

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1123 Commercial Service Airport Transparency and Accountability

**SPONSOR(S):** Transportation & Modals Subcommittee, Gossett-Seidman, Casello

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	18 Y, 0 N, As CS	Johnson	Hinshelwood
2) State Affairs Committee		Wagoner	Williamson
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

Florida is home to 20 commercial service airports. In 2020, the Legislature required certain transparency and accountability from commercial service airports. Under the 2020 law, an airport's governing body must establish and maintain a website to post specified information including:

- A link to the Airport Master Plan for the commercial service airport on the Federal Aviation Administration's (FAA's) website.
- Any contract or contract amendment executed by or on behalf of the commercial service airport in excess of \$65,000.

That law also required commercial service airports to be subject to state procurement laws for the purchase of commodities or contractual services in excess of \$65,000. Finally, that law prohibited any contract in excess of \$325,000, from being approved as part of a consent agenda; rather, such contract was made subject to approval by the airport's governing body.

The bill amends the law relating to transparency and accountability of commercial services airports by:

- Defining the term "consent agenda".
- Changing the requirement for each commercial service to have a link to the Airport Master Plan on the FAA's website to having such link on the airport's website.
- Amending the requirements for posting a contract to the airport's website such that only contracts for the purchase of commodities or contractual services in excess of \$325,000, up from \$65,000, would be posted on its website. Contracts not pertaining to the purchase of commodities or contractual services would not be posted to the airport's website.
- Increasing the threshold from \$65,000 to \$325,000 such that the commercial service airport must use the competitive solicitation process for purchases of commodities or contractual services over \$325,000.
- Amending the requirements for receiving approval of a governing body for any contracts over a threshold amount ranging from \$750,000 to \$1.25 million, based upon the size of the airport, which would need approval by a governing body as a separate line item (not a consent agenda). The current statutory requirement is \$325,000.

The bill does not have a fiscal impact on the state or private sector and has an indeterminate fiscal impact on local governments that operate commercial service airports.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

Florida is home to 20 commercial service airports and 108 general aviation airports.<sup>1</sup> 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.<sup>2</sup>

Florida's commercial service airports range in size from large-hub airports<sup>3</sup> with over 20 million annual passenger boardings to small municipal airports with approximately 10,000 annual passenger boardings.<sup>4</sup> As of 2019, 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.<sup>5</sup>

#### 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.

In Florida, the Department of Transportation (DOT) is responsible for planning airport systems and overseeing the public airport system.<sup>6</sup> The owner or lessee of a proposed public airport<sup>7</sup> must receive DOT approval before site acquisition, construction, or establishment of a public airport facility.<sup>8</sup> 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.<sup>9</sup> Current law authorizes local governments to establish and operate airports<sup>10</sup> and governs airport zoning and land use issues.<sup>11</sup>

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 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

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<sup>1</sup> Department of Transportation, *Florida Aviation System Plan 2035, Policymakers Primer*. <https://www.fdot.gov/aviation/FASP2035> (last visited Mar. 8, 2023).

<sup>2</sup> 49 U.S.C. § 47102.

<sup>3</sup> Large-hub airports are commercial service airports that have at least 1 percent of the passenger boardings in the United States.

<sup>4</sup> FAA, *Commercial Service Airports, Rank Order based on calendar year 2021*, Sep. 16, 2022.

<https://www.faa.gov/sites/faa.gov/files/2022-09/cy21-commercial-service-enplanements.pdf> (last visited Mar. 8, 2023).

<sup>5</sup> Department of Transportation, *Florida Statewide Aviation Economic Impact Study*, March 2019. Executive Summary. Available at: <https://www.fdot.gov/aviation/economicimpact.shtm> (Last visited Feb. 24, 2023).

<sup>6</sup> S. 332.001, F.S.

<sup>7</sup> For purposes of DOT approval and licensure of an airport, the term "public airport" means a publicly or privately-owned airport, which is open for use by the public. s. 330.27(6), F.S.

<sup>8</sup> S. 330.30(1), F.S.

<sup>9</sup> S. 330.30(2), F.S.

<sup>10</sup> See chapter 332, F.S.

<sup>11</sup> See chapter 333, F.S.

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.<sup>12</sup>

For Fiscal Year 2022-2023, DOT was appropriated approximately \$314.5 million from the State Transportation Trust Fund for Aviation Development Grants,<sup>13</sup> available to both commercial service airports and general aviation airports.

### State Procurement Law

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.<sup>14</sup>

Section 287.017, F.S. creates the following thresholds for purchasing categories:

- CATEGORY ONE: \$20,000.
- CATEGORY TWO: \$35,000.
- CATEGORY THREE: \$65,000.
- CATEGORY FOUR: \$195,000.
- CATEGORY FIVE: \$325,000.

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

- 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;
- 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.<sup>15</sup>

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process; however, specified contractual services and commodities are exempt from this requirement, including, but not limited to, procurements requiring emergency action, purchases made from a state term contract, and commodities and contractual services available only from a single source.<sup>16</sup>

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<sup>12</sup> S. 332.007(2), F.S.

<sup>13</sup> Ch. 2022-156, Laws of Fla., Specific Appropriation 1941.

