

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 Appropriations

BILL: SB 178

INTRODUCER: Senator Gruters

SUBJECT: Florida Tourism Marketing

DATE: March 13, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>McAuliffe</u>	<u>Hrdlicka</u>	<u>ATD</u>	Recommend: Favorable
3.	<u>McAuliffe</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

I. Summary:

SB 178 saves the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, and the division of tourism marketing within Enterprise Florida, Inc., from repeal. Without the bill, the statutory authorizations for these entities would be repealed on October 1, 2019.

Appropriations for VISIT FLORIDA have averaged \$76 million each year for the past five fiscal years. Recurring funding of \$50 million is dedicated to the entity. If VISIT FLORIDA is repealed on October 1, 2019, the dissolved entities' assets, after all legal liabilities and obligations have been paid or adequate provision for them have been made, will revert to the state.

The bill takes effect July 1, 2019.

II. Present Situation:

Enterprise Florida, Inc., (EFI) is a non-profit corporation created to act as the economic development organization for Florida, using expertise from both the private and public sectors.¹

EFI is statutorily required to maintain at least five divisions related to the following areas:

- International trade and business development;
- Business retention and recruitment;
- Tourism marketing;
- Minority business development; and
- Sports industry development.²

¹ Section 288.901(1) and (2), F.S. EFI is not a unit of state government.

² Section 288.92, F.S.

EFI's division of tourism marketing is the mechanism created in statute through which EFI interacts and contracts with its direct support organization, VISIT FLORIDA. In practice, VISIT FLORIDA is EFI's tourism marketing division. The division is staffed by VISIT FLORIDA, but that staff is not employed by EFI.³

VISIT FLORIDA is the fictitious name for the Florida Tourism Industry Marketing Corporation, a non-profit corporation that serves as Florida's statewide destination marketing organization, and represents the state's tourism industry.⁴ VISIT FLORIDA's primary responsibilities include:⁵

- Administering domestic and international advertising campaigns;⁶
- Conducting research on tourism and travel trends;
- Conducting domestic and international marketing activities; and
- Managing the state's five welcome centers.⁷

VISIT FLORIDA is required to develop a 4-year marketing plan for the state that addresses issues such as continuation of tourism growth in Florida, expansion to new or underrepresented tourists, coordination with local and other private sector partners on tourism advertising, and addressing emergency response to disasters.⁸ "In addition, [VISIT FLORIDA] administers marketing activities for Veterans Florida, medical tourism, and marketing to assist the state following critical events, such as hurricanes."⁹

VISIT FLORIDA also administers a number of small grant programs that provide organizations and state agencies funding for certain tourism-related activities. Grant funds total less than \$2 million per year.¹⁰

VISIT FLORIDA is required to report quarterly on aspects of tourism, research, and financials¹¹ and annually on its activities and financial statements.¹² VISIT FLORIDA is also required to post certain information on its website related to contracts entered into by the entity.¹³

³ Section 288.923(5), F.S.

⁴ Section 288.1226, F.S. The fictitious name is registered with the Department of State, registration no. G18000088414.

⁵ Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 5*, Report 17-13, p. 21, December 1, 2017, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=17-13> (last visited February 14, 2019).

⁶ Section 288.923(4)(b), F.S.

⁷ Sections 288.1226 and 288.12265, F.S. The DEO contracts with VISIT FLORIDA to employ staff and operate the centers.

⁸ Section 288.923(4)(c), F.S.

⁹ Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 5*, Report 17-13, p. 21.

¹⁰ Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 5*, Report 17-13, Appendix C.

¹¹ Section 288.1226(8), F.S.

¹² Sections 288.92 and 288.923(4)(d), F.S.

¹³ Section 288.1226(13)(a) and (d), F.S.

