

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 178

INTRODUCER: Senator Gruters

SUBJECT: Florida Tourism Marketing

DATE: February 8, 2019

REVISED: 2/11/19 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	_____	_____	<u>ATD</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 178 removes the scheduled repeal date for the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, and the scheduled repeal date for Division of Tourism Marketing within Enterprise Florida, Inc.

The bill does not affect state revenues or expenditures.

The bill takes effect July 1, 2019.

**II. Present Situation:**

**Enterprise Florida, Inc. and the Division of Tourism Marketing**

Enterprise Florida, Inc. (EFI) is a corporate entity organized and operated within Florida law governing non-profit corporations and is not a unit or entity of state government.<sup>1</sup> EFI acts as the economic development organization for Florida, using expertise from both the private and public sectors.<sup>2</sup> Initially created in 1992, EFI had only two responsibilities: to assist in the state's economic development efforts and to develop a strategic plan to improve the state's economic development. In 1996, the Legislature created the Office of Tourism, Trade, and Economic Development, which recognized EFI as the lead economic development entity (broadening its responsibilities) and required an incremental increase in private funding of EFI operations.<sup>3</sup> Currently, EFI serves as the state's economic development strategist, business recruiter, and facilitator of public-private investment for business ventures.<sup>4</sup>

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<sup>1</sup> Section 288.901(1), F.S.

<sup>2</sup> Section 288.901(2), F.S.

<sup>3</sup> Chapter 96-320, Laws of Fla.

<sup>4</sup> See <https://www.enterpriseflorida.com/about-efi/> (last visited February 8, 2019).

Pursuant to s. 288.92, F.S.; 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.<sup>5</sup>

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. VISIT FLORIDA largely acts as EFI's Tourism Marketing Division. Statutory requirements, such as the annual development and implementation of a 4 year marketing plan, are duplicative between VISIT FLORIDA and the Division of Tourism Marketing.<sup>6</sup> The Division must be staffed by VISIT FLORIDA, but that staff is not considered to be employed by EFI.<sup>7</sup>

Pursuant to s. 288.923, F.S.; the Division of Tourism Marketing is statutorily required to:

- Maintain and implement the contract with VISIT FLORIDA;<sup>8</sup>
- Advise the Department of Economic Opportunity (DEO) and EFI on the development of domestic and international tourism marketing plans;<sup>9</sup>
- Develop a 4 year marketing plan;<sup>10</sup> and
- Submit an annual report pursuant to s. 288.92, F.S.<sup>11</sup>

The Division of Tourism Marketing will sunset on October 1, 2019, unless s. 288.923(6), F.S., is repealed or amended. This is consistent with VISIT FLORIDA's sunset date in s. 288.1226(14), F.S.

## **VISIT FLORIDA**

The Florida Tourism Industry Marketing Corporation, known as VISIT FLORIDA, serves as Florida's statewide destination marketing organization, and represents the state's entire tourism industry.<sup>12</sup> VISIT FLORIDA is a 501(c)(6) not-for-profit corporation and a direct support organization of Enterprise Florida, Inc.<sup>13</sup> VISIT FLORIDA'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 five welcome centers.

<sup>5</sup> Section 288.92, F.S.

<sup>6</sup> Sections 288.923(3) and 288.1226(5)(a), F.S.

<sup>7</sup> Section 288.923(5), F.S.

<sup>8</sup> Section 288.923(4)(a), F.S.

<sup>9</sup> Section 288.923(4)(b), F.S.

<sup>10</sup> Section 288.923(4)(c), F.S.

<sup>11</sup> Section 288.923(4)(d), F.S.

<sup>12</sup> Section 288.1226, F.S.

<sup>13</sup> Section 288.923, F.S.

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.<sup>14</sup>

VISIT FLORIDA operates the state's five official welcome centers under contract with EFI.<sup>15</sup> 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 VISIT FLORIDA.<sup>16</sup>

EFI, in conjunction with the DEO, appoints VISIT FLORIDA's 31-member board of directors.<sup>17</sup> 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. 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.<sup>18</sup>

VISIT FLORIDA will sunset on October 1, 2019, unless s. 288.1226(14), F.S., is repealed or amended. This is consistent with Division of Tourism Marketing's sunset date in s. 288.923(6), F.S.

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

Section 20.058, F.S., establishes a comprehensive set of transparency and reporting requirements for each citizen support organization (CSO) and direct support organization (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;

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<sup>14</sup> Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations Year 5 Report 17-13*, December 1, 2017. Available at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=17-13> (last visited February 8, 2019).

<sup>15</sup> Section 288.12265, F.S.

<sup>16</sup> See <https://www.visitflorida.com/en-us/visitor-services/florida-welcome-centers.html> (last visited February 8, 2019)

<sup>17</sup> See <http://www.visitflorida.org/about-us/who-we-are/board-of-directors/> (last visited February 8, 2019).

