating the

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612 chair of the council or allowing the council to elect a chair.
613 The chair shall be appointed or elected annually and may be
614 reelected or reappointed. The members of the council shall serve
615 for staggered terms of 4 years. The terms of office of the
616 original members shall be prescribed in the resolution required
617 under paragraph (b). The council shall meet at least once each
618 quarter and, from time to time, shall make recommendations to
619 the county governing board for the effective operation of the
620 special projects or for uses of the tourist development tax
621 revenue and perform such other duties as may be prescribed by
622 county ordinance or resolution. The council shall continuously
623 review expenditures of revenues from the tourist development
624 trust fund and shall receive, at least quarterly, expenditure
625 reports from the county governing board or its designee.
626 Expenditures which the council believes to be unauthorized shall
627 be reported to the county governing board and the Department of
628 Revenue. The governing board and the department shall review the
629 findings of the council and take appropriate administrative or
630 judicial action to ensure compliance with this section. The
631 county governing board shall review all proposed contracts with
632 an estimated total contract value of \$250,000 or more submitted
633 by any tourism promotion agency. The county governing board may
634 reject such proposed contract by a majority vote before the
635 execution of such contract. The county governing board must
636 review all certifications by the head of a tourism promotion

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637 agency related to potential conflicts of interest and mitigation
638 plans ~~The changes in the composition of the membership of the~~
639 ~~tourist development council mandated by chapter 86-4, Laws of~~
640 ~~Florida, and this act shall not cause the interruption of the~~
641 ~~current term of any person who is a member of a council on~~
642 ~~October 1, 1996.~~

643 (f) The governing board of a county that levies and
644 imposes a tourist development tax under this section shall
645 publish and make the following information available online:

646 1. The approved tourist development plan, including the
647 approximate cost or expense allocation for each specific project
648 or special use.

649 2. Any substantial amendments to the tourist development
650 plan.

651 3. The tax district in which the tourist development tax
652 is levied.

653 4. A prioritized list of the proposed uses of the tax
654 revenue by specific project or special use.

655 5. The quarterly expenditure reports from the county
656 governing board or its designee.

657

658 Section 5. Paragraph (c) of subsection (13) of section
659 288.1226, Florida Statutes, is amended to read:

660 288.1226 Florida Tourism Industry Marketing Corporation;
661 use of property; board of directors; duties; audit.-

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662 (13) TRANSPARENCY.—

663 (c)1. Any entity that in the previous fiscal year received
664 more than 50 percent of its revenue from the corporation or
665 ~~taxes imposed pursuant to s. 125.0104, s. 125.0108, or s.~~
666 ~~212.0305, and that partners with the corporation or participates~~
667 ~~in a program, cooperative advertisement, promotional~~
668 ~~opportunity, or other activity offered by or in conjunction with~~
669 ~~the corporation,~~ shall annually, within 30 days of the end of
670 its fiscal year on July 1 report all public and private
671 financial data to the Governor, the President of the Senate, and
672 the Speaker of the House of Representatives, and include such
673 report on its website.

674 2. The financial data shall include:

675 a. The total amount of revenue received from public and
676 private sources.

677 b. The operating budget ~~of the partner entity.~~

678 c. The total amount of salary, benefits, and other
679 compensation provided by the entity to its officers, employees,
680 board members, or agents, regardless of the funding source
681 ~~Employee and board member salary and benefit details from public~~
682 ~~and private funds.~~

683 d. An itemized account of all expenditures, including all
684 travel and entertainment expenditures, by the ~~partner~~ entity on
685 the behalf of, or coordinated for the benefit of, the
686 corporation, its board members, or its employees.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 3 (2018)

Amendment No. 1

687 e. ~~Itemized travel and entertainment expenditures of the~~
688 ~~partner entity.~~

689 Section 6. Paragraph (c) of subsection (6) of section
690 288.904, Florida Statutes, is amended to read:

691 288.904 Funding for Enterprise Florida, Inc.; performance
692 and return on the public's investment.—

693 (6)

