

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 915 Commercial Service Airports

SPONSOR(S): State Affairs Committee; Transportation & Infrastructure Subcommittee; Avila and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1258

FINAL HOUSE FLOOR ACTION: 112 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 915 passed the House on March 6, 2020, as amended, and subsequently passed the Senate on March 9, 2020.

Florida is home to 20 commercial service airports, four of which are considered large-hub airports. The state's commercial service airports serve as critical economic engines with an annual economic impact of \$144 billion. Florida's commercial service airports operate under either a government department model (where the airport operates as a department of county or municipal government) or an airport authority model (where an airport authority is created as either an independent or a dependent special district). Because airports are generally governed and subsumed as part of local governments, state law currently provides for limited oversight and accountability.

The bill includes a number of provisions to enhance transparency and accountability for commercial service airports, including large-hub commercial service airports. The bill requires the Auditor General, at least once every seven years, to conduct operational and financial audits of the state's large-hub commercial service airports, and provides minimum requirements for each operational audit. The bill also requires the members of the governing bodies of large-hub commercial service airports to submit financial disclosure forms.

The bill requires the governing body of each commercial service airport to establish and maintain a website containing specified information, including meeting notices, agendas, approved budgets, and links to certain documents on the Federal Aviation Administration's website. The bill reiterates that members of the governing body and employees of commercial service airports are subject to the Code of Ethics for Public Officers and Employees, and requires annual ethics training for members of the governing body.

The bill requires the governing body of each commercial service airports to submit specified information to the Department of Transportation (DOT) and requires DOT to annually submit a report to the Governor and the Legislature.

Finally, the bill prohibits DOT from expending funds allocated to a commercial service airport, unless the funds are pledged for debt service, until a commercial service airport demonstrates compliance with the transparency and accountability provisions of the bill.

The bill may have an indeterminate negative fiscal impact on the state and local governments. See Fiscal Comments.

The bill was approved by the Governor on September 4, 2020, ch. 2020-167, L.O.F., and will become effective on October 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida is home to 20 commercial service airports and 109 general aviation airports.¹ Additionally, there are hundreds of small private airports. Commercial service airports are publicly-owned airports that have at least 2,500 passenger boardings each year and receive scheduled passenger service. Included in the definition of commercial service airports are large, medium, small, and non hub airports. General aviation airports are airports that do not have scheduled service or have less than 2,500 passenger boardings each year.²

Florida's commercial service airports range in size from large-hub airports³ 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 and Funding

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 Department of Transportation (DOT) is responsible for planning airport systems and overseeing the public airport system.⁷ The owner or lessee of a proposed public airport⁸ must receive DOT approval before site acquisition, construction, or establishment of a public airport facility.⁹ DOT is 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 law 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

¹ Florida Department of Transportation, *Florida Aviation System Plan Introduction*, A available at: <https://www.fdot.gov/aviation/FASP2035> (Last visited Jan. 13, 2020).

² 49 U.S.C. § 47102.

³ A subset of commercial airports is 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 FAA, Commercial Service Airports, Rank Order based on calendar year 2018, Oct. 9, 2019 (Copy on file with Transportation & Infrastructure Subcommittee).

⁵ Florida Department of Transportation, *Florida Statewide Aviation Economic Impact Study*, March 2019. Executive Summary. Available at: <https://www.fdot.gov/aviation/economicimpact.shtm> (Last visited Jan. 13, 2019).

⁶ Federal Aviation Administration website, Airports, available at: https://www.faa.gov/about/office_org/headquarters_offices/arp/ (Last visited Jan. 13, 2020).

⁷ Section 332.001, F.S.

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

⁹ Section 330.30(1), F.S.

¹⁰ Section 330.30(2), F.S.

¹¹ See chapter 332, F.S.

¹² See chapter 333, F.S.

as either an independent or a dependent special district). Because airports are generally governed and subsumed as part of local governments, state law provides for very little oversight and accountability.

DOT's work program identifies aviation development projects and discretionary capacity improvement projects. To the maximum extent possible, DOT's work program must remain consistent with the Florida Aviation System Plan and any approved and applicable local government comprehensive plans. DOT's work program also includes any project with funds administered by DOT, but undertaken and implemented by the airport operator. DOT'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

Article III, s. 2 of the State Constitution establishes the position of the Auditor General. 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.¹⁷ 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 Joint Legislative Auditing Committee.¹⁸ 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.¹⁹

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.²⁰ 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.²¹

In 2017, the Auditor General conducted an operational audit of Tampa International Airport's 2012 Master Plan Capital Project.²² 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

¹³ Section 332.007(2), F.S.

