HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RRS 23-02 Tourism Development
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform & Economic Development Subcommittee		Walsh	Anstead

SUMMARY ANALYSIS

The Florida Tourism Industry Marketing Corporation, otherwise known as "VISIT FLORIDA" (VF), is a nonprofit corporation established by the Florida Legislature to serve as Florida's statewide destination marketing organization, representing the state's tourism industry.

The Local Option Tourist Development Act authorizes counties to levy five separate taxes on transient rental transactions (tourist development taxes or TDTs). Depending on a county's eligibility and whether the county chooses to levy such taxes, the current TDT rate across the counties varies from zero percent to six percent. Statewide TDT revenue has more than doubled over the past decade – from a total of $600 million statewide in FY 12-13 to a total of $1.5 billion statewide in FY 22-23.

The bill requires VF to be funded by local TDTs.

The bill requires:

- A percentage of each county's TDT revenue to be used to fully fund VF for a mandatory period of three years.
    - After three years, it will be optional for counties to fund VF through the TDTs, if the county commission votes to continue funding.
- VF to expend at least seventy-five percent of all funds to directly assist rural counties and Florida's state parks and forests.
- VF not accept any financial assistance or specific appropriation from the state.
- VF to be dissolved if funding falls below a certain level, or VF accepts financial assistance from the state.
- Counties to hold additional referendums before imposing any of TDT.
    - TDTs expire after six years and must be renewed by a referendum.
- Counties to submit six-year plans for the expenditure of TDT funds to the governing board of the county prior to a referendum.

The bill also repeals the Tourism Promotional Trust Fund.

The bill will not impact state revenues. The bill may impact local revenues and state and local expenditures. *See* Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2023.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Tourism Industry Marketing Corporation (VISIT Florida)

The Florida Tourism Industry Marketing Corporation, otherwise known by the service mark "VISIT FLORIDA"[1] (VF), is a nonprofit corporation established by the Florida Legislature to serve as a direct support organization of Enterprise Florida, Inc.[2] (EFI).[3] VF was created by the legislature in 1996 and operates as a non-profit corporation that serves as Florida's statewide destination marketing organization, representing the state's tourism industry.[4] Florida law requires that EFI contract with VF "to execute tourism promotion and marketing services, functions, and programs for the state."[5]

EFI's Division of Tourism Marketing (division) is the entity created through statute that interacts and contracts with VF. In practice, VF is EFI's tourism marketing division. The division is staffed by VF and that staff is not employed by EFI.[6] VF's primary responsibilities include:

- Administering domestic and international advertising campaigns;
- Coordinating domestic and international marketing activities;
- Coordinating marketing efforts with local tourism marketing organizations;
- Managing Florida's four welcome centers;
- Conducting research on tourism and travel trends;
- Administering marketing activities for Veterans Florida;[7] and
- Marketing to assist the state following critical events, such as storms.[8]

Through a contractual relationship with the Department of Economic Opportunity (DEO), VF is held to performance measures and standards. VF's 31-member board of directors is appointed by DEO in conjunction with EFI and meets three times a year to provide guidance, input, and insight to, and work directly with VF executive staff.[9] VF's board of directors is composed of 16 regional members, with at least two representing each of six statutorily designated geographic areas of the state, and 15 additional tourism industry related members that serve two-year terms, including:

- One from the statewide rental car industry;
- Seven from tourist-related statewide associations;[10]
- Three from county destination marketing organizations;
- One from the cruise industry;
- One from an automobile and travel services membership organization;[11]
- One from the airline industry; and

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[1] The fictitious name "VISIT FLORIDA" is registered with the Department of State, registration no. G18000088414.

[2] Enterprise Florida, Inc., (EFI) is a non-profit corporation created to act as the state's economic development organization, using expertise from both the private and public sectors. EFI is not a unit or entity of state government. S. 288.901(1) and (2), F.S.

[3] S. 288.1226(2), F.S.

[4] S. 288.1226, F.S.

[5] S. 288.923(3), F.S.

[6] S. 288.923(5), F.S.

[7] Veterans Florida is a non-profit corporation created by the State of Florida to help military veterans transition to civilian life and to promote Florida's status as the nation's most veteran-friendly state. *See* Veterans Florida, *About Us*, https://www.veteransflorida.org/about/ (last visited Mar. 20, 2023).

[8] Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 8*, 13 (December 2020), available at https://oppaga.fl.gov/Documents/Reports/20-08.pdf (last visited Mar. 20, 2023).