694 (c)1. Any entity that in the previous fiscal year received
695 more than 50 percent of its revenue from Enterprise Florida,
696 Inc., ~~or a tax imposed pursuant to s. 125.0104, s. 125.0108, or~~
697 ~~s. 212.0305, and that partners with Enterprise Florida, Inc., in~~
698 ~~a program or other activity offered by or in conjunction with~~
699 ~~Enterprise, Florida, Inc., shall annually, within 30 days of the~~
700 ~~end of its fiscal year, on July 1 report all public and private~~
701 financial data to the Governor, the President of the Senate, and
702 the Speaker of the House of Representatives, and include such
703 report on its website.

704 2. The financial data shall include:

705 a. The total amount of revenue received from public and
706 private sources.

707 b. The operating budget ~~of the partner entity.~~

708 c. The total amount of salary, benefits, and other
709 compensation provided by the entity to its officers, employees,
710 board members, or agents, regardless of the funding source

Amendment No. 1

711 ~~Employee and board member salary and benefit details from public~~
712 ~~and private funds.~~

713 d. An itemized account of all expenditures, including all
714 travel and entertainment expenditures, by the ~~partner~~ entity on
715 the behalf of, or coordinated for the benefit of, Enterprise
716 Florida, Inc., its board members, or its employees.

717 ~~e. Itemized travel and entertainment expenditures of the~~
718 ~~partner entity.~~

719 Section 7. This act shall take effect October 1, 2018.

720

721

722

723

T I T L E A M E N D M E N T

724

Remove everything before the enacting clause and insert:

725

An act relating to economic development and tourism promotion

726

accountability; amending s. 11.45, F.S.; authorizing the Auditor

727

General to audit certain accounts and records; creating ss.

728

288.0751 and 288.12261, F.S.; providing definitions; providing

729

requirements for the operation of economic development agencies

730

and tourism promotion agencies, respectively; requiring

731

specified persons to file an annual disclosure of certain

732

interests; providing requirements for such disclosure; requiring

733

board members to serve without compensation; authorizing per

734

diem and travel expenses for certain persons paid from specified

735

funds; prohibiting specified persons from receiving public

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 3 (2018)

Amendment No. 1

736 compensation in excess of a certain amount; prohibiting certain
737 performance bonuses and severance pay; subjecting certain
738 persons to a specified code of ethics; requiring such agencies
739 to take certain actions regarding a significant potential
740 conflict of interest; limiting lodging expenses for certain
741 persons; providing an exception; prohibiting the expenditure of
742 agency funds on certain items; prohibiting specified persons
743 from accepting certain items from specified entities;
744 prohibiting a tourism promotion agency from expending funds that
745 directly benefit only one business entity; requiring certain
746 contracts to include specified information; requiring a
747 governing body of a local governmental entity to publish certain
748 proposed contracts on such entity's website and approve certain
749 contracts; requiring such agencies to submit a report of
750 financial data to a governing body of a local governmental
751 entity; specifying that certain records are public records;
752 requiring such agencies to provide online access to certain
753 information; prohibiting such agencies from receiving or
754 expending public funds; requiring the Auditor General to conduct
755 certain audits; authorizing the Governor or Chief Financial
756 Officer to cease distributing certain tax revenues to certain
757 noncompliant tourism promotion agencies; providing that it is
758 unlawful to knowingly and willfully make false or misleading
759 statements, provide false or misleading information, fail to
760 report certain information, or purposefully avoid specified

COMMITTEE/SUBCOMMITTEE AMENDMENT


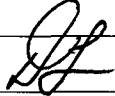
Bill No. CS/HB 3 (2018)

Amendment No. 1

761 requirements; providing penalties; providing applicability;
762 amending s. 125.0104, F.S.; requiring the governing board of a
763 county to review certain proposed contracts and certifications
764 relating to potential conflicts of interest and mitigation
765 plans; requiring the governing board of a county that imposes a
766 tourist development tax to provide online access to certain
767 information; amending ss. 288.1226 and 288.904, F.S.; revising
768 financial data required to be included in an annual report;
769 conforming provisions to changes made by the act; providing an
770 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 243 Charter County and Regional Transportation System Surtax
SPONSOR(S): Transportation & Infrastructure Subcommittee; Avila and Perez
TIED BILLS: IDEN./SIM. **BILLS:** SB 688

