The Florida Senate

Issue Brief 2011-227 *October 2010*

Committee on Transportation

TOLL FACILITY LEASE-PURCHASE AGREEMENTS

Statement of the Issue

The Florida Department of Transportation (FDOT or department) has, over the years, entered into lease-purchase agreements with legislatively-approved expressway and bridge authorities throughout the state. Under lease-purchase agreements, FDOT may provide financial support to pay the operations and maintenance costs for an authority's toll facilities, thereby enabling the gross toll revenues collected by the authority to be primarily used to pay its facilities' bond debt. Reimbursement to FDOT is typically not required until after the authority has met its debt service requirements. Upon completion of the lease-purchase agreement, ownership of the facility may be transferred back to the State and FDOT retains all operations and maintenance responsibility. Currently, Florida expressway and bridge authorities owe more than $379 million to FDOT under the terms of lease-purchase agreements.

Discussion

Toll facilities have been used throughout Florida as a means of financing road and bridge construction for many years. Very early in the state's history, most toll roads and bridges were constructed by private individuals or firms. Later, state governmental units began constructing toll facilities. In more recent years, toll facilities have been financed and constructed by specially created units of government operating primarily under local government control. These units, usually characterized as expressway or bridge authorities, arrange for construction of the facilities, including the required debt financing.

In addition to FDOT which has a long history of planning, acquiring, constructing, operating, and maintaining toll facilities, there are numerous other authorities currently operating toll facilities and collecting and reinvesting toll revenues. Aside from Florida's Turnpike Enterprise, (which is a part of FDOT) most, but not all, of the toll authorities are established under ch. 348, F.S., entitled "Expressway and Bridge Authorities". Part I of ch. 348, F.S., authorizes any county or group of counties to establish an expressway authority and prescribes the conditions under which these entities will be governed. Parts II through XI authorize specific authorities and designate the powers, duties and requirements applicable to each individual authority. Several of the authorities are inactive. Currently, three operating toll authorities authorized by ch. 348, F.S., have lease-purchase agreements with FDOT:

- Orlando-Orange County Expressway Authority - established under Part V;
- Santa Rosa Bay Bridge Authority - established under Part IX; and
- Tampa-Hillsborough County Expressway Authority - established under Part IV.

Additionally, the Mid-Bay Bridge Authority established by a special act of the Legislature, currently operates under the provisions of a lease-purchase agreement with FDOT.

Toll Facilities Revenue Bonds

Generally, toll facilities are designed to be self-supporting projects, i.e., the costs of construction, operation, and maintenance are recovered from toll revenues generated by users of the facility.[1] Since tolls cannot be collected

[1] Lacking any revenue history, traffic demand forecasts and revenue projections serve as the basis for assessing the economic

until the facility is completed and open to traffic, construction financing must come from another source. Usually this source is revenue bonds issued by the facility's operator. The proceeds of the bond issue are used to pay for the facility's construction, and the debt is repaid over a 20-40 year term from pledged toll revenues. Florida toll revenue bonds do not pledge the full faith and credit of the State and do not accrue against the state's statutory bonding cap found in s. 215.98, F.S.

Revenue bonds are sold under the provisions of a bond resolution formalizing the payment and security provisions for the bonds. One of the more significant provisions addressed in a revenue bond resolution specifies whether bondholders will have a claim on net revenues or gross revenues. Throughout the country, the standard pledge for toll facility revenue bondings is a net revenue pledge. Net revenues are defined as gross toll revenues less operation and maintenance (O&M) expenditures. The rationale for the pledge of net revenues for toll road bonds is that toll roads must be maintained to operate at high levels of service in order to attract users who are willing to pay tolls rather than use non-tolled facilities. Therefore, around the country, most revenue bond resolutions provide for O&M to be paid before debt service. This has not been the case in many recent Florida toll facility revenue bond issues which are, instead, associated with lease-purchase agreements. Thus, many Florida toll authorities adopt the use of the more favorable gross revenue pledge.