[9] *Id.* at 12.

[10] This includes tourist-related associations that represent hotels, campgrounds, county destination marketing organizations, museums, restaurants, retail, and attractions. *See* S. 288.1226(4) (b).

[11] Such organization must have at least 2.8 million members in Florida. *See Id.*

- One from the space tourism industry.[12]

VF is required to develop a four-year marketing plan[13] for the state that addresses issues such as continuation of tourism growth in Florida, expansion to new or underrepresented markets, coordination with local and private sector partners on tourism advertising, and addressing emergency responses to disasters from a marketing standpoint.[14]

For Fiscal Year 2022-2023, VF received a total appropriation of $50 million,[15] and for Fiscal Year 2021-2022, VF received a total appropriation of $75 million.[16] Payments are made to VF through EFI from DEO. VF enters into a funding agreement with EFI and DEO and an operating agreement with EFI.[17]

As a public-private partnership, VF is required to obtain private sector contributions to match public contributions. Eligible matching contributions come from four categories:

- Direct cash contributions;
- Fees for services;
- Cooperative advertising, which is limited to partner expenditures for paid media placement and actual market value of contributed products, air time, and print space; and
- In-kind contributions, which is limited to the actual market value of promotional contributions of partner-supplied benefits or of non-partner supplied airtime or print space.[18]

Both VF and the Division of Tourism Marketing will sunset on October 1, 2028, unless reviewed and saved from repeal by the Legislature.[19]

Tourism Promotional Trust Fund

Moneys deposited in the Tourism Promotional Trust Fund may only be used to support the authorized activities and operations and the tourism promotion and marketing activities, services, functions, and programs administered by EFI, through a contract with VF. The Tourism Promotional Trust Fund receives 15.75% of the state's rental car surcharge tax.[20]

Tourist Development Taxes

Overview

Currently, sixty-two of the sixty-seven counties in the state levy at least one type of TDT.[21]

Statewide TDT revenue has more than doubled over the past decade – from a total of $600 million statewide in FY 12-13 to a total of $1.5 billion statewide in FY 22-23. In Fiscal Year 2012-13, Florida counties realized a total of $606,389,013 in TDT revenue. In Fiscal Year 2022-23, Florida counties collected $1,546,495,275 in TDT revenue.
Local counties have seen revenues from TDTs grow exponentially. For example, Orange county, which currently levies the maximum potential tax rate of 6%, jumped from collecting over $187 million in Fiscal Year 2012-13 to collecting over $302 million in Fiscal Year 2022-23. Wakulla county, which

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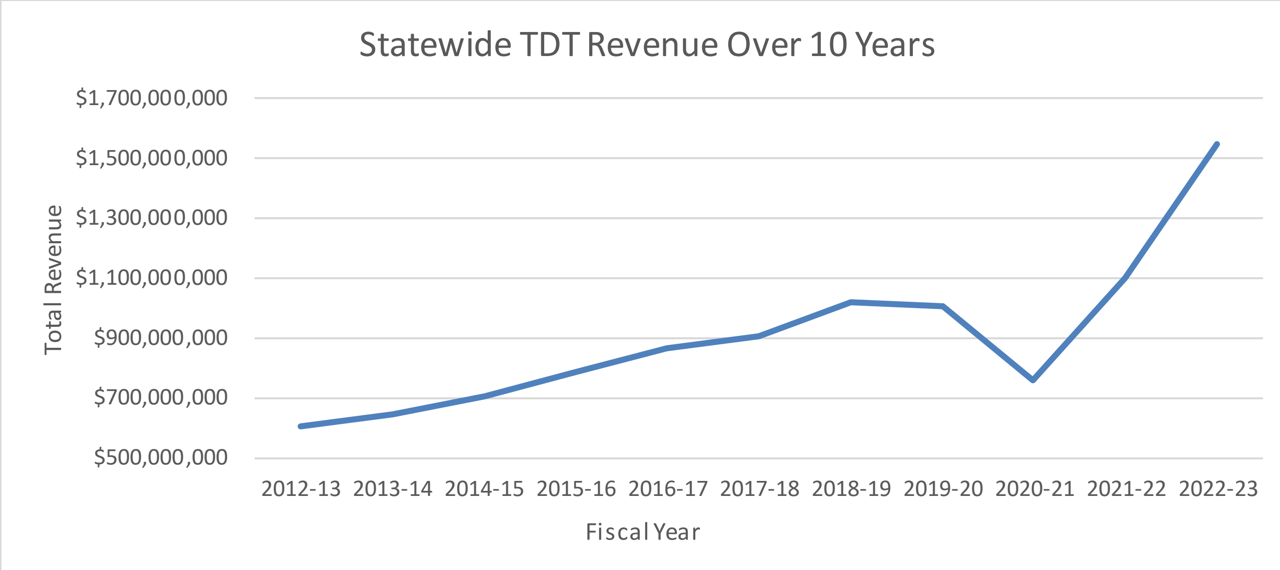
[12] S. 288.1226(4), F.S.
[13] This plan is annual in construction and ongoing in nature. *See* S. 288.923(4)(c), F.S.
[14] S. 288.923(4)(c), F.S.
[15] Specific Appropriation 2303, s. 6, ch. 2022-156, Laws of Fla.
[16] Specific Appropriation 2244, s. 6, ch. 2021-36, Laws of Fla.; S.A. 2244, s. 152, ch. 2021-36, Laws of Fla.
[17] *See Funding Agreement SB23-003- Agreement between the Department of Economic Opportunity, Enterprise Florida, Inc., and the Florida Tourism Industry Marketing Corporation*, executed August 26, 2022, available at https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=400000&ContractId=S0198 (last visited Mar. 20, 2023).
[18] S. 288.1226(6), F.S.
[19] Ss. 288.1226(14) and 288.923(6), F.S.
[20] S. 212.0606(5)(a), F.S.
[21] *Id.*

