

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1714

INTRODUCER: Senator Perry

SUBJECT: Economic Development and Tourism Promotion Accountability

DATE: January 26, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McKay	CM	Pre-meeting
2.			ATD	
3.			AP	
4.			RC	

I. Summary:

SB 1714 specifies reporting, contractual, and accountability requirements for “economic development agencies” and “tourism promotion agencies” that engage in economic development and tourism promotion on behalf of local governmental entities. The bill imposes the following measures on economic development agencies and tourism promotion agencies:

- Requires board member annual disclosures;
- Prohibits compensation for board members;
- Limits employee compensation and benefits paid from public funds;
- Requires compliance with state per diem and travel expenses requirements;
- Specifies ethics provisions and gift prohibitions;
- Limits lodging expenses;
- Requires that all contracts contain certain information;
- Requires 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;
- Requires the submittal of specified financial information to local governing boards;
- Requires the posting of specified contract, meeting, and financial information;
- Provides that any contract or agreement required by the bill are public records;
- Requires that agencies and the DEO maintain and provide online access to information;
- Provides that agencies that fail to comply with certain transparency and accountability requirements may not receive or expend public funds until becoming compliant;
- Requires Auditor General audits of such agencies, and provides authority for doing so; and
- Provides for a first-degree misdemeanor for willful noncompliance.

The bill imposes the following additional measures on tourism promotion agencies:

- Prohibits the expenditure of funds for the direct benefit of a single corporation; and

- Authorizes the suspension of tourist development taxes by the Governor or the Chief Financial officer when an agency fails to comply with specified requirements.

The bill also enacts additional reporting requirements for county governing boards that impose tourist development taxes, and modifies existing reporting requirements for entities that partner with VISIT FLORIDA or Enterprise Florida, Inc.

II. Present Situation:

Auditor General

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.¹ The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.²

Section 11.45, F.S., defines the types of audits the Auditor General may conduct, and requires certain state and local governmental audits and specifies the frequency with which the audits must occur. The Auditor General also may conduct other audits he or she determines to be appropriate.³

Local Tourism Promotion and Economic Development

To the extent authorized by state law, local governments have the authority to promote economic and tourism development within their jurisdictions.⁴

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:⁵

- 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;⁶

¹ Section 11.42(2), F.S.

² Section 11.42(5), F.S.

³ Section 11.45(3), F.S.

⁴ 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.

⁵ Sections 125.0104(5)(a), F.S., and 125.0104(3)(l) and (n), F.S.

⁶ Also included in this category: publicly owned auditoriums operated by nonprofit organizations, and aquariums or museums owned and operated by nonprofit organizations.

- 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”⁷ 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.⁸

Tourist Development Taxes

Florida law permits counties to impose local option taxes on rentals or leases of accommodations for a term of 6 months or less.⁹ The taxes are generally referred to as “tourist development taxes,” but consist of several separate levied taxes.

- **One or 2 Percent Tax**:¹⁰ This tax may be levied by the county’s governing board at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- **Additional 1 Percent Tax**:¹¹ This tax may be levied by an extraordinary vote of a county’s governing board, in addition to the 1 or 2 percent tax on the total amount charged for transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.
- **High Tourism Impact Tax**:¹² A county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.¹³
- **Professional Sports Franchise Facility Tax**:¹⁴ In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied to pay debt service on bonds issued to finance professional sports franchise facilities,

⁷ Section 125.045, F.S.; Section 166.021(8), F.S.

⁸ 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> (last visited January 26, 2018).

⁹ Section 125.0104, F.S.

¹⁰ Section 125.0104(3)(c), F.S.

¹¹ Section 125.0104(3)(d), F.S.

¹² Section 125.0104(3)(m), F.S.

¹³ A county may be designated as having a “high tourism impact” by the Department of Revenue as provided by s. 125.0104(3)(m)2., F.S.

¹⁴ Section 125.0104(3)(l), F.S.

retaining spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.

- **Additional Professional Sports Franchise Facility Tax:**¹⁵ Counties that levy the professional sports franchise facility tax may levy an additional tax no greater than 1 percent to be used for the same purposes.

Depending on a county’s eligibility, the maximum tax rate varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.¹⁶

	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	8	65
Levying:	63	51	43	6	29

These local option taxes may be administered by the Department of Revenue or by one or more units of local government. These taxes may be levied within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district.¹⁷

As a requirement for adopting tourist development taxes, a county’s tourist development council¹⁸ must prepare a plan for tourist development and present it before the governing board of the county. The plan must include the anticipated revenue derived from the tax for the first 24 months, the tax district where it will be imposed, and a list prioritizing the use of the revenue. Any changes to the plan after the levy has been enacted must be approved by the county’s governing board.¹⁹

Economic Development and Reporting Requirements

Section 125.045, F.S., related to “county economic development powers,” provides legislative intent language with regards to enhancing and expanding economic activity in the counties of the state by attracting and retaining business, 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

¹⁵ Section 125.0104(3)(n), F.S.