<sup>18</sup> Section 288.1226(4), F.S.

- The statutory authority or executive order that created the CSO or DSO;
- 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.<sup>19</sup>

The DEO, on behalf of EFI, has submitted this information annually with regards to VISIT FLORIDA.<sup>20</sup>

### ***Transparency of Reported CSO or DSO Information***

Section 20.058(2), F.S., provides that each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., shall 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, Enterprise Florida, Inc., and VISIT FLORIDA each have links on their websites to the other entities.<sup>21</sup> VISIT FLORIDA provides online access to their public records and information required in s. 20.058(1), F.S. to the public.<sup>22</sup>

Section 20.058(3), F.S., provides that, by August 15 of each year, each agency shall 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 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 its report by August 15, 2018, on behalf of EFI, in which the DEO recommends the continued collaboration and association between the DEO, EFI, and VISIT FLORIDA.<sup>23</sup>

### ***Contract Requirements***

Section 20.058(4), F.S., provides that any contract between an agency and a CSO or DSO must 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

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<sup>19</sup> 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 here: <https://www.visitflorida.org/media/52357/annual-tax-return-2017.pdf> (last visited February 8, 2019).

<sup>20</sup> Department of Economic Opportunity, *2018 DSO Report*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=18027&DocType=PDF> (February 8, 2019); See also <https://www.visitflorida.org/about-us/media/public-records/> and <https://www.visitflorida.org/about-us/what-we-do/> (last visited February 8, 2019).

<sup>21</sup> See <http://www.floridajobs.org/> (last visited February 8, 2019).

<sup>22</sup> See <https://www.visitflorida.org/about-us/media/public-records/> (last visited February 8, 2019).

<sup>23</sup> Department of Economic Opportunity, *2018 DSO Report*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=18027&DocType=PDF> (February 8, 2019).

authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall 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 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.<sup>24</sup>

### **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 OPAGGA, the Florida Auditor General, and DEO on September 17, 2018.<sup>25</sup>

### **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.<sup>26</sup> 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.<sup>27</sup>

VISIT FLORIDA has their code of ethics posted online and it is in compliance with sections 112.313 and 112.3143 of the Florida Statutes.<sup>28</sup>

### **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 have reviewed their compliance with these requirements, and with the resources available, have found that the following requirements are met:

- Board of directors based on region and industry;<sup>29</sup>
- Contracts with EFI;<sup>30</sup>

<sup>24</sup> VISIT FLORIDA, *SB18-003 Visit Florida – DEO Agreement Executed FY2017-18*, (February 8, 2019) (on file with the Senate Commerce and Tourism Committee).

<sup>25</sup> See <https://www.visitflorida.org/about-us/media-and-public-records/audits/> (last visited February 8, 2019).

<sup>26</sup> 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.

<sup>27</sup> Section 112.3251, F.S.

<sup>28</sup> See <https://www.visitflorida.org/about-us/media/public-records/miscellaneous/> (last visited February 8, 2019).

<sup>29</sup> *Id.*

<sup>30</sup> Section 288.923(3), F.S.

- VISIT FLORIDA maintains a standing contract with EFI and an annual contract is adopted with DEO.
- Annually updates their 4 year marketing plan;<sup>31</sup>
- Annually completes financial and compliance audits;<sup>32</sup>
- Operates in the Sunshine per ss. 119 and 286, F.S.; and <sup>33</sup>
- Submits a quarterly report to EFI.<sup>34</sup>

For the 2018-19 Fiscal Year, VISIT FLORIDA received a legislative appropriation of \$76 million.<sup>35</sup> VISIT FLORIDA receives its state fund appropriations from DEO and not EFI. As a result, VISIT FLORIDA has an annual contract for funding with DEO, and an operating agreement with EFI.<sup>36</sup>

### III. Effect of Proposed Changes:

SB 178 removes that scheduled repeal dates for the Florida Tourism Industry Marketing Corporation, known as VISIT FLORIDA, and the Division of Tourism Marketing within Enterprise Florida, Inc.

### 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.

<sup>31</sup> Section 288.923(4)(c), F.S.

<sup>32</sup> Sections 288.923(4)(d)(4) and 288.1226(7), F.S.

<sup>33</sup> Sections 288.1226(9) through 288.1226(13), F.S.

<sup>34</sup> Section 288.1226(8), F.S.

<sup>35</sup> Chapter 2018-9, Laws of Fla.

<sup>36</sup> VISIT FLORIDA, *SB18-003 Visit Florida – DEO Agreement Executed FY2017-18*, (February 8, 2019) (on file with the Senate Commerce and Tourism Committee).

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

**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.