<sup>14</sup> S. 287.001, F.S.

<sup>15</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>16</sup> See s. 287.057(3), F.S.

## Commercial Service Airport Transparency and Accountability

In 2020, the Legislature created s. 332.0075, F.S., relating to commercial service airport<sup>17</sup> transparency and accountability.<sup>18</sup>

Under s. 332.0075, F.S., each airport's governing body<sup>19</sup> must establish and maintain a website to post information relating to the operation of a commercial service airport, including:

- All published notices of meetings and published meeting agendas of 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 were approved.
- The approved budget for the commercial service airport for the current fiscal year, which must be posted within seven business days after the date of adoption. Budgets must remain on the website for two years after the conclusion of the fiscal year for which they were adopted.
- A link to the Airport Master Plan for the commercial service airport on the FAA's website.
- A link to all financial and statistical reports for the commercial service airport on the FAA'S website.
- Any contract or contract amendment executed by or on behalf of the commercial service airport in excess of \$65,000, which must be posted no later than seven business days after the commercial service airport executes the contract or contract amendment.
- Position and rate information for each employee of the commercial service airport, including, at a minimum, the employee's position title, position description, and annual or hourly salary.<sup>20</sup>

Notwithstanding any other provision of law to the contrary, commercial service airports are subject to ch. 287, F.S., for purchases of commodities or contractual services which exceed \$65,000. If the purchase of commodities or contractual services exceeds \$65,000, the purchase may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless an exception applies as provided in s. 287.057(3), F.S., or an immediate danger to the public health, safety, or welfare or other substantial loss to the commercial service airport requires emergency action.<sup>21</sup>

A governing body must approve, award, or ratify all contracts executed by or on behalf of a commercial service airport in excess of \$325,000 as a separate line item on the agenda and must provide a reasonable opportunity for public comment. Such contracts may not be approved, awarded, or ratified as part of a consent agenda.<sup>22</sup>

### **Effect of the Bill**

The bill amends s. 332.0075, F.S., relating to commercial service airport transparency and accountability.

The bill defines the term "consent agenda" to mean an agenda which consists of items voted on as a group and which does not provide the opportunity for public comment on each such item before approval or disapproval by the governing body.

The bill changes the requirement for each commercial service to have a link to the Airport Master Plan on the FAA's website to having a link to the plan on the airport's website.

The bill amends the requirements for posting a contract to the airport's website such that only contracts for the purchase of commodities or contractual services in excess of \$325,000, up from \$65,000, would

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<sup>17</sup> Section 332.0075(1)(a), F.S., defines the term "commercial service airport" to mean a primary airport as defined in 49 U.S.C. s. 47102 which is classified as a large, medium, or small hub airport by the Federal Aviation Administration.

<sup>18</sup> Ch. 2020-167, Laws of Fla.

<sup>19</sup> Section 332.0075(1)(c), F.S., defines the term "governing body" to mean the governing body of the county, municipality, or special district that operates a commercial service airport.

<sup>20</sup> S. 332.0075(2), F.S.

<sup>21</sup> S. 332.0075(3)(a), F.S.

<sup>22</sup> S. 332.0075(3)(b), F.S.

be posted on their website. Contracts not pertaining to the purchase of commodities or contractual services would not be posted to the airport's website.

The bill increases the threshold from \$65,000 to \$325,000 such that the commercial service airport must use the competitive solicitation process for purchases of commodities or contractual services over \$325,000.

The bill amends the requirements for receiving approval of a governing body for contracts over a threshold amount as a separate line item on the governing body's agenda with reasonable opportunity for public comment such that only contracts over the following amounts need be approved by a governing body:

- For a small hub airport:<sup>23</sup> contracts exceeding \$750,000.
- For a medium hub airport:<sup>24</sup> contracts exceeding \$1 million.
- For large hub airports:<sup>25</sup> contracts exceeding \$1.25 million.

A contract that exceeds the above amounts may not be approved, awarded, or ratified as part of a consent agenda.

**B. SECTION DIRECTORY:**

**Section 1** Amends s. 332.0075, F.S., relating to commercial service airports; transparency and accountability; penalty.

**Section 2** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate, positive fiscal impact on local governments operating commercial service airports due to the increase in the thresholds that trigger a competitive solicitation.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

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<sup>23</sup> The term "small hub airport" means a commercial service airport that has at least 0.05 percent but less than 0.25 percent of the passenger boardings. 49 U.S.C. § 47102(25).

<sup>24</sup> The term "medium hub airport" means a commercial service airport that has at least 0.25 percent but less than 1.0 percent of the passenger boardings. 49 U.S.C. § 47102(13).

<sup>25</sup> The term "large hub airport" means a commercial service airport that has at least 1.0 percent of passenger boardings. 49 U.S.C. § 47102(11).

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 15, 2023, the Transportation & Modals Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised the threshold amounts for airport contracts that may not be on a governing body's consent agenda and provides that the provision applies to *any* contract over the appropriate threshold amounts, not just contracts for commodities or contractual services.

This analysis has been updated to reflect the committee substitute as approved by the Transportation & Modals Subcommittee.