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---|--|
| 1) Transportation & Infrastructure Subcommittee | 12 Y, 0 N, As CS | Johnson | Vickers |
| 2) Ways & Means Committee | | Dugan  | Langston  |
| 3) Government Accountability Committee | | | |

SUMMARY ANALYSIS

Section 212.055(1), F.S., creates the Charter County and Regional Transportation System Surtax, authorizing certain counties to establish a sales surtax of up to one-percent for specified transportation purposes. While 31 counties are eligible to levy the surtax, it is only levied in Duval and Miami-Dade Counties, both at the rate of one-half percent. Since its inception in 2003, Miami-Dade County has collected approximately \$2.6 billion in surtax proceeds. The surtax proceeds may be applied to as many or as few of the uses enumerated in s. 212.055(1) as the county's governing body deems appropriate. In Miami-Dade County, the county transfers surtax proceeds to the county's transit department, the county's public works department, and certain municipalities.

The bill amends the Charter County and Regional Transportation System Surtax providing that in Miami-Dade County, to the extent not prohibited by contracts or bond covenants in effect on July 1, 2018, surtax proceeds must be used for the following purposes:

- The planning, design, engineering, and construction of a fixed guideway rapid transit system.
- The acquisition of right-of-way for fixed guideway rapid transit systems or for the development of dedicated facilities for autonomous vehicles.
- The payment of principal and interest on bonds related to a fixed guideway rapid transit system or bus system.
- As security to the county to refinance existing bonds or to issue new bonds for the planning, design, engineering, or construction of fixed guideway rapid transit systems or bus systems.

The bill also prohibits Miami-Dade County's transportation department from using surtax proceeds for salaries or other personnel expenses.

The bill also removes redundant provisions and makes technical changes to the Charter County and Regional Transportation System Surtax statute.

The bill does not have a fiscal impact to state government. However, the bill limits the use of surtax revenues to transit-based capital costs in Miami-Dade County. To the extent Miami-Dade County uses these revenues for another purpose, those expenses will need to be reduced or Miami-Dade County will be required to obtain the revenue from other sources.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

History of Charter County and Regional Transportation System Surtax

Created in 1976 as the Charter County Transit System Surtax, the surtax originally authorized counties with charters adopted before June 1, 1976, to levy a one-percent sales surtax subject to voter approval in a countywide referendum. Proceeds from the surtax were restricted to costs associated with developing and constructing fixed guideway and rapid transit systems.¹

In 1985, the Legislature authorized the use of surtax proceeds for countywide bus systems supporting fixed guideway transit systems.² In 1987, the Legislature authorized counties to remit surtax proceeds to an expressway or transportation authority to develop, construct, operate, and maintain roads or bridges, or to operate and maintain a bus system.³ In 1987, the Legislature also authorized any county consolidated with one or more municipalities to levy the surtax at a rate of one percent.⁴

In 1999, the Legislature authorized surtax proceeds to be applied to as many or as few of the statutorily authorized purposes in whatever combination the county's governing body deemed appropriate.⁵

In 2002, the Legislature authorized any county with a charter adopted prior to January 1, 1984, to levy the surtax.⁶ In 2003, the Legislature expanded the number of uses for surtax proceeds.⁷ In 2004, the Legislature authorized all charter counties eligible to levy the surtax to use up to 25 percent of the proceeds for non-transit purposes,⁸ which was previously limited to Miami-Dade County.

