

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 Infrastructure and Security

BILL: SB 1258

INTRODUCER: Senator Diaz

SUBJECT: Commercial Service Airports

DATE: January 28, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Favorable
2.			CA	
3.			RC	

I. Summary:

SB 1258 requires the Auditor General to conduct an operational and financial audit of each large-hub commercial service airport in the state. The bill additionally requires each member of the governing body of such airports to comply with the full and public disclosure of financial interests set out in section 8, Article II of the State Constitution.

The bill also requires the governing body of each commercial service airport to establish and maintain a website to post specified information relating to operation of the airport, and subjects such airports to the requirements of Ch. 287, F.S., relating to procurement. After opportunity for public comment, a governing body must approve as a separate line item on its agenda each contract executed by or on behalf of a commercial service airport in amounts exceeding a threshold of \$65,000. Approval of such contracts as part of a consent agenda is prohibited.

Members of a governing body and employees of a commercial service airport are subjected to part II of Ch. 112, F.S., relating to the Code of Ethics for Public Officers and Employees, and must comply with the requirements for full and public disclosure of financial interests set out in section 8, Article II of the State Constitution. The bill also imposes on each member of a governing body certain annual ethics training requirements.

Beginning November 1, 2021, and each November 1 thereafter, the bill requires each commercial service airport to submit specified information to the Florida Department of Transportation (FDOT). The FDOT is required to review the information submitted by such airports and posted on the required websites to determine the accuracy of the information. Beginning January 15, 2022, and each January 15 thereafter, the FDOT must submit to the Governor, the Senate President, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with the bill's provisions. The FDOT is prohibited from expending any funds allocated to a commercial service airport, unless pledged for debt service, until such airport demonstrates its compliance.

The bill appears to have no impact on state or local revenues. The fiscal impact on state and local expenditures is indeterminate. See the Fiscal Impact Statement for details.

The bill takes effect July 1, 2020.

II. Present Situation:

Twenty commercial service airports and 109 general aviation airports,¹ as well as hundreds of small private airports, currently operate in Florida. Commercial service airports are publicly-owned airports having at least 2,500 passenger boardings each year and receiving scheduled passenger service. General aviation airports are airports that do not have scheduled service or have less than 2,500 passenger boardings each year.²

Commercial service airports operating in this state range in size from large-hub airports,³ with over 20 million annual passenger boardings, to small municipal airports with approximately 10,000 annual passenger boardings.⁴ Commercial service airports in Florida support approximately 1.1 million jobs, have a total annual payroll of approximately \$47.3 billion, and a total annual economic impact of approximately \$144 billion.⁵

Airport Oversight

The Federal Aviation Administration (FAA) is responsible for planning and developing a safe and efficient national airport system, including all programs related to airport safety and inspections and standards for airport design, construction, and operation. Federal law requires each commercial service airport to operate under a federal certificate and comply with federal aviation requirements. The FAA is responsible for national airport planning and environmental and social requirements and establishes policies related to airport rates and charges, compliance with grant assurances, and airport privatization.⁶

In Florida, the FDOT is responsible for planning airport systems and overseeing the public airport system.⁷ The owner or lessee of a proposed public airport⁸ must receive FDOT approval before site acquisition, construction, or establishment of a public airport facility.⁹ The FDOT is

¹ Florida Department of Transportation, *Florida Aviation System Plan Introduction*, available at <https://www.fdot.gov/aviation/FASP2035> (last visited January 22, 2020).

² 49 U.S.C. s. 47102.

³ A subsection of commercial airports are large-hub airports. Large-hub airports are commercial service airports that have at least 1 percent of the passenger boardings in the United States.

⁴ See FAA, Commercial Service Airports, Rank Order based on calendar year 2018, December 20, 2019, available at https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy18-commercial-service-enplanements.pdf (last visited January 22, 2020).

⁵ Florida Department of Transportation, *Florida Statewide Aviation Economic Impact Study*, March 2019, Executive Summary at p. 7, available at <https://www.fdot.gov/aviation/economicimpact.shtm> (last visited January 22, 2020).

⁶ See the FAA website, *Airports*, available at https://www.faa.gov/about/office_org/headquarters_offices/arp/ (last visited January 22, 2020).

⁷ Section 332.001, F.S.

⁸ Section 330.27(6), F.S. For purposes of FDOT approval and licensure, the term “public airport” means a publicly or privately owned airport for public use.