currently levies a tax rate of 4%, went from collecting $131,532 in Fiscal Year 2012-13 to collecting $306,528 in Fiscal Year 2022-23.[22]



[23]

The Local Option Tourist Development Act

The Local Option Tourist Development Act[24] authorizes counties to levy five separate taxes on transient rental[25] transactions, which are known as tourist development taxes or TDTs. These taxes are raised on local accommodations or short term rentals and are sometimes known as "resort taxes," "bed taxes," or "local option tourist taxes." However, these taxes are not limited to tourists - anyone staying in a hotel regardless of whether they reside in Florida or another state typically pays them.

Prior to the authorization of the initial one or two percent TDT, the levy must be approved by a countywide referendum held at a general election[26] and approved by a majority of the electors voting in the county.[27]

Depending on a county's eligibility to levy such taxes, the maximum potential tax rate varies. The original TDT[28] may be levied at the rate of one or two percent on the total consideration charged for transient rental transactions.[29] All sixty-seven of Florida's counties are eligible to levy the one or two percent tax, but only sixty-two counties have done so, all at a rate of two percent.[30] These counties are estimated to realize $612 million in revenue from these taxes in the 2022-23 fiscal year.[31]

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[22] EDR, *Realized and Unrealized Revenues by County: LFY 2005-2023 [xls]* (November 2022), available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (last visited Mar. 26, 2023).
[23] *Id.*
[24] S. 125.0104, F.S.
[25] Section 125.0104(3)(a)(1), F.S., considers "transient rental" to be the rental or lease of any accommodation for a term of six months or less.
[26] "General election" means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law. S. 97.021(17), F.S.
[27] S. 125.0104(6), F.S.
[28] S. 125.0104(3)(c), F.S.
[29] Office of Economic & Demographic Research (EDR), *Local Government Financial Information Handbook* (December 2022), p. 251, http://edr.state.fl.us/Content/local-government/reports/lgfih22.pdf (last visited Mar. 23, 2023).
[30] EDR, *County Tax Rates: CY 2007-2023*, available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (last visited Mar. 23, 2023).
[31] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 251.

County Participation and Estimated Revenue for the 2022-23 State Fiscal Year

TDT Type	Number of Eligible Counties	Number of Counties that Levy	Estimated Revenue
1 or 2 percent	67	62	$612 million
Additional 1 percent	59	56	$250 million
High tourism impact	14*	9	$162 million
Professional sports franchise facility	67	45	$285 million
Additional professional sports franchise facility tax	34	65	$217 million

* This number is an estimate.[32]

Additional Types of TDTs

An additional one percent tax may be levied by counties who have previously levied the original TDT at the one or two percent rate for at least three years.[33] Fifty-six of the eligible fifty-nine counties levy this tax, with an estimated 2022-23 state fiscal year collection of $250 million in revenue.[34]