In 2009, the surtax was renamed the Charter County Transportation System Surtax and an additional 13 counties become eligible to assess the surtax. In 2009, surtax proceeds were also allowed to be remitted to transit authorities. Additionally, the Legislature required interlocal agreements specifying the distribution of surtax proceeds with one or more municipalities to be revised no less than every five years to reflect recent municipal incorporations.⁹

In 2010, the surtax was renamed the Charter County and Regional Transportation System Surtax and eligibility was extended to counties within or under an interlocal agreement with a regional transportation or transit authority. Additionally, surtax proceeds could be spent to plan, develop, construct, expand, operate, and maintain on-demand transportation services.¹⁰

¹ Chapter 76-284, L.O.F. 2017 Florida Tax Handbook, p. 226.

² Chapter 85-180, L.O.F. 2017 Florida Tax Handbook, p. 226.

³ Chapters 87-99 and 87-100, L.O.F. 2017 Florida Tax Handbook, p. 226.

⁴ Chapter 87-548, L.O.F. 2017 Florida Tax Handbook, p. 226.

⁵ Chapter 99-385, L.O.F. 2017 Florida Tax Handbook, p. 226.

⁶ Chapter 2002-20, L.O.F. 2017 Florida Tax Handbook, p. 226.

⁷ Chapter 2003-254, L.O.F. 2017 Florida Tax Handbook, p. 226.

⁸ Chapter 2004-66, L.O.F. 2017 Florida Tax Handbook, p. 226.

⁹ Chapter 2009-146, L.O.F. 2017 Florida Tax Handbook, pp. 226-227.

¹⁰ Chapter 2010-225, L.O.F. 2017 Florida Tax Handbook p. 227.

Based on current statutory criteria, 31 counties are eligible to levy the surtax.¹¹ However, only Duval and Miami-Dade Counties levy the surtax, both at a rate of one-half percent.¹² Duval County began levying the tax in 1989, and Miami-Dade County began levying the tax in 2003.¹³

Miami-Dade County

Section 125.011(1), F.S., defines a county as:

[A]ny county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

The local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the City of Key West and Monroe County,¹⁴ Dade County,¹⁵ and Hillsborough County.¹⁶ Of these, only Miami-Dade County operates under a home-rule charter, adopted on May 21, 1957, under this constitutional provision.¹⁷ Therefore, Miami-Dade County is the only county that meets the definition in s. 125.011(1), F.S.

In 2002, Miami-Dade County adopted a resolution calling for a special election for a one-half cent Charter County and Transit System Surtax with the following ballot language:

Shall the county implement the People's Transportation Plan including: plans to build rapid transit lines to West Dade, Kendall, Florida City, Miami Beach and North Dade; expanding bus service; adding 635 buses; improving traffic signalization to reduce traffic backups; improving major neighborhood roads and highways, including drainage; and funding to municipalities for road and transportation projects by levying a ½ percent sales surtax whose proceeds will be overseen by the Citizen's Independent Transportation Trust?

Miami-Dade County's Department of Transportation and Public Works (DTPW) is the 15th largest public transit system in the United States and Florida's largest transit agency. DTPW annually provides approximately 27.2 million miles of Metrobus revenue service along 98 routes. DTPW has a fleet of 706 full-sized buses, 79 articulated buses, and 64 minibuses. Its system also includes a 25-mile dual elevated Metrorail track, a 20-mile Bus Rapid Transit line, and a 4.4-mile dual elevated Metromover track. Additionally, DTPW provides Special Transportation Services to eligible participants.¹⁸

DTPW also administers a system of roads, bridges, drainage, pathways, traffic signals, signs, and streetlights. Additionally, it administers roadway infrastructure maintenance, inspection, compliance, and improvement programs. DTPW also implements all highway, transit, and neighborhood improvement projects included in Miami-Dade County's Capital Improvement Plan and the Transportation Improvement Program. DTPW also implements various public works projects using

¹¹ The counties eligible to levy the surtax are: Alachua, Bay, Brevard, Broward, Citrus, Clay, Columbia, Duval, Escambia, Franklin, Gulf, Hernando, Hillsborough, Lee, Leon, Manatee, Miami-Dade, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Santa Rosa, Sarasota, Seminole, Volusia, Wakulla, and Walton. 2017 Florida Tax Handbook, p. 227.

¹² 2017 Florida Tax Handbook, p. 227.