Lease-Purchase Agreements

Various sections of ch. 348, F.S., provide the toll authorities the ability to enter into lease-purchase agreements with FDOT. The department is authorized to enter these agreements by s. 334.044, F.S. Additionally, s. 339.08(1)(g), F.S., allows the department to lend or pay a portion of the O&M and capital costs of any revenue-producing transportation project located on the State Highway System (SHS) or that is demonstrated to relieve traffic congestion on the SHS. The department pays such costs using funds from the State Transportation Trust Fund (STTF). Using the authority provided in these sections, the department has entered into a number of lease-purchase agreements with the expressway and bridge authorities created under ch. 348, F.S.

In a typical lease-purchase agreement between the department and an expressway authority, FDOT, as lessee, agrees to pay the O&M (which usually includes replacement and renewal, or R&R) costs of the associated toll facility. Upon completion of the lease-purchase agreement, ownership of the facility would be transferred to the State and FDOT would retain all revenues collected, as well as the O&M responsibility. The department assumes a position which permits reimbursement of O&M costs only after the authority's debt service and administrative cost requirements have been satisfied. Lease-purchase agreements are currently in place for the Mid-Bay Bridge Authority, Santa Rosa Bay Bridge Authority, Orlando-Orange County Expressway Authority, and Tampa-Hillsborough County Expressway Authority.

Lease-purchase agreements enhance the public sector's ability to provide high-functioning transportation facilities within the state and particularly within urbanized areas. Assuming the department would not, likewise, leverage the same funds, the State, *vis a vis*, the public obtains the use of a high-cost transportation facility with a relatively minimal infusion of tax dollars. With the exception of Florida's Turnpike, the financing of nearly every major toll facility project constructed in Florida over the past 40 years has benefited from one or more of these lease-purchase agreement covenants.

These agreements benefit the toll authorities by freeing the authority (the lessor) from the financial obligations of operating and maintaining the system. Further, the deparment's irrevocable agreement to pay the operations and maintenance expense of a project financed by bond proceeds, provides additional bonding capacity and enhances the credit quality of the bonds by making gross toll revenues available for debt service rather than net toll revenues. This also provides for calculation of gross debt service coverage ratios rather than net debt coverage ratios, thus the authority is able to secure more favorable revenue bonding terms. This enhances the credit quality

feasibility of proposed toll facilities. Sections 338.223(1)(a), and 338.2275, F.S., ensure that a uniform test is used to determine if Turnpike projects are economically feasible before the department may fund or fully implement such projects. Toll facility projects which are not included within the Turnpike system need not meet the statutory economic feasibility requirements. Rather, non-Turnpike projects are subject only the bond testing, i.e., whether sufficient financing will be available from the sale of revenue bonds.

of the authority's toll revenue bonds and improves cash flow during the early years of a project when toll revenues are "ramping up," both of which improve the financial feasibility of the projects. Additionally, when an agreement includes provisions for FDOT to operate and maintain the toll facility, bondholders receive additional assurance, inherent to the department's significant experience with toll facilities, and that the facility will be adequately operated and maintained.

As required by existing lease-purchase agreements, the department paid $21.1 million in operations and maintenance expenses in fiscal year 2009/2010 and an additional $2.5 million in renewal and replacement expenses, periodic maintenance, and toll equipment capital costs, on behalf of various toll authorities. These funds were in addition to various loans made periodically from the State Infrastructure Bank[2] and Toll Facilities Revolving Trust Fund[3] and accrue to an authority's long-term debt owed to FDOT. When O&M (and renewal and replacement) expenses are not reimbursed by the toll authority on a current basis, *e.g.*, monthly or annually, the STTF monetary advances are added to the authority's long-term debt due to the department. As of June 30, 2010, debt owed to FDOT from various toll authorities for expenses paid totaled approximately $379.1 million.

A description of the authorities, their facilities, and any associated lease-purchase status follows.

Mid-Bay Bridge Authority

The Mid-Bay Bridge Authority was created in 1986 by special act of the Legislature. The authority operates the three-mile long Mid-Bay Bridge across the Choctawhatchee Bay and four-miles in approaches (SR 293) on the northern and southern sides of the bridge. The facility, which connects SR 20 with U.S. Highway 98 east of Destin is a link between Interstate 10 and U.S. 98 and provides a more direct route to tourists and residents between northern and southern Okaloosa and Walton counties.