EFI, in conjunction with the DEO, appoints VISIT FLORIDA's 31-member board of directors.¹⁴ The board provides “guidance, input, and insight into the evolution and development of [VISIT FLORIDA] programs, processes, and messages; acts as a steering council for various committees; and works directly with [VISIT FLORIDA] executive staff to guide strategy.”¹⁵ VISIT FLORIDA's board of directors is composed of 16 regional members, with at least two representing each of the six statutorily designated geographic areas of the state, and 15 additional tourism industry related members, including:

- One from the statewide rental car industry;
- Seven from tourist-related statewide associations;
- Three from county destination marketing organizations;
- One from the cruise industry;
- One from an automobile and travel services membership organization;
- One from the airline industry; and
- One from the space tourism industry.¹⁶

For the 2018-2019 fiscal year, VISIT FLORIDA received an appropriation of \$76 million.¹⁷ Payments are made to VISIT FLORIDA directly from the DEO – appropriated funds do not pass through EFI. VISIT FLORIDA enters into a funding agreement with the DEO and an operating agreement with EFI.¹⁸

VISIT FLORIDA and the EFI division of tourism marketing will sunset on October 1, 2019, unless reviewed and saved from repeal by the Legislature.¹⁹

Compliance with s. 20.058, F.S. - CSO/DSO Transparency and Reporting Requirements

Chapter 2014-96, L.O.F., created dates of repeal for numerous citizen support organizations (CSO) and direct support organizations (DSO), including VISIT FLORIDA and EFI's division of tourism marketing.²⁰ The law also created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for each CSO and DSO.

Reporting Requirements

Section 20.058(1), F.S., requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;

¹⁴ Section 288.1662(4), F.S. See VISIT FLORIDA, *Board of Directors*, available at <http://www.visitflorida.org/about-us/who-we-are/board-of-directors/> (last visited February 8, 2019).

¹⁵ Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 5*, Report 17-13, p. 21.

¹⁶ Section 288.1226(4), F.S.

¹⁷ SA 2239, s. 6, ch. 2018-19, L.O.F.

¹⁸ VISIT FLORIDA, *Funding Agreement SB18-003 – Agreement between the Department of Economic Opportunity and the Florida Tourism Industry Marketing Corporation*, executed August 25, 2017, and renewed by Amendment 2, executed May 11, 2018, available at <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=400000&ContractId=S0089> (last visited February 14, 2019).

¹⁹ Sections 288.1226(14) and 288.923(6), F.S.

²⁰ Sections 3 and 16, ch. 2014-96, L.O.F.

- A brief description of the mission and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;
- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.²¹

The DEO, on behalf of EFI, submits this information annually with regard to VISIT FLORIDA.²²

Transparency of Reported CSO or DSO Information

Section 20.058(2), F.S., requires each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., to make such information available to the public through the agency's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.

The DEO and EFI each have links on their websites to VISIT FLORIDA.²³ VISIT FLORIDA provides online access to relevant public records and information that is required by s. 20.058(1), F.S.²⁴

Section 20.058(3), F.S., requires, by August 15 of each year, each agency to report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information provided by each CSO and DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.

The DEO submitted the required report on August 15, 2018, on behalf of EFI, and the report recommends the continued collaboration and association between the DEO, EFI, and VISIT FLORIDA.²⁵

Contract Requirements

Section 20.058(4), F.S., requires any contract between an agency and a CSO or DSO to be contingent upon the CSO or DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an

²¹ The IRS Form 990 is the an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. s. 501. The most recent Form 990 provided by VISIT FLORIDA is from 2016 and available at <https://www.visitflorida.org/media/52357/annual-tax-return-2017.pdf> (last visited February 12, 2019).

²² Department of Economic Opportunity, *2018 DSO Report for VISIT FLORIDA*, August 15, 2018, available at p. 39 at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=18027&DocType=PDF> (last visited February 12, 2019).

²³ The DEO's home page contains a link at the bottom to VISIT FLORIDA, available at <http://www.floridajobs.org/> (last visited February 12, 2019). EFI's home page has a link for partner sites, including VISIT FLORIDA, available at <https://www.enterpriseflorida.com/> (last visited February 12, 2019).

²⁴ VISIT FLORIDA, Public Records, available at <https://www.visitflorida.org/about-us/media/public-records/> and VISIT FLORIDA, Annual Reports, available at <https://www.visitflorida.org/about-us/what-we-do/> (both sites last visited February 12, 2019).