¹³ 2003 Florida Tax Handbook. p. 154.

¹⁴ FLA. CONST. art. VIII, s. 6, n. 2.

¹⁵ FLA. CONST. art. VIII, s. 6, n. 3.

¹⁶ FLA. CONST. art. VIII, s. 6, n. 4.

¹⁷ Florida Association of Counties, *Charter County Information*, <http://www.fl-counties.com/charter-county-information> (last visited November 17, 2017).

¹⁸ <http://www.miamidade.gov/budget/library/fy2017-18/proposed/transportation-and-public-works.pdf> (Last visited October 30, 2017).

Building Better Communities General Obligation Bonds, and all county transportation capital projects in the People's Transportation Plan.

2002 Charter County Transit Surtax Law

In 2002, Miami-Dade County passed a referendum authorizing the Charter County Transit Surtax¹⁹ and began levying the surtax in 2003. As written in 2002, s. 212.055(1)(d), F.S., provided Charter County Transit System Surtax proceeds could be applied to as many or as few of the purposes provided below, in whatever combination the county commission deemed appropriate:

- For the development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, and related costs of a fixed guideway rapid transit system;
- Remitted to an expressway or transportation authority for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges; and
- In Miami-Dade County, for the development, construction, operation, and maintenance of the county's roads and bridges; for the expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses.

Current Charter County and Regional Transportation Surtax Law

Subsequent to 2002, the Legislature amended the authorized uses of surtax proceeds, including allowing proceeds to be used for on-demand transportation services,²⁰ funds being remitted to transit authority for certain purposes related to bus systems, expanded the use of funds limited to Miami-Dade County to all counties. Additionally, the Legislature authorized surtax proceeds to be used by the county for various functions relating to roads and bridges, bus and fixed-guideway systems, on-demand transportation services, and certain bond issuances. Additionally, the statute currently authorizes counties to enter into interlocal agreements to distribute tax proceeds to a municipality, or an expressway or transportation authority for authorized purposes. These interlocal agreements are revised no less than once every five years in order to incorporate new municipalities.²¹

Administration of the Surtax in Miami-Dade County

Miami-Dade County's Citizen's Independent Transportation Trust (CITT) is a 15-member body overseeing the surtax-funded People's Transportation Plan (PTP).²² The CITT's powers and duties include:

- To monitor, oversee, review, audit, and investigate implementation of the transportation and transit projects listed in any levy by the county under s. 212.055, F.S.
- To assure compliance with any limitations imposed in the levy on the expenditure of surtax proceeds, including but not limited to:
 - Any limitation that surtax proceeds only be expended for the transportation and transit purposes specified in state law;
 - Any limitation that no more than five percent of surtax proceeds spent on administrative costs, excluding project management and oversight for projects funded by the surtax; and

¹⁹ <https://www.miamidade.gov/elections/results/ele02309/RACE054.HTML> (Last visited July 27, 2017)

²⁰ Section 212.055(1)(e), F.S., defines "on-demand transportation services" as transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

²¹ Section 212.055(1)(d), F.S.

²² <http://www.miamidade.gov/citt/> (Last visited October 19, 2017).

- The limitation that the county commission may not delete or materially change any county project listed in an exhibit attached to the ordinance levying the surtax nor add any project except as specifically provided.
- Any requirement with regard to maintenance of effort of general fund support for Miami-Dade Transit.
- To assure compliance with any applicable federal and state requirements;
- To require monthly reports from the manager, county agencies and instrumentalities regarding the implementation of the projects funded by surtax proceeds;
- To file a quarterly report, regarding the implementation of the projects funded by surtax proceeds; and
- To monitor, oversee and periodically report to the county commission on the level of Community Small Business Enterprises and Community Business Enterprises in contracts funded in whole or in part with surtax proceeds, and to recommend ways to increase such participation.²³

The ordinance creating Miami-Dade County's surtax requires the distribution of 20 percent of surtax proceeds to municipalities on a pro rata basis for local transportation and transit projects. Municipalities must apply at least 20 percent of their share of surtax proceeds to transit and are required to submit their transportation plans to the county.²⁴