Under a lease-purchase agreement with the authority, FDOT pays O&M and renewal and replacement (R&R) expenses for the bridge and remits all tolls collected to the authority as lease payments. The agreement remains in effect until all outstanding bonds have been repaid and all obligations owed to FDOT by the authority have been fully discharged, at which point FDOT will own the bridge. Though the current agreement states FDOT is to be reimbursed annually from toll revenues for payment of O&M, these reimbursements are deeply subordinated to bond debt service in the flow of toll revenue funds hierarchy.

Mid-Bay Bridge Authority Five-Year History of O&M and R&R Expenses

	2006	2007	2008	2009	2010
O&M Expense	1,820,373	2,161,596	2,271,495	2,350,069	2,137,802
R&R Expenses	643,848	304,463	410,587	333,943	72,716
Returned to FDOT	(2,678,199)	(2,588,978)	(2,577,720)	(2,808,594)	(2,410,080)
Increase/(Decrease) to Long Term Debt	(213,978)	(122,919)	104,362	(124,582)	(199,562)

As of June 30, 2010, the Mid-Bay Bridge Authority's total long-term debt liability to FDOT from lease-purchase-related O&M (and R&R) advances was $16,181,629.

[2] The State Infrastructure Bank (SIB) is authorized by s. 339.55, F.S., to provide loans and credit enhancements to governmental units and private entities for the construction or improvement of transportation facilities on, or improving mobility on, the State Highway System. Projects increasing mobility on the state's transportation system, including intermodal connectivity with airports, seaports, rail, and other terminals, are included.

[3] The Toll Facilities Revolving Trust Fund is a loan program authorized by s. 338.251, F.S., to develop and enhance the financial feasibility of revenue-producing road projects undertaken by local governmental entities and the Turnpike Enterprise. Loans can be awarded for project planning and design activities, and advanced right-of-way purchase activities.

Orlando – Orange County Expressway Authority

The Orlando-Orange County Expressway Authority (OOCEA) is an agency of the state, created in 1963 under ch. 348, Part V, F.S., for the purpose of construction and operation of an expressway road system in Central Florida. OOCEA has the right to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards together with the right to construct, repair, replace, operate, install, and maintain electronic toll payment systems outside of Orange County with the respective county's written consent. The authority is also authorized to issue toll revenue bonds to finance portions of the system.

OOCEA currently owns and operates 105 miles of roadway in Orange County. The roadways include:

- 22 miles of the East-West Expressway (SR 408),
- 23 miles of the Beachline (formerly Beeline) Expressway (SR 528),
- 33 miles of the Central Florida GreeneWay (SR 417),
- 22 miles of the Daniel Webster Western Beltway (SR 429) and
- 5 miles of the John Land Apopka Expressway (SR 414).

The OOCEA reported toll revenue of $206 million in FY 2009 based on 293 million transactions. Major future projects in the authority's $1.4 billion Five-Year Work Plan (FY 2010 through FY 2014) include: right-of-way and interchange for John Land Apopka Expressway (phase two); partial design and right-of-way for Wekiva Parkway; partial widening of SR 408 and SR 417; resurfacing of SR 429 (part A); new interchanges; conversion of SR 528 Beachline Airport toll plaza to open road tolling (ORT); a new express lane toll plaza at Dallas Boulevard on SR 528, and toll collection system upgrades.

Under terms defined in a revised lease-purchase agreement, FDOT is responsible for paying O&M costs for portions of the authority's expressway system. The authority is reimbursed by the department for a portion of the operating and maintenance costs of the Beachline Expressway and the East-West Expressway which are recorded as advances because these are to be repaid to FDOT from future toll revenues after all bonds are retired and all other financial obligations have been met.

Orlando-Orange County Expressway Authority Five-Year History of Revenues and Expenses

	2006	2007	2008	2009	2010
O&M Expense	$9,324,112	$9,714,814	$9,445,763	$8,268,847	$8,616,852
R&R Expenses	n/a	n/a	n/a	n/a	n/a
Returned to FDOT	0	0	0	0	0
Increase/(Decrease) to Long Term Debt	$9,324,112	$9,714,814	$9,445,763	$8,268,847	$8,616,852

The authority first entered a lease-purchase agreement with FDOT's predecessor, the State Road Department, in 1964 to develop the Beeline (currently Beachline) Expressway. In that agreement, the State agreed to assume O&M cost for the Beeline and to remit toll revenues to OOCEA which were to be used for the retirement of debt service on OOCEA's $7 million bond issue for the construction of the original 17.5 mile facility. In 1971, OOCEA issued additional bonds worth $70.5 million to finance construction of the East-West Expressway and the associated lease-purchase agreement required all excess revenues to be used for debt service. Additional bond sales in 1985 and 1986 yielded significant changes to the lease-purchase agreement and the bonds' Master Resolutions. This changed OOCEA's repayment obligations to FDOT and established the authority's discretion to administer excess revenues, essentially subordinating the authority's repayment of FDOT's O&M advances to all other obligations.