¹⁴ DOT website, available at: <https://www.fdot.gov/aviation/workProgram.shtm> (Last visited Jan. 13, 2020).

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

¹⁶ Florida Department of Transportation, Fiscal Year 2020 Aviation Work Program, available at: <https://fdotewp1.dot.state.fl.us/fmsupportapps/workprogram/Support/WPIItemRept.ASPX?RF=WP&CT=I&FY=TRUE|FALSE|FALSE|FALSE|FALSE&RP=ITEM> (Last visited Jan. 13, 2020).

¹⁷ Section 11.42(2), F.S.

¹⁸ Section 11.45(2)(d)-(f), F.S.

¹⁹ Section 11.45(7)(b), F.S.

²⁰ Section 11.45(1)(d), F.S.

²¹ Section 11.45(1)(i), F.S.

²² Chapter 2017-70, L.O.F. This audit was provided for in proviso language to specific appropriation 1862 in the 2017 General Appropriations Act.

Orlando Aviation Authority.²³ However, the Auditor General has not conducted financial and operational audits of an entire airport's operation.²⁴

Financial Disclosures

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).²⁵ The Florida Commission on Ethics oversees the financial disclosure filing process with the assistance of local qualifying officers.

Article 2, s. 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.²⁶ 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.

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 officers²⁷ 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.²⁸

Procurement

Chapter 287, F.S., provides statutory requirements for the procurement of goods and services 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.²⁹

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:³⁰

- 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;

²³ Joint Legislative Auditing Committee, Meeting Summary, Dec. 12, 2019 (Copy on file with the Transportation & Infrastructure Subcommittee).

²⁴ Email from Bruce Jeroslow, General Council, Florida Auditor General, FW: HB 915-Auditor General Impact, Jan. 6, 2020 (Copy on file with the Transportation & Infrastructure Subcommittee).

²⁵ Sections 112.3144 and 112.3145, F.S.

²⁶ Section 112.3144(1)(b), F.S.

²⁷ 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.

²⁸ Section 112.3145(3), F.S.

²⁹ Section 287.001, F.S.

³⁰ See ss. 287.012(6) and 287.057, F.S.

- 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;³¹ however, certain contractual services and commodities are exempt from this requirement.³²

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.³³ Included in the code are provisions relating to doing business with one's agency,³⁴ conflicting employment or contractual relationships,³⁵ post-employment restrictions,³⁶ and requirements for ethics training for specified constitutional officers and elected municipal officers and commissioners.³⁷

Effect of the Bill

The bill provides for additional transparency and accountability of commercial service airports, including large-hub commercial service airports. The bill defines the term "commercial service airport" as a primary airport³⁸ as defined in 47 U.S.C., s. 47102, that is classified as a large, medium,³⁹ or small hub airport⁴⁰ by the FAA. Based on these definitions, the bill is applicable to 15 commercial service airports⁴¹ in Florida, including four large-hub commercial service airports: Orlando International, Miami International, Fort Lauderdale-Hollywood International, and Tampa International.

The bill requires the Auditor General, at least once every seven years, to conduct an operational and financial audit of each large-hub commercial service airport. The operational audit must include, at a minimum, an assessment of compliance with the transparency and accountability provisions for commercial service airports, including compliance with chapter 287, F.S., relating to procurement of personal property and services, and compliance with public records and public meeting laws.

The bill requires each member of the governing body of a large-hub commercial service airport, except for members already required to comply with the full and public disclosure of their financial interests contained in s. 8, Art. II of the State Constitution (Form 6), to comply with the financial disclosure requirements in s. 112.3145(3), F.S. (Form 1). Since the Miami and Fort Lauderdale airports are

³¹ Section 287.057(1), F.S., requires all projects that exceed the CATEGORY TWO (\$35,000) threshold contained in s. 287.017, F.S., be competitively bid.

³² See s. 287.057(3), F.S.

³³ 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 Jan. 13, 2020).

³⁴ Section 112.313(3), F.S.

³⁵ Section 112.313(7), F.S.

³⁶ Section 112.313(9), F.S.

³⁷ Section 112.3142, F.S.

³⁸ Federal law defines the term "primary airport" as a commercial service airport the Secretary determines to have more than 10,000 passenger boardings each year. See 47 U.S.C. s. 47102(16).

