

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 9 Florida Tourism Industry Marketing Corporation

SPONSOR(S): Renner

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rules & Policy Committee		Willson	Birtman

SUMMARY ANALYSIS

The bill moves the Florida Tourism Industry Marketing Corporation (dba VISIT Florida) from the supervision of Enterprise Florida, Inc., to the Department of Economic Opportunity (DEO). The bill also modifies current law to provide greater accountability and oversight of Visit Florida.

The bill provides additional accountability for Visit Florida by:

- Requiring Visit Florida to comply with state procurement laws.
- Limiting travel and per diem expenses of Visit Florida employees to those of state employees.
- Limiting compensation of Visit Florida employees to \$130,000, freezing benefits of employees at current levels and prohibiting bonuses for employees unless authorized by law.
- Prohibiting Visit Florida employees or board members from receiving food, beverages, lodging, entertainment or gifts paid for by Visit Florida funds or funds from a local tourist or economic development agency.
- Requiring Visit Florida contracts to contain performance standards, operating budgets and salaries of employees of the contracting entity to increase transparency of Visit Florida contracts and partnership agreements.
- Requiring Visit Florida to post all contracts on the Chief Financial Officer's Transparency website.
- Requiring the Governor to approve all out-of-state and international travel.
- Requiring the corporation to take all steps necessary to provide all data that is used to develop tourism estimates and measures, including the source data, to the Office of Economic and Demographic Research.
- Removing the public records exemption for marketing projects and research.
- Prohibiting the corporation from creating or establishing any other entity, corporation, or direct support organization.
- Prohibiting expending funds, public or private, that directly or indirectly, benefit only one company, corporation or business entity.
- Tightening Visit Florida's current matching requirements.

The bill provides for additional legislative oversight of Visit Florida by:

- Requiring Visit Florida to place proposed contracts worth \$750,000 or more on 14-day legislative consultation. Upon objection by the chair or vice chair of the Joint Legislative Budget Commission (LBC) or Speaker or Senate President, Visit Florida would be prohibited from entering into contract.
- Requiring Visit Florida to submit a detailed operating budget to the LBC each year in order to obtain release of funds.
- Requiring Senate confirmation of the Visit Florida President/CEO.

The bill eliminates the State Economic Enhancement and Development Trust Fund, the Tourism Promotional Trust Fund, and the Florida International Trade and Promotion Trust Fund.

The bill has not been reviewed by the Revenue Estimating Conference. However, on February 10, 2017, the REC reviewed identical provisions in PCB CCS 17-01 (HB 7005) related to the termination of the SEED Trust Fund, the Tourism Promotional Trust Fund, and the Florida International Trade and Promotion Trust Fund. The REC determined the impact of these trust fund terminations and subsequent redirect of revenues to the General Revenue Fund would result in a negative recurring impact of \$186.6 million in state trust funds, and a corresponding positive general revenue impact of \$186.6 million.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's economic development system is multi-faceted and includes public agencies, non-profit corporations, and private entities at the state, regional, and local level. The Legislature created some of these organizations, while others are units of local government or privately formed associations or alliances. Many of the organizations have similar missions (e.g., encouraging economic development and enhancing the state's business climate) and serve the same constituencies (e.g., in- and out-of-state businesses and the state's economic and workforce development communities). The most prominent of these organizations are Enterprise Florida, Inc. (EFI) and the Department of Economic Opportunity (DEO).¹

To achieve their economic development missions, EFI and DEO perform numerous activities and collaborate via contracts. DEO serves as the contract manager for agreements with EFI, the Institute for the Commercialization of Public Research, the Florida Defense Support Task Force, the Florida Sports Foundation, Space Florida, and the Florida Tourism Industry Marketing Corporation (VISIT Florida).²

Prior to the creation of EFI, the Department of Commerce and Department of Labor and Employment Security were responsible for the state's economic development activities. In 1996, the Legislature created EFI as a public-private partnership to serve as the state's principal economic development marketing and promotion organization.³

To support the ongoing evolution of the state's economic development system, the 2011 Legislature created the Department of Economic Opportunity, transferring functions from the Agency for Workforce Innovation (AWI), Department of Community Affairs (DCA), and Governor's Office of Tourism, Trade, and Economic Development (OTTED) to the new agency.⁴ AWI had performed

¹ OPPAGA, Report No. 16-09, Agency Review-Enterprise Florida, Inc., and Department of Economic Opportunity, p.6 (December 2016)

² *Id.* s. 20.60(9)(b), F.S.