A 1999 OPPAGA report characterized the unique structure of the OOCEA/FDOT lease-purchase agreement thusly:

> (T)he authority pledges revenues generated by the whole expressway system, including those facilities for which the department is responsible, to repay bonds issued to finance these recent additions. For example, the authority pays bonds for the Southern Connector with revenues generated on the Beeline and East-West expressways. Thus, funds that could have been used to repay the department have instead been obligated to finance the new expressway additions. Provisions of the lease-purchase agreements hold the department responsible for paying operations and maintenance costs to the expressway authority as long as the authority has outstanding bond principal and interest.

In 2002, the Legislature granted OOCEA the ability to issue bonds outside of the Division of Bond Finance for the purposes of financing legislatively-approved projects and to refinance existing bonds. Bonds issued by OOCEA are statutorily limited to a 40-year maturity and do not include the lease-purchase provisions related to FDOT paying O&M costs. OOCEA issued $499 million in Variable Rate Refunding Revenue Bonds, Series 2008B, in May 2008. Bonds are payable from and secured by a pledge of net toll revenues collected from the operation of the expressway system. Bond proceeds were used to refund Series 2005 Bonds. In March 2010, OOCEA issued $335 million in fixed rate Revenue Bonds, Series 2010A, to partially fund projects in the OOCEA Work Plan. These bonds are also secured by a pledge of net toll revenues. In addition, the authority continues to use other funds obtained from FDOT. A recent example includes a SIB loan to acquire right-of-way for construction of the John Land Apopka Expressway.

As of June 30, 2010, the Orlando-Orange County Expressway Authority's total long-term debt liability to FDOT from lease-purchase-related O&M advances was $227,573,891. The subordinate nature of the authority’s obligations to FDOT, as structured by the lease-purchase agreement and bond resolutions, would not require their repayment until the year 2042. Assuming such non-interest bearing advances continue to accrue at the conservative rate[4] of 3.5% annually and that the payoff date is not further extended, OOCEA’s obligations to FDOT would total $695 million at that time.

Santa Rosa Bay Bridge Authority

The Santa Rosa Bay Bridge Authority, established in 1984 under ch. 348, Part IX, F.S., oversaw the construction of the 3.5-mile Garcon Point Bridge, the authority’s only toll facility. The bridge, which opened on May 14, 1999, spans Pensacola Bay and connects Garcon Point to the north and Redfish Point to the south, providing access to Gulf Breeze and other areas on the peninsula from areas north and east of Pensacola Bay. In June and August of 2010, the bond rating of the authority was downgraded. The bond rating reports state the original traffic forecasts were grossly overestimated causing less-than-expected toll revenues which have strained the authority's finances from the first year of operation. The bridge has significant competition from free alternatives (SR 87, the Pensacola Bay Bridge, and I-10); however, construction on these routes in the past several years has positively affected traffic flow over the Garcon Point Bridge.

In June of 2010, the authority’s underlying rating on approximately $115.9 million in outstanding revenue bonds, series 1996, were downgraded to 'C' from 'CCC' by Fitch. According to Fitch, a 'C' category rating means default of some kind appears imminent or inevitable and capacity for meeting financial commitments is solely reliant upon sustained, favorable business or economic conditions. Similarly, Moody’s dropped its bond rating from ‘B3’ to ‘Caa3’ in August 2010. Bond raters cited “an extremely constrained financial profile” stemming from the increasingly poor traffic and revenue performance and the lack of economic ratemaking flexibility of the Garcon Point Bridge; repeated draws on debt service reserves in order to meet obligations; lack of clear management guidance to deal with declining traffic and escalating debt service; existence of free competing facilities; and reliance on FDOT for operating support. Moody’s also cited the recent Gulf oil spill had further reduced already weak traffic levels.