Since its inception in 2003, through September 2016, Miami-Dade County received approximately \$2.6 billion in surtax revenues, with approximately \$1.8 billion transferred to Miami-Dade Transit, \$563 million to municipalities and \$186 million to public works.²⁵

Proposed Changes

The bill creates s. 212.055(1)(d)2., F.S., providing that to the extent not prohibited by contracts or bond covenants in effect on July 1, 2018, Miami-Dade County must use Charter County and Regional Transportation Surtax proceeds for the following purposes:

- The planning, design, engineering or construction of fixed guideway rapid transit systems.
- The acquisition of right-of-way for fixed guideway rapid transit system or dedicated facilities for autonomous vehicles provided that the current owner of the right-of-way is a willing seller.
- The payment of principal and interest on bonds previously issued related to fixed guideway rapid transit systems or bus systems.
- As security by the governing body of Miami-Dade County to refinance existing bonds or to issue new bonds for the planning, design, engineering, or construction of fixed guideway rapid transit systems or bus systems.

The bill prohibits the county from using surtax proceeds for salaries or other personnel expenses of the county transportation department.

The bill also makes technical changes to and removes redundant provisions in s. 212.055(1)(d), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 212.055, F.S., relating to discretionary sales surtaxes.

Section 2 provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

²³ <http://www.miamidade.gov/citt/about-citt.asp> (Last visited October 24, 2017)

²⁴ <http://www.miamidade.gov/citt/about-municipal-program.asp> (Last visited October 30, 2017).

²⁵ <http://www.miamidade.gov/citt/library/finance/2017/ptp-cash-analysis.pdf> (Last visited October 30, 2017).

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill changes the statutorily authorized use of Charter County and Regional Transportation Surtax revenues in Miami-Dade County and limits the use to capital costs associated with transit. To the extent surtax revenues are being used for another purpose, the bill may negatively impact expenditures for those purposes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For Miami-Dade County, the bill revises the allocation of funds for the Charter County and Regional Transportation System Surtax to focus on transit systems.

D. FISCAL COMMENTS:

While the bill does not change the tax rate, it revises the authorized uses for surtax proceeds. The bill limits the use of surtax revenues to capital costs related to public transit. To the extent surtax proceeds are allocated to other uses, Miami-Dade County may have to reduce those expenditures or find funds from other sources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised the authorized uses for the Charter County and Regional Transportation Surtax in Miami-Dade County.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

1 A bill to be entitled
 2 An act relating to the charter county and regional
 3 transportation system surtax; amending s. 212.055,
 4 F.S.; requiring certain counties to use surtax
 5 proceeds for specified purposes related to fixed
 6 guideway rapid transit systems and bus systems;
 7 authorizing the use of surtax proceeds for the
 8 purchase of rights-of-way under certain circumstances;
 9 authorizing the use of surtax proceeds for refinancing
 10 existing bonds; prohibiting the use of such proceeds
 11 for certain purposes; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraph (d) of subsection (1) of section
 16 212.055, Florida Statutes, is amended to read:

17 212.055 Discretionary sales surtaxes; legislative intent;
 18 authorization and use of proceeds.—It is the legislative intent
 19 that any authorization for imposition of a discretionary sales
 20 surtax shall be published in the Florida Statutes as a
 21 subsection of this section, irrespective of the duration of the
 22 levy. Each enactment shall specify the types of counties
 23 authorized to levy; the rate or rates which may be imposed; the
 24 maximum length of time the surtax may be imposed, if any; the
 25 procedure which must be followed to secure voter approval, if

26 required; the purpose for which the proceeds may be expended;
 27 and such other requirements as the Legislature may provide.
 28 Taxable transactions and administrative procedures shall be as
 29 provided in s. 212.054.