³ *Id.* at 7.

⁴ Chapter 2011-142, Laws of Fla. DEO began operations in October 2011.

functions related to workforce, unemployment compensation, and early learning services, while DCA was the state's land planning and community development agency. OTTED assisted the Governor in formulating economic development policies and strategies and administered the state's economic programs.⁵

Department of Economic Opportunity

Three core divisions carry out DEO's objectives and statutory responsibilities: Strategic Business Development, Community Development, and Workforce Services. These divisions help fulfill DEO's statutorily mandated responsibilities, which include:⁶

- ensuring that Florida's goals and policies relating to economic development, community planning and development, workforce development, and affordable housing are fully integrated with appropriate implementation strategies;
- recruiting new businesses to Florida and promoting the expansion of businesses by expediting permitting and location decisions, worker placement and training, and incentive awards;
- promoting viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities;
- coordinating with state agencies on the processing of state development approvals or permits to minimize the duplication of information provided by the applicant and the time before approval or disapproval; and
- managing the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of various programs.⁷

DEO derives most of its funding from federal sources and transfers a significant portion to other entities. In Fiscal Year 2015-16, DEO's total budget was \$1.08 billion and the majority (\$679 million, 63%) of this funding was from federal sources. Most of DEO's total budget (\$816.4 million, 75%) was transferred to other entities. For example, \$283 million was transferred to fund local workforce boards, \$105 million supported housing programs administered by Florida Housing Finance Corporation, \$74 million went to VISIT Florida, and \$25 million went to EFI.⁸ Between Fiscal Year 2012-13 and Fiscal Year 2015-16, EFI's legislative appropriation increased by 56.3% (\$9 million), while DEO's appropriation decreased by 16.4% (\$207.7 million).⁹

Enterprise Florida, Inc.

EFI is a nonprofit corporation established by the Legislature to serve as the state's main economic development organization.¹⁰ EFI is required to enter into a performance-based contract with DEO, which includes annual measurements of the performance of EFI.¹¹ EFI is governed by a board of directors chaired by the Governor.

⁵ OPPAGA, Report No. 16-09, p.7

⁶ OPPAGA, Report No. 16-09, p.24

⁷ s. 20.60(4)(b)(f), F.S.

⁸ OPPAGA, Report No. 16-09, p.24.

⁹ OPPAGA, Report No. 16-09, p.8.

¹⁰ s. 288.901, F.S. Chapter 92-277, Laws of Fla., created EFI, while ch. 96-320, Laws of Fla, established EFI as a public-private partnership.

¹¹ Section 20.60(1), F.S., requires DEO to "establish annual performance standards for Enterprise Florida, Inc., CareerSource Florida, Inc., the Florida Tourism Industry Marketing Corporation, and Space Florida and report annually on how these performance measures are being met".

As a public-private partnership, EFI is expected to obtain private sector support to help pay for its operational costs. According to state law, the agency's legislative appropriations must be matched with private sector support equal to at least 100% of state operational funding.¹² Under state law, private sector support includes:

- cash given directly to EFI for its operations, including contributions from at-large members of the board of directors;
- cash donations from organizations assisted by EFI's divisions;
- cash jointly raised by EFI, private local economic development organizations, a group of such organizations, or a statewide private business organization that supports collaborative projects;
- cash generated by fees charged for products or services of EFI and its divisions by sponsorship of events, missions, programs, and publications; and
- copayments, stock, warrants, royalties, or other private resources dedicated to Enterprise Florida or its divisions.

According to a recent report¹³ published by the Office of Program Policy Analysis and Government Accountability (OPPAGA), state funding has always far exceeded private sector funding.¹⁴ Specifically, private sector cash contributions during the review period¹⁵ rarely exceeded \$2 million, while state appropriations averaged about \$20 million per year. Funds from other private sources (e.g., event revenue, other income) averaged approximately \$2.7 million per year.