Under a lease-purchase agreement with the authority, FDOT pays O&M and R&R expenses for the bridge and remits all tolls collected to the authority as lease payments. The term of the lease runs through the life of the bonds and terminates in 2028, at which point FDOT will own the bridge (assuming all the bonds are fully paid).

[4] FDOT’s O&M payments to OOCEA can vary dramatically from year to year. The average annual variance from 1992 to 2010 was an increase of 7.5%.

Should the bonds, or any additional issuance of bonds, be outstanding in 2028, the lease term will be extended through the payoff date of the outstanding bonds.

Santa Rosa Bay Bridge Authority Five-Year History of Revenues and Expenses

	2006	2007	2008	2009	2010
O&M Expense	954,045	1,138,402	1,174,381	1,094,924	1,090,904
R&R Expenses	23,144	44,974	129,405	86,676	41,684
Returned to FDOT	0	0	0	0	0
Increase/(Decrease) to Long Term Debt	977,189	1,183,376	1,303,786	1,181,600	1,132,588

Though the current agreement states FDOT is to be reimbursed annually from toll revenues for payment of O&M and R&R, these reimbursements are deeply subordinated to bond debt. FDOT has paid O&M and R&R expenses without reimbursement since the project's inception and is expected to do so for the foreseeable future.

As of June 30, 2010, the Santa Rosa Bay Bridge Authority's total long-term debt liability to FDOT from lease-purchase-related O&M and R&R advances was $15,128,442.

Tampa Hillsborough Expressway Authority

The Tampa-Hillsborough County Expressway Authority (THEA) was created in 1963 as an agency of the state under ch. 348, Part IV, F.S., for the purposes of and having the power to construct, reconstruct, improve, extend, repair, maintain and operate the expressway system within Hillsborough County. THEA owns the Selmon Expressway, a 15-mile, four-lane, limited-access toll road traversing the city of Tampa from Gandy Boulevard in south Tampa, through downtown Tampa and east to I-75 and Brandon. The Selmon Expressway connects St. Petersburg (via the Gandy Bridge) with Tampa and Brandon. Since their opening in August 2006, Reversible Express Lanes (REL) in the median of the Selmon Expressway, operate in the peak travel direction depending on the time of day.

Significant projects in the Five-Year Work Plan include deck replacement on various bridges, development of the I-4 Connector Project that will connect I-4 to the existing Expressway, and toll system conversion to All Electronic Tolling (AET). These projects are being completed in partnership with FDOT and are funded either from the STTF or bond proceeds.

THEA is authorized to issue toll revenue bonds to finance improvements or extension of the expressway system. In 2009, the Legislature revised s. 348.54, F.S., to enable THEA to issue toll revenue bonds without having to go through the Division of Bond Finance of the State Board of Administration or obtaining the department’s consent.

As a result of design errors on the REL project, THEA incurred additional costs to complete that project. The authority made claims against its builder’s risk insurer and filed suit against the design engineers to recover the additional costs incurred. In FY 2009, the authority recovered approximately $75 million from a mediation settlement, $70 million of which has been collected to date. THEA has set aside $10 million of the settlement as a capital reserve fund to cover costs in excess of funds in the FDOT Work Program for replacement of tolling systems on the Selmon Expressway. Based on a revised forecast of declining revenues due to the recession, the THEA Board approved using $60 million of the settlement funds to partially defease current outstanding bonds in order to meet its future debt service coverage requirements. According to THEA, this defeasance will improve THEA’s current financial position, including increasing debt service coverage ratios, reducing long term debt obligations, and strengthening credit ratings. The defeasance will also provide an offset for negative revenue impacts that may result from construction of the Bridge Deck Replacement Project and the I-4 Connector Project.

THEA last issued $327 million in Revenue Bonds, Series 2005, in August 2005. Bonds are payable from and secured by a pledge of gross revenues of the Expressway System. Bond proceeds were used to refund Series 1997 bonds, pay off the principal of STTF loans, and finance a portion of the Reversible Express Lanes Project. As of June 30, 2009, bonds in the principal amount of approximately $386.8 million remain outstanding. THEA's traffic engineering firm completed a required annual Traffic and Revenue Report in September 2009, and is currently in the process of completing an investment grade traffic and revenue study for inclusion in a potential future THEA bond issue.