Eligible counties may levy a high tourism impact tax at an additional one percent on the total consideration charged for transient rental transactions.[35] A county is considered a high tourism impact county after the Department of Revenue has certified to the county that its sales subject to the tax exceeded $600 million during the prior calendar year or were at least eighteen percent of the county's total taxable sales under ch. 212, F.S.[36] Nine of the estimated fourteen eligible counties currently levy this tax, and these counties will realize an estimated $162 in revenue during the 2022-23 state fiscal year.[37]

In addition to any other TDT imposed, a county may levy a professional sports franchise facility tax, which may be up to an additional one percent tax on the total consideration charged for transient rental transactions.[38] Revenue from this tax can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-five of the sixty-seven counties levy this additional tax, with an estimated 2022-23 state fiscal year collection of $285 million in revenue.[39]

An additional professional sports franchise facility tax no greater than one percent may be imposed by a county that has already levied the professional sports franchise facility tax.[40] Thirty-four out of the

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[32] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24.
[33] S. 125.0104(3)(d), F.S.
[34] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 255.
[35] S. 125.0104(3)(m), F.S.
[36] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 261.
[37] *Id*.
[38] S. 125.0104(3)(l), F.S. *Id.* at 263.
[39] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 259.
[40] S. 125.0104(3)(n), F.S..

eligible sixty-five counties levy the additional professional sports franchise facility tax, with an estimated 2022-23 state fiscal year collection of $217 million in revenue.[41]

TDT Process

Each county that levies the original one or two percent TDT is required to have a tourist development council. The tourist development council is a group of residents from the county who are appointed by the county governing board. The tourist development council, among other duties, makes recommendations to the county governing board for the effective operation of special projects or for uses of the TDT revenue.[42]

Prior to the authorization of the original one or two percent TDT, the levy must be approved by a countywide referendum held at a general election[43] and approved by a majority of the electors voting in the county.[44] Additional TDT levies must be authorized by a vote of the county's governing board or by voter approval in a countywide referendum.[45]

Each county proposing to levy the original one or two percent tax must then adopt an ordinance for the levy and imposition of the tax,[46] which must include a plan for tourist development prepared by the tourist development council.[47] The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy, as well as a list of the proposed uses of the tax and the approximate cost for each project or use.[48] The plan for tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.[49]

Currently, once a county has obtained approval to levy the original one or two percent TDT tax through a referendum, that county is not required to seek electorate approval through a referendum to continue levying the original TDT tax or to initially impose any of the additional TDT taxes.

TDT Uses

Current law authorizes counties to levy and spend TDTs as a mechanism for funding a variety of tourist-related uses, including tourism promotion and the financing and construction of public facilities needed to increase tourist-related business activities in the county, beach restoration and maintenance projects, and convention centers and professional sports franchise facilities.[50] More specifically, the revenues derived from TDTs may be used for:[51]

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.

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41 EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 265.
42 S. 125.0104(4)(e), F.S.
43 "General election" means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law. S. 97.021(17), F.S.
44 S. 125.0104(6), F.S.
45 Section 125.0104(3)(d), F.S.
46 S. 125.0104(4)(a), F.S.
47 S. 125.0104(4), F.S.
48 *See* s. 125.0104(4), F.S.
49 *See* s. 125.0104(4), F.S. The provisions found in s. 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.
50 Florida Legislative Committee on Intergovernmental Relations, *Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10* (December 2009), http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf (last visited Mar. 23, 2023).
51 S. 125.0104, F.S.

- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- Financing 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.[52]
- In counties with populations less than 950,000, the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.[53]
- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum, or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

In addition, up to 10 percent of the tax revenue received by a county located adjacent to the Gulf of Mexico or the Atlantic Ocean may be used to reimburse for expenses incurred in providing public safety services[54] that are needed to address impacts related to increased tourism and visitors to an area. However, a county or municipality that does so may not use these funds to supplant the normal operating expenses of an emergency medical services department, a fire department, a sheriff's office, or a police department.[55] To receive reimbursement the county must:

- Generate a minimum of $10 million in annual proceeds from any tax, or any combination of taxes, authorized to be levied pursuant to this section;
- Have at least three municipalities; and
- Have an estimated population of less than 225,000.[56]

Revenues received by a county from the original one percent levy or the additional one percent levy can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and to promote and advertise tourism. The original one percent levy may also be used to operate or maintain a convention center.[57]

The use of TDT revenue for any purpose not expressly authorized in statute is expressly prohibited.[58]

Effect of the Bill

Under the bill, VISIT FLOIRDA (VF) must be **funded by the local tourist development taxes** (TDTs) collected by counties.