The Legislature provides an annual appropriation to EFI for its operations. EFI is required to have divisions related to:

- International Trade and Business Development,
- Business Retention and Recruitment, Tourism Marketing;
- Minority Business Development; and
- Sports Industry Development.

Florida law directs EFI's board of directors to "integrate its efforts in business recruitment and expansion, job creation, marketing the state for tourism and sports, and promoting economic opportunities for minority-owned businesses and promoting economic opportunities for rural and distressed urban communities with those of the department, to create an aggressive, agile, and collaborative effort to reinvigorate the state's economy."¹⁶

Florida Tourism Industry Marketing Corporation (VISIT Florida)

The Florida Tourism Industry Marketing Corporation dba VISIT Florida (VF) is a nonprofit corporation established by the Florida Legislature to serve as a direct support organization of EFI.¹⁷ Florida law requires that EFI contract with VF "to execute tourism promotion and marketing services, functions, and programs for the state."¹⁸

¹² s. 288.904(2)(a), F.S.

¹³ OPPAGA, Agency Review-Enterprise Florida, Inc., and Department of Economic Opportunity, Report No. 16-09 (December 2016).

¹⁴ OPPAGA Report No. 16-09, p. 19.

¹⁵ Review period was Fiscal Year 2012-2013 through Fiscal Year 2015-2016.

¹⁶ s. 288.9015(1), F.S.

¹⁷ s. 288.1226(2), F.S.

¹⁸ s. 288.923(3), F.S.

EFI, in conjunction with DEO, appoints VF's 31-member board of directors. The board, which meets three times per year, provides guidance, input and insight into the evolution and development of programs, processes, and messages; acts as a steering council for various committees; and works directly with VF executive staff to guide strategy.

VF's primary responsibilities include:

- administering domestic and international advertising campaigns;
- conducting research on tourism and travel trends;
- conducting domestic and international marketing activities; and
- managing the state's welcome centers.

VF also administers a number of small grant programs that provide organizations and state agencies funding for certain tourism-related activities, including convention grants for attracting national conferences and conventions to Florida.¹⁹ Grant funds total less than \$2 million per year.

VF administers a cooperative advertising matching grants program whereby VF makes expenditures and enters into contracts with certain local governments and nonprofit corporations for the purpose of publicizing the tourism advantages of the state.²⁰ The total annual allocation of funds for this grant program may not exceed \$40,000. Each grant awarded under the program is limited to no more than \$2,500 and must be matched by nonstate dollars. Grants are restricted to local governments and nonprofit corporations serving and located in municipalities having a population of 50,000 persons or less or in counties with an unincorporated area having a population of 200,000 persons or less.²¹

VF operates the state's five official welcome centers. Four welcome centers are located along the main travel corridors leading into the state and the fifth welcome center operates in the Capitol Complex in Tallahassee. The Department of Transportation owns the buildings that house the four highway welcome centers, but the centers are staffed and managed by VF.

In a recent study, OPPAGA found that it is difficult to distinguish VF's influence from that of other entities that engage in similar tourism marketing activities. VF focuses much of its efforts on statewide tourism goals such as increasing total visitors and visitor spending in the state. As a result, these same indicators are often used to promote VF's success in positioning Florida as the top travel destination in the world. However, numerous other entities also actively promote the state. State agencies, county governments, the federal government, and the private sector all engage in tourism promotional activities, including statewide marketing. Moreover, county governments and private businesses specifically market local attractions and destinations.²²

¹⁹ s. 288.124, F.S.

²⁰ s. 288.017, F.S.

²¹ s. 288.017(2), F.S.

²² OPPAGA, Report No. 15-01, Florida Economic Development Program Evaluations-Year 2 (January 1, 2015)

Trust Funds

The State Economic Enhancement and Development Trust Fund²³

The trust fund was created for the purpose of infrastructure and job creation opportunities and for the following purposes or programs:

- Transportation facilities that meet a strategic and essential state interest with respect to the economic development of the state;
- Affordable housing programs and projects in accordance with chapter 420, F.S.;
- Economic development incentives for job creation and capital investment;
- Workforce training associated with locating a new business or expanding an existing business; and
- Tourism promotion and marketing services, functions, and programs.