⁹ Section 330.30(1), F.S.

also responsible for licensing public airport facilities prior to the operation of aircraft to or from the facility and must inspect such facilities prior to licensing or license renewal.¹⁰ Current law authorizes local governments to establish and operate airports¹¹ and governs airport zoning and land use issues.¹²

Neither state nor federal law establish requirements for airport governance or ownership. As such, Florida airports operate under either a government department model (where the airport operates as a department of the local government) or an airport authority model (where the airport authority is created as either an independent or a dependent special district). Airport operation and administration is generally governed as part of the local government or special district that owns the airport.

FDOT Airport Funding

The FDOT's work program identifies aviation development projects and discretionary capacity improvement projects. To the maximum extent possible, the FDOT's work program must remain consistent with the Florida Aviation System Plan and any approved and applicable local government comprehensive plans. The FDOT's work program also includes any project with funds administered by the FDOT, but undertaken and implemented by the airport operator. The FDOT's aviation program provides assistance to airports in the areas of access, economic enhancement, development, improvement, and land acquisition in the way of matching funds. These matching funds assist local governments and airport authorities in planning, designing, purchasing, constructing, and maintaining public use aviation facilities.¹³

For commercial service airports, DOT may provide up to 50 percent of the non-federal share if federal funding is available and up to 50 percent of the total project costs if federal funding is not available.¹⁴ For Fiscal Year 2019-2020, DOT was appropriated \$266 million from the State Transportation Trust Fund for Aviation Development Grants,¹⁵ available to both commercial service airports and general aviation airports.¹⁶

Auditor General

The position of the Auditor General is established by Article III, section 2 of the State Constitution.¹⁷ The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Joint Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.¹⁸ The Auditor General must conduct audits, examinations, or reviews of government programs as well as audit the accounts of state agencies, state universities, state colleges, district school boards, and others as directed by the

¹⁰ Section 330.30(2), F.S.

¹¹ See chapter 332, F.S.

¹² See chapter 333, F.S.

¹³ Section 332.007(2), F.S.

¹⁴ FDOT website available at <https://www.fdot.gov/aviation/workProgram.shtm> (last visited January 22, 2020).

¹⁵ Chapter 2019-115, L.O.F., Specific Appropriation 1940.

¹⁶ FDOT Fiscal Year 2020 Aviation Work Program available at <https://fdotewp1.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CT=I&FY=TRUE|FALSE|FALSE|FALSE|FALSE&RP=ITEM> (last visited January 22, 2020).

¹⁷ Art. III, s. 2, Fla. Const.

¹⁸ Section 11.42(2), F.S.

Joint Legislative Auditing Committee.¹⁹ The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.²⁰

A financial audit is an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements.²¹ An operational audit is an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.²²

In 2017, the Auditor General conducted an operational audit of Tampa International Airport's 2012 Master Plan Capital Project.²³ More recently, at its meeting on December 12, 2019, the Joint Legislative Auditing Committee directed the Auditor General to perform a targeted operational audit of the Greater Orlando Aviation Authority.²⁴ However, the Auditor General has not conducted financial and operational audits of an entire airport's operation.²⁵

Financial Disclosure

Florida ethics laws provide for two tiers of financial disclosure for public officers, candidates for public office, and certain public employees: a full and public disclosure of financial interests (Form 6) and a statement of financial interests (Form 1).²⁶ The Florida Commission on Ethics oversees the financial disclosure filing process with the assistance of local qualifying officers.

Article 2, section 8(a) of the State Constitution requires all elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees to file a Form 6. Additionally, members of certain expressway authorities, transportation authorities, bridge authorities, toll authorities, or expressway agencies are required to comply with these financial disclosure requirements.²⁷ Form 6 requires the filer to disclose his or her net worth and identify each asset and liability in excess of \$1,000 and its value together with either a copy of the person's most recent federal income tax return, or a sworn statement identifying each separate source and amount of income exceeding \$1,000.

¹⁹ Section 11.45(2)(d)-(f), F.S.

²⁰ Section 11.45(7)(b), F.S.

²¹ Section 11.45(1)(d), F.S.

²² Section 11.45(1)(i), F.S.

²³ Chapter 2017-70, L.O.F. This audit was provided for in proviso language to Specific Appropriation 1862 in the 2017 General Appropriations Act.

²⁴ Joint Legislative Auditing Committee, Meeting Summary, December 12, 2019, available at <http://www.leg.state.fl.us/Data/Committees/Joint/JCLA/MeetingSummaries/121219.pdf> (last visited January 22, 2020).

²⁵ Email from Bruce Jeroslow, General Counsel, Florida Auditor General, to House committee staff, relating to HB 915, January 6, 2020 (on file in the Senate Infrastructure and Security Committee.)

²⁶ Sections 112.3144 and 112.3145, F.S.

²⁷ Section 112.3144(1)(b), F.S.