²⁵ Department of Economic Opportunity, *2018 DSO Report for VISIT FLORIDA*.

organization fails to submit the required information for two consecutive years, the agency head must terminate any contract between the agency and the organization.

Though the Operating Agreement for Direct Support Activities between Enterprise Florida, Inc., and VISIT FLORIDA does not appear to reference the s. 20.058(1) and (2), F.S., posting requirements, the DEO provided the required information in its 2018 DSO report. The contract between the DEO and VISIT FLORIDA does provide that VISIT FLORIDA assets revert to the state in the event of dissolution of VISIT FLORIDA.²⁶

Compliance with s. 215.981, F.S. - CSO/DSO Audit Requirements

Section 215.981(1), F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.

VISIT FLORIDA submitted its most recent annual financial audit in compliance with ss. 288.1226(7) and 215.981(1), F.S., to the OPPAGA, the Florida Auditor General, and the DEO on June 30, 2018.²⁷

Compliance with s. 112.3251, F.S. - CSO/DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.²⁸ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.

VISIT FLORIDA has its code of ethics posted online and it is in compliance with ss. 112.313 and 112.3143, F.S.²⁹

Compliance with Specific Administrative Requirements

Sections 288.1226 and 288.923, F.S., specify administrative requirements for VISIT FLORIDA and the EFI division of tourism marketing. As part of the DSO sunset review, legislative staff reviewed compliance with these requirements and, with the resources available, determined that VISIT FLORIDA generally meets the statutory requirements, including:

- Having a board of directors based on region and industry;³⁰

²⁶ VISIT FLORIDA, *Funding Agreement SB18-003 – Agreement between the Department of Economic Opportunity and the Florida Tourism Industry Marketing Corporation*, executed August 25, 2017, and renewed by Amendment 2, executed May 11, 2018.

²⁷ VISIT FLORIDA, *Audits*, available at <https://www.visitflorida.org/about-us/media-and-public-records/audits/> (last visited February 13, 2019).

²⁸ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

²⁹ VISIT FLORIDA, *Miscellaneous*, available at <https://www.visitflorida.org/about-us/media/public-records/miscellaneous/> (last visited February 13, 2019).

³⁰ Section 288.1662(4), F.S. See VISIT FLORIDA, *Board of Directors*, available at <http://www.visitflorida.org/about-us/who-we-are/board-of-directors/> (last visited February 13, 2019).

- Contracting with EFI;³¹
- Annually updating the 4-year marketing plan;³²
- Annually completing financial and compliance audits;³³
- Complying with the public records and open meetings requirements of chs. 119 and 286, F.S.; and³⁴
- Submitting quarterly reports to EFI.³⁵

III. Effect of Proposed Changes:

The bill saves the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, and the division of tourism marketing within Enterprise Florida, Inc., from repeal. The bill repeals s. 288.1226(14), F.S., (Section 1) and s. 288.923(6), F.S. (Section 2).

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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.

³¹ Section 288.923(3), F.S.

³² Section 288.923(4)(c), F.S.

³³ Sections 288.923(4)(d)4. and 288.1226(7), F.S.

³⁴ Section 288.1226(2)(d), (9), and(13), F.S.

³⁵ Section 288.1226(8), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Appropriations for VISIT FLORIDA have averaged \$76 million each year for the past five fiscal years.³⁶ Recurring funding of \$50 million is dedicated to the entity. If VISIT FLORIDA is repealed on October 1, 2019, the dissolved entities' assets, after all legal liabilities and obligations have been paid or adequate provisions have been made, will revert to the state.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals the following sections of the Florida Statutes: 288.1226(14) and 288.923(6).

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.

³⁶ SA 2239, s. 6, ch. 2019-8, L.O.F.; s. 26, ch. 2017-233, L.O.F.; SA 2240, s. 6, ch. 2016-66, L.O.F.; SA 2254, s. 6, ch. 2015-232, L.O.F.; and SA 2261, s. 6, 2014-51, L.O.F.

³⁷ VISIT FLORIDA, *Funding Agreement SB18-003 – Agreement between the Department of Economic Opportunity and the Florida Tourism Industry Marketing Corporation*, executed August 25, 2017, and renewed by Amendment 2, executed May 11, 2018.