The trust fund receives documentary stamp tax proceeds as specified in law, local financial support funds, interest earnings, and cash advances from other trust funds. Funds are expended only pursuant to legislative appropriation or an approved amendment to DEO's operating budget pursuant to the provisions of chapter 216, F.S.

Tourism Promotional Trust Fund²⁴

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 VISIT Florida. The Tourism Promotional Trust Fund receives 15.75% of the state's rental car surcharge tax.²⁵

Florida International Trade and Promotion Trust Fund²⁶

The Florida International Trade and Promotion Trust Fund is administered by DEO for the operation of EFI and for the operation of Florida international offices under s. 288.012, F.S. The Florida International Trade and Promotion Trust Fund receives 4.25% of the state's rental car surcharge tax.²⁷

Effect of Proposed Changes

Transfer to DEO

The bill makes VISIT Florida a direct-support organization of DEO and allows VISIT Florida to enter into an agreement with DEO to continue any existing program, activity, duty or function necessary for its operation.

The bill provides for DEO to assume EFI's responsibility for the Capitol Information Center.

²³ s. 288.1201, F.S.

²⁴ s. 288.122, F.S.

²⁵ s. 212.0606(3)(a), F.S.

²⁶ s. 288.826, F.S.

²⁷ s. 212.0606(3)(a), F.S.

The bill provides for DEO to assume EFI's management responsibilities for the welcome centers that are located on DOT property.

VISIT Florida

The bill amends s. 288.1226, F.S., to provide additional accountability for VISIT Florida by:

- Requiring VISIT Florida to comply with state procurement laws in chapter 287, F.S.
- Limiting travel and per diem expenses of VISIT Florida employees to those of state employees under s. 112.061, F.S.
- Limiting compensation of VISIT Florida employees to no more than \$130,000 (the Governor's salary for Fiscal Year 2016-17 is \$130,273), providing that benefits of employees may not exceed the level provided as of January 1, 2017, and prohibiting bonuses for employees unless authorized by law.
- Prohibiting VISIT Florida employees or board members from receiving food, beverages, lodging, entertainment or gifts paid for by VISIT Florida funds or funds from a local tourist or economic development agency receiving revenue from a tax imposed pursuant to ss. 125.0104, 125.0108, or 212.0305, F.S.
- Prohibiting lodging expenses for an employee of VISIT Florida in excess of \$150 per day, excluding taxes. However, an employee may expend his or her own funds for any lodging expenses in excess of \$150 per day.
- Requiring VISIT Florida contracts with any entity, including a local government, private, or nonprofit entity, that receives public funds from the state or from a tax imposed pursuant to ss. 125.0104, s. 125.0108, or s. 212.0305, F.S., to contain performance standards, operating budgets and salaries of employees of the contracting entity to increase transparency of VISIT Florida contracts and partnership agreements.
- Indicating VISIT Florida is a governmental entity as defined in s. 215.985, F.S., and therefore, is subject to the Transparency Florida Act.
- Requiring VISIT Florida to post all contracts on the Chief Financial Officer's transparency website under s. 215.985, F.S., to be easily accessible to the public at no cost.
- Requiring the Governor to approve all out-of-state and international travel.
- Requiring VISIT Florida to take all steps necessary to provide all data that is used to develop tourism estimates and measures, including the source data, to the Office of Economic and Demographic Research to enhance their ability to evaluate the impact of tourism advertising spending by the state.
- Removing the public records exemption for marketing projects and research.
- Prohibiting the corporation from creating or establishing any other entity, corporation, or direct support organization.
- Prohibiting expending funds, public or private, that directly or indirectly, benefit only one company, corporation or business entity.
- Limiting the type of contributions that may be included in the calculation of the one-to-one match to direct cash contributions from private sources and fees for services.
- Specifying that, for the purpose of calculating the one-to-one match, contributions from the following entities are not considered private contributions:
 - a government entity, or
 - any entity that received more than 50% of its revenue in the previous fiscal year from public sources.