Under the requirements of the lease-purchase agreement, FDOT agrees to pay the costs of O&M and R&R on the expressway system. The department is reimbursed for O&M and long-term debt, if toll revenues are sufficient, after the authority pays its current year debt service. If the amount is not reimbursed annually, the payments are added to the authority's long term debt owed to the department.

Tampa Hillsborough Expressway Authority Five-Year History of O&M and R&R Expenses

	2006	2007	2008	2009	2010
O&M Expense	6,752,047	8,462,692	10,028,324	10,796,158	9,283,175
R&R Expenses	577,051	3,580,642	10,118,342	845,689	2,421,430
Returned to FDOT	(8,792,292)	(9,051,853)	(15,153,804)	(12,245,751)	(9,363,099)
Increase/(Decrease) to Long Term Debt	(1,463,193)	2,991,481	4,992,863	(603,904)	2,341,506

Since FY 2001, THEA has reimbursed the department for the annual O&M expenses which were programmed in the authority's adopted budget. O&M expenses in excess of the adopted budget and renewal and replacement costs are added to the authority's long-term debt on an annual basis. THEA is required to repay the long term debt from net toll revenues only after all other obligations have been met. In addition, THEA has received funding through FDOT loans (STTF, TFRTF, SIB) with specified repayment schedules. These loans are scheduled for repayment in installments over the next 17 years.

As of June 30, 2010, the Tampa Hillsborough Expressway Authority's total long-term debt liability to FDOT from lease-purchase-related O&M advances and R&R costs was $120,217,454. The amount is expected to increase significantly in the near future due to FDOT's programming of more than $73 million in Fiscal Year 2011 for the replacement of failing deck panels on the downtown viaduct section of the Selmon Expressway.

Miami-Dade Expressway Authority

Miami-Dade County Expressway Authority (MDX) is an agency of the state of Florida, created in 1994 pursuant to ch. 348, Part I, F.S., for the purposes of and having the power to acquire, hold, construct, improve, maintain, operate, own and lease an expressway system located in Miami-Dade County. The Authority may also fix, alter, change, establish and collect tolls, rates, fees, rentals, and other charges for the services and facilities of such system and is further authorized to issue bonds.

MDX currently oversees, operates and maintains five expressways constituting approximately 34 centerline-miles and 221 lane-miles of roadway in Miami-Dade County. The four toll facilities include:

- Dolphin Expressway (SR 836);
- Airport Expressway (SR 112);
- Don Shula Expressway (SR 874); and
- Gratigny Parkway (SR 924).

MDX also owns the Snapper Creek Expressway (SR 87) which is currently not tolled.

The Authority reported toll revenue of $113 million in FY 2009 based on 116 million transactions.

MDX no longer operates under a lease-purchase agreement with FDOT. Rather, after the facilities were developed by FDOT, the authority assumed control of the facilities by legislative action when in December 1996, the Legislature transferred operational and financial control of the five roadways and certain physical assets to

MDX. In the transfer, MDX essentially assumed FDOT's outstanding debt of $68.2 million for the facilities and made a payment of $11.8 million to the department. In order to fund the acquisition, MDX issued $80 million in Toll System Revenue Bonds, Series 1996. While FDOT retains the underlying title to the facilities, the department irrevocably transferred all operational and financial control to MDX in perpetuity.

FDOT does not contribute to O&M or R&R for MDX facilities. The Authority maintains, operates and improves the system with revenue generated from tolls collected on the system. Thus, MDX has no long-term debt due to the STTF. However, the authority has received loans and advances from the department's TFRTF and SIB to fund various projects.

Other Authorities

In addition to the authorities described above, Florida Statutes authorize two transportation authorities created under ch. 343, F.S., to enter lease-purchase agreements with the department. Specifically, s. 343.837, F.S., authorizes the Northwest Florida Transportation Corridor Authority, and s. 343.946, F.S., authorizes the Tampa Bay Area Regional Transportation Authority, to enter into lease-purchase agreements with FDOT. In both sections, FDOT is authorized to covenant the O&M and R&R of the respective authority's facilities. As of September 2010, neither authority has programmed the construction of any facility and no lease-purchase agreements have been entered into.