¹⁶ Office of Economic Demographic Research, The Florida Legislature, *County Tax Rates: CY 2007-2018, Local Option Tourist Taxes*, (last updated January 8, 2018), available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited January 26, 2018).

¹⁷ See ss. 125.0104(b), (d), and (l), F.S.

¹⁸ Also referred to as a “tourism” development council.

¹⁹ See ss. 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.

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.²⁰

Section 125.045(4), F.S., 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.” 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.

Public Employee Per Diem and Travel Expenses

Section 112.061, F.S., establishes the rates of per diem and subsistence allowance for travel by public officers and employees. When traveling to a convention or conference or to conduct bona fide state business, a traveler is authorized to receive \$80 per diem. However, if actual expenses exceed \$80, the traveler may receive \$6 for breakfast, \$11 for lunch, \$19 for dinner, and the actual expenses for lodging at a single-occupancy rate.

The 2017-18 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 is in effect until July 1, 2018.

Section 112.061(2)(a), F.S., defines the term “agency or public agency” to mean 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.

VISIT FLORIDA

VISIT FLORIDA (VF) serves as Florida’s statewide destination marketing organization, representing the state’s entire tourism industry.²¹ VF is a 501(c)(6) not-for-profit corporation and a subcontractor of EFI.²² VF’s primary responsibilities include:

- Administering domestic and international advertising campaigns;
- Conducting research on tourism and travel trends;
- Conducting domestic and international marketing activities; and

²⁰ Section 125.045(3), F.S.

²¹ Section 288.1226, F.S.

²² Section 288.923, F.S.

- Managing the state's five welcome centers.

Enterprise Florida, Inc.

Enterprise Florida, Inc., (EFI) serves as the principal economic development organization for the state. Among its numerous duties, EFI markets the state for business creation, expansion, and retention.²³ Additionally, EFI contracts with the DEO to manage some of the various programs housed in the Division of Strategic Business Development.

Reporting Requirements for Entities that Partner with VISIT FLORIDA or Enterprise Florida

Section 288.1226(13)(c)1., F.S., requires any entity that in the previous fiscal year received more than 50 percent of its revenue from VF or tourist development taxes, high tourist impact taxes, or convention development taxes, and that partners with VF or participates in a program, cooperative advertisement, promotional opportunity, or other activity offered by or in conjunction with VF, to annually report all public and private financial data to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and include that report on its website.

The financial data must include:

- The total amount of revenue received from public and private sources;
- The operating budget of the partner entity;
- Employee and board member salary and benefit details from public and private funds;
- An itemized account of all expenditures by the partner entity on the behalf of, or coordinated for the benefit of the corporation, its board members, or employees; and
- Itemized travel and entertainment expenditures of the partner entity.

Section 288.904(6)(c)1., specifies the same requirements for entities that partner with EFI.

III. Effect of Proposed Changes:

Auditor General

Section 1 amends the duties in s. 11.45, F.S., to give the Auditor General the authority to conduct audits of the accounts and records pertaining to:

- The use of funds from tourist development taxes, high tourist impact taxes, or convention development taxes, for tourism development or promotion by a local governmental entity, nonprofit organization, or for-profit organization, including a tourism promotion agency as defined and created in section 3 of this bill or a program or entity created by a tourism promotion agency;
- An economic development agency of a county or municipality, including an economic development agency as defined and created in section 2 of this bill, or a program or entity created by an economic development agency;

²³ Section 288.901(2), F.S.

- If the county or municipality does not have an economic development agency, the county or municipal officers or employees assigned to promote the general business interests, industrial interests, or related responsibilities of the county or municipality; or
- If authorized by the state, a municipality, or a county to promote the general business interests, industrial interests, or related responsibilities of the state, municipality, or county, a private agency, person, partnership, corporation, or business entity.

Economic Development Agencies

Section 2 creates s. 288.0751, F.S., which provides a definition and related transparency and contracting requirements for an “economic development agency,” which means an entity, including, but not limited to, an agency as defined in s. 119.011, F.S., that receives public funds and is engaged in economic development activities on behalf of one or more local governmental entities.

The bill specifies that the DEO and EFI are not considered economic development agencies for purposes of the following requirements.

Tourism Promotion Agencies

Section 3 creates s. 288.12261, F.S., which provides a definition and related transparency and contracting requirements for a “tourism promotion agency,” which means an entity, including, but not limited to, an agency as defined in s. 119.011, F.S., that receives public funds to promote tourism development on behalf of one or more local governmental entities.

The bill specifies that the DEO and VF are not considered tourism promotion agencies.

Operation, Contracting, and Accountability Requirements

The bill imposes the following measures on both economic development agencies and tourism promotion agencies:

Operation

- Requires that directors, officers, and board members file an annual disclosure when they, or their interests, benefit from the expenditure of agency funds, under certain circumstances.
- Prohibits compensation for board members, and subjecting them to state per diem and travel provisions.
- Limits the amount of employee compensation and benefits from public funds to what is authorized to be paid to the Governor, and prohibits bonuses or severance pay for employees from public funds unless authorized by law.
- Provides that agencies comply with the per diem and travel expenses requirements in s. 112.061, F.S.
- Provides that officers and employees are subject to the Code of Ethics for Public Officers and Employees standards under s. 112.313, F.S.
- Requires that agencies avoid, neutralize, or mitigate significant potential organizational conflicts of interest before entering into certain contracts.

- Prohibits agency from spending funds on food, beverages, lodging, entertainment, or gifts for employees or board members, unless authorized by s. 112.061, F.S., or the bill.
- Prohibits 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.
- Limits lodging expenses for an employee or board member to \$150 per day, excluding taxes, unless the agency is participating in a negotiated group rate discount or the agency provides documentation of at least three comparable alternatives demonstrating that such lodging at the required rate is not available. However, an employee or board member may expend his or her own funds for any lodging expenses in excess of \$150 per day.
- Prohibits expenditure of agency funds for food, beverages, lodging, entertainment, or gifts for employees or board members, nor may they be accepted, unless available to general public.

Transparency

- Requires 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.
- Requires agency contracts valued at \$250,000 or more to 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. If the local government entity does not take action on the proposed contract within the 14 day time period, the contract is authorized to be executed. An economic development agency may not enter into multiple related contracts to avoid this requirement.
- Requires an agency to submit to the governing board of the local governmental entity, 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.
- Requires an 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 local governmental entity, 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 14 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.

- Provides 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, except as provided in s. 125.0104(9)(d)1. and (d)2.a., and must be produced in full in accordance with the bill or upon request.
- Requires 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.
- Provides that agencies which fail to comply with certain transparency and accountability requirements of the bill may not receive or expend public funds until becoming compliant.

Audits

- Requires 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 that received public funds, and two tourism promotion agencies in counties receiving less than \$30 million per year (annually).
- Provides that it is a first 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.
- Limits the extent to which a private entity must comply with the bill, under certain circumstances.

Additional Requirements for Tourism Promotion Agencies

The bill imposes the following additional measures on tourism promotion agencies:

- Prohibits the expenditure of funds for the direct benefit of a single corporation or business entity;
- Authorizes 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; and
- Requires that certain reports and other information that is already required under s. 125.0104(4), F.S., must also be published and made available online.

Tourist Development Tax Transparency

Section 4 amends s. 125.0104, F.S., to provide that county governing boards must review, and may reject, a proposed contract by a tourist development council with an estimated total contract value of \$250,000 or more. The county governing board must review all certifications by the head of a tourism promotion agency related to potential conflicts of interest and mitigation plans.

The governing board of a county that levies and imposes a tourist development tax must publish the following information available online:

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

- Any substantial amendments to the tourist development plan.
- The tax district in which the tourist development tax is levied.
- A prioritized list of the proposed uses of the tax revenue by specific project or special use.
- The quarterly expenditure reports from the county governing board or its designee.

Reporting Requirements for Entities that Partner with VISIT FLORIDA or Enterprise Florida

Sections 5 and 6 amend sections 288.1226(13)(c)1. and 288.904(6)(c)1., F.S., respectively, to modify reporting requirements for entities that partner with VF or EFI. The bill deletes the requirement that entities receiving more than 50 percent of their revenue from tourist development taxes, high tourist impact taxes, or convention development taxes must annually report specified financial information.

For entities that must report, the bill clarifies the required salary and benefit information, and the required travel and entertainment expenditure information.

Effective Date

Section 7 provides that the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not create a new public records exemption, but it does provide that notwithstanding any law to the contrary, records required under the bill, which may include contracts, are public records and are not “confidential or exempt.”

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”²⁴ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.²⁵

This provision may affect contracting arrangements that involve trade secrets or other materials that may otherwise be confidential and exempt, or exempt.

²⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

²⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not affect any tax rates or collections, but it does give the authority to the Governor or the Chief Financial Officer to order the halt of distribution of specified taxes in certain circumstances.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate costs, but likely minimal, for any entity that meets the definition of economic development agency or tourism promotion agency and is therefore subject to the reporting requirements imposed by the bill.

Indeterminate costs, but likely minimal, for the DEO to provide and maintain the required website addresses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define “economic development activities,” which could lead to uncertainty in compliance and enforcement.

The bill provides that the Governor or Chief Financial Officer may at any time order the Department of Revenue or the local official to whom the tax is remitted to cease and desist distributing certain specified taxes based on a tourism promotion agency’s failure to comply with some of the provisions in the bill. It is not clear that the Constitution of the State of Florida provides such authority to the Chief Financial Officer, or to the Governor, absent an emergency.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.45, 125.0104, 288.1226, and 288.904.

This bill creates the following sections of the Florida Statutes: 288.0751 and 288.12261.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