³⁹ Federal law defines the term "medium hub airport" as a commercial service airport that has at least 0.25 percent but less than 1.0 percent of the passenger boardings. See 47 U.S.C. s. 47102(13).

⁴⁰ Federal law defines the term "small hub airport" as a commercial service airport that has at least 0.05 percent but less than 0.25 percent of the passenger boardings. See 47 U.S.C. s. 47102(25).

⁴¹ The commercial service airports excluded from this definition are Tallahassee, Daytona Beach, Melbourne, Gainesville, and Vero Beach.

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.

The bill requires the governing body⁴² 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 seven 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 no later than seven business days after the date of adoption. Budgets must remain on the website for two years following the conclusion of the fiscal year.
- A link to the airport's Master Plan on the FAA website.
- A link to the airport's financial and statistical reports on the FAA website.
- Any contract and contract amendment executed by or on behalf of the commercial service airport in excess of \$65,000,⁴³ which must be posted on the website no later than seven business days after the airport executes the contract or contract amendment. However, a contract or contract amendment may not reveal information made confidential or exempt by law. Each airport must redact confidential or exempt information before posting a contract on its website.
- Position and rate information for each employee of the commercial service airport, including, at a minimum, the position title, position description, and annual salary or hourly salary rate of pay, which must be updated annually.

The bill provides that, notwithstanding any other provision of law to the contrary, commercial service airports are subject to the requirements of chapter 287, F.S., for the purchase of commodities or contractual services that exceed \$65,000. If the purchase of commodities or contractual services exceeds \$65,000, such purchases may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless an exception applies, or an immediate danger to the public health, safety, or welfare, or other substantial loss to the airport requires emergency action.

All contracts executed by or on behalf of the commercial service airport in excess of \$325,000⁴⁴ must be approved, awarded, or ratified by the governing body of a commercial service airport as a separate line item on the meeting agenda after a reasonable opportunity for public comment. Such contracts may not be approved 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.⁴⁵ However, this does not prohibit the application of more stringent ethical standards adopted by county or municipal charter, ordinance, or resolution of the governing body for its members and employees.

Beginning January 1, 2021, each member of the governing body of a commercial service airport must complete four hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. 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 other continuing professional education class,

⁴² The bill defines the term "governing body" as the governing body of the municipality, county, or special district that operates a commercial service airport.

⁴³ This is the CATEGORY THREE purchasing threshold in s. 287.017, F.S.

⁴⁴ This is the CATEGORY FIVE purchasing threshold in s. 287.017, F.S.

⁴⁵ Part III of Ch. 112, F.S.

seminar, or presentation, if the required subject material is covered by the class.⁴⁶ Constitutional officers and elected municipal officers who complete the ethics training required for those persons in chapter 112, F.S.,⁴⁷ are considered in compliance with this provision.

Beginning November 1, 2021, and each November 1 thereafter, the governing body of each commercial service airport must submit the following information to DOT:

- 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 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 s. 92.525, F.S.

DOT must review the information submitted by the governing body of each commercial service airport and each airport's website to determine the accuracy of the information reported. Beginning January 15, 2022, and each January 15 thereafter, DOT must provide 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 oversight provisions.

DOT may not spend any funds allocated to a commercial service airport as contained in its adopted work program, unless pledged for debt service, until the commercial service airport demonstrates its compliance with the requirements established in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to impact state revenues.

2. Expenditures:

The Auditor General will incur expenditures associated with operational and financial audits of large-hub commercial service airports; however, the Auditor General's office cannot determine with certainty the fiscal impact of this requirement.⁴⁸

DOT may incur expenditures associated with reviewing information submitted by commercial service airports and compiling that information into a report. The provisions of the bill will have an indeterminate impact on department workload and resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to impact local government revenues.

2. Expenditures:

⁴⁶ 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.

⁴⁷ This ethics training is required in s. 112.3142, F.S.

⁴⁸ Email from Bruce Jeroslow, General Council, Florida Auditor General, FW: HB 915-Auditor General Impact, Jan. 6, 2020 (Copy on file with the Transportation & Infrastructure Subcommittee).

Local government entities operating commercial service airports may incur expenditures associated with compliance with the provisions of the bill; however, these expenditures are expected to be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DOT may not spend any funds allocated to a commercial service airport as contained in its adopted work program, unless pledged for debt service, until the commercial service airport demonstrates its compliance with the transparency and accountability requirements established in the bill. To the extent a commercial service airport does not comply with the requirements of this bill, the fiscal impact cannot be quantified at this time.