30 (1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM
 31 SURTAX.—

32 (d)1. Except as set forth in subparagraph 2., proceeds
 33 from the surtax shall be applied to as many or as few of the
 34 uses enumerated below in whatever combination the county
 35 commission deems appropriate:

36 a.1. Deposited by the county in the trust fund and shall
 37 be used for the purposes of development, construction,
 38 equipment, maintenance, operation, supportive services,
 39 including a countywide bus system, on-demand transportation
 40 services, and related costs of a fixed guideway rapid transit
 41 system;

42 b.2. Remitted by the governing body of the county to an
 43 expressway, transit, or transportation authority created by law
 44 to be used, at the discretion of such authority, for the
 45 development, construction, operation, or maintenance of roads or
 46 bridges in the county, for the operation and maintenance of a
 47 bus system, for the operation and maintenance of on-demand
 48 transportation services, for the payment of principal and
 49 interest on existing bonds issued for the construction of such
 50 roads or bridges, and, upon approval by the county commission,

51 such proceeds may be pledged for bonds issued to refinance
 52 existing bonds or new bonds issued for the construction of such
 53 roads or bridges; and

54 ~~3. Used by the county for the development, construction,~~
 55 ~~operation, and maintenance of roads and bridges in the county;~~
 56 ~~for the expansion, operation, and maintenance of bus and fixed~~
 57 ~~guideway systems; for the expansion, operation, and maintenance~~
 58 ~~of on-demand transportation services; and for the payment of~~
 59 ~~principal and interest on bonds issued for the construction of~~
 60 ~~fixed guideway rapid transit systems, bus systems, roads, or~~
 61 ~~bridges; and such proceeds may be pledged by the governing body~~
 62 ~~of the county for bonds issued to refinance existing bonds or~~
 63 ~~new bonds issued for the construction of such fixed guideway~~
 64 ~~rapid transit systems, bus systems, roads, or bridges and no~~
 65 ~~more than 25 percent used for nontransit uses; and~~

66 c.4. Used by the county for the planning, development,
 67 construction, operation, and maintenance of roads and bridges in
 68 the county; for the planning, development, expansion, operation,
 69 and maintenance of bus and fixed guideway systems; for the
 70 planning, development, construction, expansion, operation, and
 71 maintenance of on-demand transportation services; and for the
 72 payment of principal and interest on bonds issued for the
 73 construction of fixed guideway rapid transit systems, bus
 74 systems, roads, or bridges; and such proceeds may be pledged by
 75 the governing body of the county for bonds issued to refinance

76 existing bonds or new bonds issued for the construction of such
 77 fixed guideway rapid transit systems, bus systems, roads, or
 78 bridges and no more than 25 percent used for nontransit uses.
 79 Pursuant to an interlocal agreement entered into pursuant to
 80 chapter 163, the governing body of the county may distribute
 81 proceeds from the tax to a municipality, or an expressway or
 82 transportation authority created by law to be expended for the
 83 purpose authorized by this paragraph. Any county that has
 84 entered into interlocal agreements for distribution of proceeds
 85 to one or more municipalities in the county shall revise such
 86 interlocal agreements no less than every 5 years in order to
 87 include any municipalities that have been created since the
 88 prior interlocal agreements were executed.

89 2. To the extent not prohibited by contracts or bond
 90 covenants in effect on July 1, 2018, each county as defined in
 91 s. 125.011(1) shall use proceeds of the surtax only for the
 92 following purposes:

93 a. The planning, design, engineering, or construction of
 94 fixed guideway rapid transit systems.

95 b. The acquisition of rights-of-way for fixed guideway
 96 rapid transit systems or for the development of dedicated
 97 facilities for autonomous vehicles as defined in s. 316.003,
 98 provided that the owner of the right-of-way is a willing seller.

99 c. The payment of principal and interest on bonds
 100 previously issued related to fixed guideway rapid transit

101 systems or bus systems.

102 d. As security by the governing body of the county to
 103 refinance existing bonds or to issue new bonds for the planning,
 104 design, engineering, or construction of fixed guideway rapid
 105 transit systems or bus systems.

106
 107 Proceeds from the surtax may not be used for salaries or other
 108 personnel expenses of the county transportation department.

109 Section 2. This act shall take effect July 1, 2018.