Form 1 requires less detail than Form 6 and is filed by certain state and local officers not subject to the full and public disclosure of financial interests, including local officers²⁸ and specified state employees. Form 1 requires filers to disclose their primary sources of income (other than from their public position), secondary sources of income (in certain circumstances), real property in Florida (other than a residence or vacation home in Florida), intangible personal property, liabilities, and interests in specified businesses.²⁹

Procurement

Chapter 287, F.S., provides statutory requirements for the procurement of goods and service by the state. The Legislature recognizes that fair and open competition is a basic tenet of public procurement. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures utilized by state agencies in managing and procuring commodities and contractual services, that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained, and that adherence by the agency and the vendor to specific ethical considerations be required.³⁰

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:³¹

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000 (CATEGORY TWO), agencies must utilize a competitive solicitation process;³² however, certain contractual services and commodities are exempt from this requirement.³³

²⁸ Section 112.3145(1)(a), F.S., defines the term "local officer" to include every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office and any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state.

²⁹ Section 112.3145(3), F.S.

³⁰ Section 287.001, F.S.

³¹ See ss. 287.012(6) and 287.057, F.S.

³² Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

³³ See s. 287.057(3), F.S.

Code of Ethics for Public Officers and Employees

Part III of chapter 112, F.S., contains the Code of Ethics for Public Officers and Employees. The intent of the code is to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.³⁴ Included in the code are provisions relating to doing business with one's agency,³⁵ conflicting employment or contractual relationships,³⁶ post-employment restrictions,³⁷ and requirements for ethics training for specified constitutional officers and elected municipal officers and commissioners.³⁸

III. Effect of Proposed Changes:

The bill provides for additional transparency and accountability of commercial service airports.

Section 1 amends s. 11.45(2)(m), F.S., requiring the Auditor General, at least once every five years, to conduct an operational and financial audit of each large-hub commercial service airport. The bill defines the term "large-hub commercial service airport" for purposes of paragraph (m) to mean a publicly owned airport that has at least one percent of the annual passenger boardings in the United States as reported by the FAA.

Section 2 amends s. 112.3144(1)(c), F.S., requiring each member of the governing body of a large-hub commercial service airport to comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution. For purposes of paragraph (c), the bill defines the term "large-hub commercial service airport" to mean a publicly owned airport that has at least 1 percent of the annual passenger boardings in the United States as reported by the FAA.

Based on the definitions in the bill, there are 20 commercial service airports in Florida, four of which are large-hub commercial service airports (Orlando, Miami, Fort Lauderdale, and Tampa International). The Auditor General would be required to conduct a financial and operational audit of these four airports at least once every five years.

Each member of the governing body of a large-hub commercial service airport would be required to comply with the full and public disclosure of their financial interests set out in section 8, Article II of the State Constitution (Form 6). Because the Miami and Fort Lauderdale airports are operated by Miami-Dade and Broward counties, respectively, in which county commissioners are already subject to the constitutional financial disclosure requirements (Form 6), this provision only impacts the governing bodies of the Orlando and Tampa airports, which are governed as independent special districts.

³⁴ Florida Commission on Ethics, *Guide to the Sunshine Amendment and the Code of Ethics for Public Employees*. 2019, p.1., available at <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf?cp=20191213> (last visited January 22, 2020).

³⁵ Section 112.313(3), F.S.

³⁶ Section 112.313(7), F.S.

³⁷ Section 112.313(9), F.S.

³⁸ Section 112.313(9), F.S.

Section 3 creates s. 332.0075, F.S., entitled *Commercial service airports; transparency and accountability; penalty*, providing the following definitions for purposes of the new section:

- “Commercial service airport” means a publicly owned airport that has at least 2,500 passenger boardings each calendar year and receives scheduled passenger service as reported by the FAA.
- “Department” means the Department of Transportation.
- “Governing body” means the governing body of the municipality, county, or special district that operates a commercial service airport.

The bill requires the governing body of each commercial service airport to establish and maintain a website to post information relating to the operation of such airport, including

- All published notices of meetings and published meeting agendas for the governing body.
- The official minutes of each meeting of the governing body, which must be posted within three business days after the date of the meeting in which the minutes are approved.
- The approved budget for the commercial service airport for the current fiscal year, which must be posted on the website, which must be posted within seven days after the date of adoption. Budgets must remain on the website for two years after the conclusion of the fiscal year in which they were adopted.
- All commercial service airport planning documents and all financial and statistical reports submitted to the FAA, which must be posted upon submission.
- Any contract or contract amendment executed by or on behalf of the airport in excess of \$35,000,³⁹ which must be posted on the website no later than seven days before the governing body votes to approve the contract or amendment.
- Position and rate information for each employee, including, at a minimum, the employee’s position title, position description, and annual or hourly salary.