- Requiring VISIT to revert all unmatched contributions to the state treasury by June 30 of each fiscal year.

The bill amends s. 288.1226, F.S., to provide additional oversight of VISIT Florida by:

- Requiring VISIT Florida to place proposed contracts worth \$750,000 or more on 14-day legislative notice and review under s. 216.177, F.S. Upon objection by the chair or vice chair of the LBC or Speaker or Senate President, VISIT Florida would be prohibited from executing the contract.
 - VISIT Florida may not enter into multiple related contracts to avoid the \$750,000 threshold requirement.
- Requiring 25 percent of the operating budget appropriated in the General Appropriations Act for VISIT Florida to be released on July 1st, with the remainder released in accordance with a detailed operating budget submitted to the LBC each year by August 15th, if approved.
- Requiring Senate confirmation of the VISIT Florida President/CEO.

Trust Funds

The bill repeals and terminates the following trust funds:

- The State Economic Enhancement and Development Trust Fund (s. 288.1201, F.S.)
- Tourism Promotional Trust Fund (s. 288.122, F.S.)
- The Florida International Trade and Promotion Trust Fund (s. 288.826, F.S.)

The bill provides that all current balances remaining in, and all revenues of, the trust funds shall be transferred to the General Revenue Fund.

The bill provides that DEO shall pay any outstanding debts and obligations of the terminated funds as soon as practicable, and the Chief Financial Officer shall close out and remove the terminated funds from various state accounting systems using generally accepted accounting principles concerning warrants outstanding, assets, and liabilities.

The portion of the rental car surcharge tax formerly deposited in the Florida International Trade and Promotion Trust Fund and the portion of the rental car surcharge tax formerly deposited in the Tourism Promotional Trust Fund are redirected to general revenue. The portion of the documentary stamp tax proceeds formerly deposited in the State Economic Enhancement and Development Trust Fund are redirected to general revenue.

B. SECTION DIRECTORY:

Section	1	Amends	s. 11.45	Authority for Audits and Other Engagement
Section	2	Transfers		Authorizing the corporation to enter into an agreement with DEO for certain purposes and to use certain funds; providing legislative intent
Section	3	Amends	s. 201.15	Distribution of taxes collected
Section	4	Amends	s. 212.0606	Rental car surcharge
Section	5	Amends	s. 272.11	Capitol information center
Section	6	Amends	s. 288.0001	Economic development program evaluation
Section	7	Amends	s. 288.017	Cooperative advertising matching grants program

Section	8	Repeals	s. 288.1201	State Economic Enhancement and Development Trust Fund
Section	9	Terminates		State Economic Enhancement and Development Trust Fund
Section	10	Repeals	s. 288.122	Tourism Promotional Trust Fund
Section	11	Terminates		Tourism Promotional Trust Fund
Section	12	Amends	s. 288.1226	Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit
Section	13	Amends	s. 288.12265	Welcome centers
Section	14	Amends	s. 288.124	Convention grants program
Section	15	Repeals	s. 288.826	Florida International Trade and Promotion Trust Fund
Section	16	Terminates		Florida International Trade and Promotion Trust Fund within DEO
Section	17	Amends	s. 288.904	Funding for Enterprise Florida, Inc.; performance and return on the public's investment.
Section	18	Amends	s. 288.92	Divisions of Enterprise Florida, Inc.
Section	19	Amends	s. 288.923	Division of Tourism Marketing; definitions; responsibilities.
Section	20	Provides		Effective Date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

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 has not been reviewed by the Revenue Estimating Conference. However, on February 10, 2017, the REC reviewed identical provisions in PCB CCS 17-01 (HB 7005) related to the termination of the SEED Trust Fund, the Tourism Promotional Trust Fund, and the Florida International Trade and Promotion Trust Fund. The REC determined the impact of these trust fund terminations and subsequent redirect of revenues to the General Revenue Fund would result in a negative recurring

impact of \$186.6 million in state trust funds, and a corresponding positive general revenue impact of \$186.6 million.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES