

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 3 Economic Development and Tourism Promotion Accountability
SPONSOR(S): Ways and Means, 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	15 Y, 5 N, As CS	Dugan	Langston

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.

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

STORAGE NAME: h0003d.WMC

DATE: 1/16/2018

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

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.

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

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.

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 Development Tax (i.e., Duval County) pursuant to s. 212.0305(4)(a), F.S., may levy this tax. With the

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

²⁵ *Id.* at 257.

²⁶ *Id.* at 263-264.

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 available levies are applicable to separate taxing districts in Volusia County. The levies may be

²⁷ *Id.* at 259-260.

²⁸ *Id.* at 265-266.

²⁹ *Id.* at 123-124.

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 management, and other activities conducive to economic promotion, in order to provide a stronger,

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).

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.

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

³⁴ s. 125.045, F.S.

³⁵ *Supra*, note 39.

³⁶ *Id.*

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 Incentives*³⁷

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 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

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.

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 Property*⁴²

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 financial audit of its accounts and records completed within nine months after the end of its fiscal year

⁴¹ s. 170.01(2), F.S.

⁴² *Supra*, note 39.

⁴³ s. 215.97(2)(a), F.S.

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 implementing bill, which further specified that a “meeting” for purposes of the limit does not include

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.

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 travel and entertainment expenses. It also limits travel expenditures, lodging expenses, public

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.*

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 Sorentue, *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-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 defines “economic development activities” as:

- Developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, or leasing or conveying real property, as part of an economic incentive agreement for one or more businesses.
- Making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.
- Participation in trade shows and prospecting missions.
- Expenditures for the design of strategic plans for economic development activities.
- Expenditures for marketing and research services, including marketing specific sites for business and industry development or recruitment, and responding to inquiries from business and industry concerning the development of specific sites.
- Economic development incentives, including:
 - Direct financial incentives of monetary assistance provided to a business, including grants, loans, equity investments, loan insurance and guarantees, and training subsidies.
 - Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development.
 - Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions.
 - Below-market rate leases or deeds for real property.

The bill clarifies that activities such as the development, maintenance, and improvement of infrastructure and public safety, as well as other traditional functions of local government which benefit the public at large or otherwise provide an indirect or incidental benefit to the development of the local economy, are not considered "economic development activities."

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 directors, officers, and board members file an annual disclosure when they, or their interests, benefit from the expenditure of agency funds, under certain circumstances.
- Requiring that directors, officers, and board members disclose potential conflicts of interest under certain circumstances.

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>

- Prohibiting compensation for board members.
- Limiting employee compensation and benefits from public funds to what is authorized for the chief administrative or executive officer or employee of the local governmental entity on whose behalf such duties, responsibilities, or services are performed, 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 requirements in s. 112.061(14) in each county that adopted an ordinance, or if no ordinance was adopted then those 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. 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.
- Requiring that an agency 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.
- 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 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.
- 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, 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.
- 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.

On January 9, 2018, the Ways & Means 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 agency employees cannot earn more than “the chief administrative officer” of the local government that they work on behalf of and clarifies that board members private salaries are not subject to reporting requirements.
- Clarifies that the bill does not apply to entities that are wholly private if they are not funded by local government entities or taxes and do not have dual role employees.
- Clarifies the definition of “Economic Development Activities” does not apply to ordinary local governments activities such as road building.
- Clarifies that certain personal information obtained in response to sales promotions or booking records remains confidential.
- Clarifies that certain ethics requirements only apply if they are not already applicable.
- Allows local governments to continue to operate according to their current travel and expense policies.
- Specifies the type of financial disclosure form to be used.
- Requires potential conflict of interest information to be provided and noticed before the meeting during which such related contract or information is to be discussed or voted upon.
- Provides for an effective date of October 1, 2018.

The bill analysis is drafted to the committee substitute as passed by the Ways & Means Committee.