The bill provides that commercial service airports are subject to the requirements of chapter 287, F.S., relating to procurement of personal property and services, notwithstanding any other law.

All contracts executed by or on behalf of the commercial service airport in excess of \$65,000⁴⁰ must be approved by the governing body of the airport as a separate line item on the agenda after providing a reasonable opportunity for public comment. The bill prohibits approving such contracts as part of a consent agenda.

The bill reiterates that members of the governing body and employees of a commercial service airport are subject to the Code of Ethics for Public Officers and Employees.⁴¹

Beginning January 1, 2021, each member of a governing body of a commercial service airport will be required to complete four hours of ethics training each calendar year which addresses, at a minimum, section 8, Article II of the State Constitution, relating to ethics in government; the Code of Ethics for Public Officers and Employees; and the public records and public meetings laws. This requirement may be satisfied by completion of a continuing legal education class or

³⁹ This is the CATEGORY TWO purchasing threshold in s. 287.017, F.S.

⁴⁰ This is the CATEGORY THREE purchasing threshold in s. 287.017, F.S.

⁴¹ Part III of chapter 112, F.S.

other continuing professional education class, seminar, or presentation, if the required subject material is covered by the class.⁴²

Beginning November 1, 2021, and each November 1 thereafter, the bill requires each commercial service airport to submit to the FDOT the following information:

- Its approved budget for the current fiscal year.
- Any financial reports submitted to the FAA during the previous calendar year.
- A link to the website for the commercial service airport.
- A statement that the commercial service airport has complied with part III of chapter 112, F.S., relating to the Code of Ethics for Public Officers and Employees; chapter 287, F.S., relating to procurement; and the statutory provisions created in the bill. This statement must be verified as provided in section 92.525, F.S.

The FDOT is required to review the submitted and website-posted information to determine the information's accuracy. Beginning January 15, 2022, and each January 15 thereafter, the FDOT is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report summarizing commercial service airport compliance with these provisions. The bill prohibits the FDOT from expending any funds allocated to a commercial service airport as contained in the FDOT's adopted work program, unless pledged for debt service, until the airport demonstrates its compliance.

Section 4 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(a), Article VII, of the Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless certain exemptions or exceptions are met. Article VII, section 18(d) of the Florida Constitution provides laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, *laws having insignificant fiscal impact*,⁴³ and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section. For Fiscal Year 2020-2021, an insignificant impact is forecast at slightly over \$2.1 million.⁴⁴

⁴² This requirement is identical to the ethics training required for constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies contained in s. 112.3142(2), F.S.

⁴³ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited January 22, 2020).

⁴⁴ Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited January 22, 2020).

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply to the bill's requirements when the commercial service airport is a government department model (where the airport operates as a department of the local government) or possibly an airport authority model (for dependent special districts⁴⁵). The insignificant impact exemption may apply if the cost of compliance with the bill's provisions does not exceed \$2.1 million in the aggregate.

The fiscal impact of the bill to local governments is indeterminate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no apparent impact to state or local government revenues.

Local government entities operating commercial service airports may incur expenditures associated with compliance with the provisions of the bill; however, the amount of these expenditures would vary from airport to airport based on how the bill's requirements exceed current operational and administrative practices. The total fiscal impact to local government is therefore indeterminate.

⁴⁵ For example, a "dependent special district" can mean a special district in which the membership of its governing body is identical to that of the governing body of a single county. *See* s. 189.012(2), F.S.

The FDOT may not expend any funds allocated to a commercial service airport as contained in the FDOT's adopted work program, unless pledged for debt service, until the airport demonstrates its compliance. However, the fiscal impact of any non-compliance, and the effect of such non-compliance on the FDOT's adopted work program, is indeterminate.

The FDOT will incur administrative expenses and use of resources associated with the bill's provisions. According to the FDOT, to fully administer such a program, the FDOT would need to establish rules and procedures to establish the processes for submission and review of the required information, thresholds for compliance, and timelines to reasonably accomplish tasks without impairing project production schedules. Other funding needs include but are not limited to technology costs for data storage, electronic file exchange, and websites.⁴⁶ However, the agency analysis assigns no estimated dollar value for such costs. The fiscal impact to the FDOT appears to be indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 11.45 and 112.3144.

This bill creates the following sections of the Florida Statutes: 332.0075.

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.

⁴⁶ See the FDOT's analysis of similar HB 915 (2020) available at <http://abar.laspbs.state.fl.us/ABAR/ABAR.aspx> (last visited January 22, 2019).