The bill requires:

- **Five percent** of all TDT revenue derived from a county that imposes such a tax to be quarterly remitted to VF, for three years, beginning July 1, 2023, and ending July 1, 2026.
  - Unless the county is a rural county,[59] in which case **two percent** of all TDT revenue derived from such a county must be quarterly remitted to VF.[60]

[52] In counties with populations less than 100,000, up to 10 percent of tourist development tax revenues may be used for financing beach park facilities. *See* s. 125.0104(5)(a), F.S.
[53] S. 125.0104(5)(b), F.S.
[54] Public safety services include emergency medical services as defined in s. 401.107(3), F.S., and law enforcement services. S. 125.0104(5)(c), F.S.
[55] *Id.*
[56] S. 125.0104(5)(c), F.S.
[57] S. 125.0104(5)(d). F.S.
[58] S. 125.0104(5)(e), F.S.
[59] Under the bill, a rural county is defined as a county:

- With a population of 75,000 or fewer; or

  - After July 1, 2026, counties may elect by a majority vote of the board of county commissioners to quarterly remit TDT revenue to fund VF, making it optional.
- **Seventy-five percent** of all VF's expenditures must be spent on programs that directly assist **rural counties and Florida's state parks and forests**.
- Any ordinance enacted to levy any of the TDTs (not just the initial one or two percent) must be approved in a referendum by at least sixty percent of the electors voting in the county.
- Ordinances, that levy and impose a TDT, expire six years after the date the ordinance is approved in a referendum, but the county may renew a TDT imposed by an expired ordinance in the same manner as the original TDT was approved.
- A county, through the county tourist development council, to submit six-year plans for the expenditure of TDT funds to the governing board of the county prior to a referendum.
  - Such plans must include the anticipated amount of tourist development revenue to be remitted to VF.

VF must still meet a one-to-one match requirement for all public funds received, which includes TDT revenues VF receives from counties. If VF fails to meet the one-to-one match requirement, VF shall remit all unmatched funds received from counties, which were derived from TDT revenue, to the counties that remitted funds to the corporation, on a pro rata basis, based on the amount of funds received from each county.

VF may not receive any financial support or specific appropriation from the state. If VF accepts any financial support or specific appropriation from the state after July 1, 2023, or if VF receives less than $1 million in public contributions within a fiscal year, VF will be dissolved and funds or liquidated assets held by VF will either be returned to the counties which remitted the funds or transferred to the General Revenue Fund.

The bill also repeals the Tourism Promotional Trust Fund and removes the allocation to the trust fund from the rental car surcharge.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.0104, F.S., relating to tourist development tax.

Section 2: Amends s. 212.0606, F.S., relating to rental car surcharge.

Section 3: Amends s. 288.0001, F.S., relating to economic development programs evaluation.

Section 4: Repeals s. 288.122, F.S., relating to Tourism Promotional Trust Fund.

Section 5: Amends s. 288.1226, F.S., relating to Florida Tourism Industry Marketing Corporation.

Section 6: Terminates the Tourism Promotional Trust Fund.

Section 7: Provides a declaration of important state interest.

Section 8: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- With a population of 125,000 or fewer which is contiguous to a county of 75,000 or fewer.

A county's population will be determined in accordance with the most recent official estimate pursuant to s. 186.901, F.S.

[60] The bill requires that either the Department of Revenue or the county itself remit the required percentage of TDT revenue to VF, depending on whether the county has elected to self-administer the tax.

1. Revenues:

   None.

2. Expenditures:

   The bill will likely have a recurring negative impact on state government expenditures, since the state will no longer be funding VF.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have a positive impact on local revenues in rural counties, since VF will be required to expend a certain percentage of funds on assisting rural counties and state parks and forests. The bill will likely have a recurring indeterminate impact on local government expenditures for the three years that counties which impose TDTs must transfer funds to VF, depending on whether such counties already provide funds to VF.

2. Expenditures:

   Insignificant. There may be additional expense for local governments to renew TDTs in a general election every 6 years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

D. FISCAL COMMENTS:

   None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18(a), of the Florida Constitution may apply because this bill requires counties to remit funds derived from local tourist development taxes to the Florida Tourism Industry Marketing Corporation. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES