

**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 Appropriations

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BILL: CS/SB 1012

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); and Senators Passidomo and Young

SUBJECT: Toll Operations

DATE: March 5, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Miller	TR	<b>Favorable</b>
2. McAuliffe	Hrdlicka	ATD	<b>Recommend: Fav/CS</b>
3. McAuliffe	Hansen	AP	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1012 extends the statutory obligation of the Florida Department of Transportation (FDOT) to reimburse a county or another local governmental entity for the direct actual costs of operating the fire station at mile marker 63 on I-75/Alligator Alley (the Alley), currently set to expire on June 30, 2018. The bill requires the FDOT to make such reimbursement by interlocal agreement through June 30, 2019.

The bill also provides that a law enforcement officer operating an unmarked vehicle while on official law enforcement business is exempt from paying tolls on toll facilities. The bill defines "official law enforcement business."

The Miami-Dade Expressway Authority (MDX) is created pursuant to the Florida Expressway Authority Act. In 2017, the Legislature required MDX, subject to bond covenants, to reduce its tolls for qualifying SunPass users. The bill requires the MDX to submit to the Governor, by October 1, 2018, information regarding the toll reduction required in s. 348.0004, F.S. If the reduction has not taken place, then the existing board is dissolved effective October 31, 2018, and a new board must be appointed by that date

The fiscal impact regarding the reimbursement by the FDOT for the costs of operating the fire station is indeterminate, but any FDOT expenditures will be based on an agreed-upon estimated

schedule of such operational expenses incorporated into the required extended interlocal agreement.

The Revenue Estimating Conference reviewed the effect of a similar exemption from tolls for law enforcement vehicles (marked and unmarked vehicles) and estimated that revenues would be reduced by an indeterminate amount for the State Transportation Trust Fund, Turnpike trust funds, and local trust funds. State and local agencies with law enforcement traveling through toll facilities will have less expenditures.

The bill takes effect July 1, 2018.

## II. Present Situation:

### **Fire Station 63 on I-75/Alligator Alley**

Collier County provides fire, rescue, and emergency management services along the Alley through its dependent fire district, the Ochopee Fire Control and Rescue District, and the county's emergency medical services. These services are provided at a facility located at the FDOT's rest area on the Alley at mile marker 63 (MM63).<sup>1</sup>

### *Use of Alley Tolls to Fund Fire Station 63*

Section 338.26, F.S., establishes the Alley as a toll road, because the construction of the road "contributed to the alteration of water flows in the Everglades and affected ecological patterns of the historical southern Everglades." The statute sets forth required uses of the fees generated from tolls for use of the Alley, which are deposited into the State Transportation Trust Fund. Fees must be used to reimburse outstanding contractual obligations and to operate and maintain the highway and toll facilities, including reconstruction and restoration.

Currently, related to the fire station on the Alley, the statute requires the fees to be used:

- To design and construct the fire station, which may be used by a county or other local governmental entity to provide the services to the public on the Alley; and
- To reimburse a county or other local governmental entity for the direct actual costs of operating the fire station, through an interlocal agreement effective July 1, 2014, to no later than June 30, 2018.<sup>2</sup>

Fees may also be transferred to the Everglades Trust Fund for certain environmental projects or may be pledged for revenue bonds or notes issued to pay for environmental projects in the area.

Upon termination of the interlocal agreement for the fire station, the FDOT would be authorized to use the fees for the other required or authorized uses described above.

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<sup>1</sup> National Park Service, *Big Cypress: I-75, Mile Marker 63*, available at <https://www.nps.gov/bicy/planyourvisit/i-75-mm-63.htm> (last visited February 2, 2018). Greater Naples Fire Rescue District, *Station 63*, available at <https://www.greaternaplesfire.org/gnfrd-location/station-63/> (last visited February 2, 2018).

<sup>2</sup> Chapter 2014-223, Laws of Florida.

### ***Toll Revenues and Expenses***

According to the FDOT's 2016 Annual Report for its Enterprise Toll Operations,<sup>3</sup> for Fiscal Year 2016-17 through 2020-21 the Alligator Alley will average \$34.5 million in gross toll revenue each year with annual operating and maintenance expenses averaging \$8.9 million and annual debt service payments averaging \$3.45 million. The maintenance expenses include funding for rest area improvements, fire station operations, and interchange lighting projects.

### ***The Interlocal Agreement for Fire Station 63***

On May 9, 2014, the FDOT and the Board of Commissioners of Collier County entered into an interlocal agreement to provide the terms and conditions under which the FDOT would "provide funding to the County for the County's expenses in purchasing equipment, compensating County employees, and otherwise providing fire, rescue and emergency services utilizing the Fire Station."<sup>4</sup>

The FDOT included the fire station in its construction project when it rebuilt the rest area at MM63 and the fire station opened in early 2015.<sup>5</sup> The fire station was built "for the exclusive use of the County for the duration of this Agreement."<sup>6</sup> The FDOT owns the fire station and leases it to the County.<sup>7</sup> However, under the agreement, "all equipment, personal property, vehicles, apparatus and supplies acquired by County with funding provided by DEPARTMENT...shall remain the property of County, notwithstanding any termination of this Agreement."<sup>8</sup>

### ***Funding in the Interlocal Agreement***

For the term of the agreement, the FDOT agreed to provide a maximum of \$1,761,235 for direct actual capital costs and a maximum of \$1,498,100 for the county's direct actual costs of operating the fire station.<sup>9</sup> The county agreed to bear all expenses in excess of the FDOT's specified participation.<sup>10</sup> The agreed-upon funding includes various annual operating items such as hired paramedics and fire fighters; expenses for administrative and building maintenance; expenses for bulk fuel and various types of search and rescue equipment. Capital costs include items such as vehicles, radios, vehicles, and breathing air compressors.<sup>11</sup>

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<sup>3</sup> The 2016 report is the latest posted to the FDOT's Turnpike Enterprise webpage and is available at [http://www.floridasturnpike.com/documents/reports/Toll%20Operations%20Annual%20Report/2016/2016%20OTO\\_Deptment%20Owned.pdf](http://www.floridasturnpike.com/documents/reports/Toll%20Operations%20Annual%20Report/2016/2016%20OTO_Deptment%20Owned.pdf) (last visited February 2, 2018.)

<sup>4</sup> Department-Collier County Interlocal Agreement, CSFA No. 55.036, May 9, 2014, at pp. 2-3.

<sup>5</sup> Department-Collier County Interlocal Agreement at p. 2 and 3. Marco Eagle, *New fire/EMS station opens on Alligator Alley*, April 5, 2015, available at <http://www.marconews.com/story/news/2015/04/03/new-fully-staffed-fireems-station-opens-alligator-alley/25238329/> (last visited February 2, 2018).

<sup>6</sup> Department-Collier County Interlocal Agreement at p. 3. The agreement provides that state or local law enforcement may station officers, agents, or response teams at the fire station, based on space and availability.

<sup>7</sup> Department-Collier County Interlocal Agreement at p. 12.

<sup>8</sup> Department-Collier County Interlocal Agreement at p. 13.

<sup>9</sup> The Agreement also authorizes the County to request a Consumer Price Index adjustment of the total operating amount 30 days prior to July 1 for each year after the first covered by the Agreement. Department-Collier County Interlocal Agreement at p. 10.

<sup>10</sup> Department-Collier County Interlocal Agreement at p. 11.

<sup>11</sup> Department-Collier County Interlocal Agreement at Exhibit B.

Information regarding the FDOT’s Adopted Five-Year Work Program for 2014-2018 reflects the following funding for the MM63 fire station:<sup>12</sup>

Fiscal Year	Amount
2014	\$1,761,235
2015	\$1,498,100
2016	\$1,522,070
2017	\$1,522,070
2018	\$1,498,100

**Toll Exemptions**

Section 338.155, F.S., requires the payment of tolls on toll facilities. However, the DOT may suspend tolls when necessary to assist in an emergency evacuation and the law provides the following exemptions:

- Employees of the agency operating the toll facility on official state business.
- State military personnel while on official military business.
- Certain disabled persons.
- Persons exempt from toll payment by the authorizing resolution for bonds issued to finance the toll facility.
- Persons exempt on a temporary basis when a toll facility is part of a detour route.
- Any law enforcement officer operating a marked official vehicle when on official law enforcement business.
- Any person operating a fire or rescue vehicle when on official business.
- Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty.
- Any person driving a Department of Military Affairs automobile or other vehicle used for transporting military personnel, stores, and property that is properly identified.

For toll facilities managed by the DOT, the revenues of which are not pledged to repayment of bonds, the DOT is authorized to allow certain vehicles exemptions from the payment of tolls:<sup>13</sup>

- Public transit vehicles.<sup>14</sup>
- Vehicles participating in a funeral procession for an active-duty military service member.<sup>15</sup>
- Registered hybrid vehicles using high-occupancy-vehicle or express lanes.<sup>16</sup>

<sup>12</sup> FDOT, Web Application, Office of Work Program and Budget, *Five Year Work Program – Project Summary for Transportation System: Intrastate Interstate, Description: Alligator Alley Fire Station @ MM63*, updated January 10, 2018, available at

<http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=HIS&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM> and <http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM> (last visited February 2, 2018.)

<sup>13</sup> See Rules 14-100.006 and 14-100.004, F.A.C. Respectively the rules exempt public transit vehicles, certain carpools, motorcycles, and hybrid vehicles registered and operating on I-95 in Miami-Dade, Broward and Palm Beach Counties; and for public transit vehicles operating on express lanes.

<sup>14</sup> Section 338.155, F.S.

<sup>15</sup> Section 338.155, F.S.

<sup>16</sup> Section 316.0741, F.S.

### ***Toll Exemptions for Law Enforcement Marked Vehicles***

According to the DOT, law enforcement agencies with marked vehicles submit a “SunPass Non-Revenue Account Application,” in which the agency lists each marked vehicle that will have a non-revenue SunPass transponder along with certain identifying information regarding each vehicle. The agency representative attests that the vehicles listed on the application qualify for the toll exemption for marked law enforcement vehicles.<sup>17</sup>

### **Turnpike Bonds**

Section 338.227, F.S., authorizes the DOT to borrow money as provided in the State Bond Act<sup>18</sup> to pay all or any part of the cost of any one or more legislatively approved turnpike projects. The principal of, and the interest on, these bonds is paid solely from revenues pledged for their payment.

In s. 338.229, F.S., in connection with the issuance of Turnpike bonds, the state agrees not to limit or restrict the rights vested in the DOT to establish and collect tolls for the use of the Turnpike System and to fulfill the terms of any agreements made with bondholders. The agreement includes not impairing the rights or remedies of the bondholders until the bonds, together with interest on the bonds, are fully paid and discharged.<sup>19</sup>

The DOT provided information about the Turnpike’s master bond resolution under which the current Turnpike bonds were issued. The resolution contains the DOT’s commitments regarding the funding and operation of the Turnpike System. The resolution is a contract with the bondholders and “may not be amended in any way that affects ‘the unconditional promises of the Department to fix, maintain and collect tolls for the use of the Turnpike System’ without consent of all the holders of outstanding Turnpike bonds.”<sup>20</sup>

Additionally, the DOT states that the resolution includes a section in which the DOT agreed that it “shall not allow or permit any free use of the Toll roads of the Florida Turnpike, except to officials or employees of the Department whose official duties in connection with the Florida Turnpike require them to travel over the Florida Turnpike, or except as may be provided by laws in effect on the date of the adoption of this Resolution.”<sup>21</sup>

### ***Toll Exemptions under the Turnpike Bonds***

The Turnpike bond resolution was adopted and restated on May 17, 2005. At that time, state law authorized the DOT to suspend tolls in the event of emergencies and included the enumerated exemptions discussed above in s. 338.155, F.S.<sup>22</sup>

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<sup>17</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

<sup>18</sup> Sections 215.57 – 215.83, F.S. Statutes creating the state’s expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.

<sup>19</sup> Statutes creating the state’s expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.

<sup>20</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

<sup>21</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

<sup>22</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

Such provisions were also in place when bonds were sold for Alligator Alley in 2007.<sup>23</sup>

In 2008 and 2012, when additional toll exemptions were created they were limited to DOT managed toll facilities, whose revenues were not pledged to repayment of bonds. As discussed above, the DOT is authorized to exempt public transit vehicles, vehicles participating in a funeral procession for an active-duty military service member, and hybrid vehicles from paying tolls. Because the revenues of the Turnpike System are pledged to repayment of bonds, these provisions do not apply to the Turnpike System or Alligator Alley.<sup>24</sup>

### **Miami-Dade County Expressway Authority**

The Florida Expressway Authority Act (act), codified in part I of ch. 348, F.S.,<sup>25</sup> authorizes any county or two or more contiguous counties within a single DOT district to, by resolution adopted by the board of county commissioners, form an expressway authority, which must be an agency of the state.<sup>26</sup> The Miami-Dade Expressway Authority (MDX) was created in 1994, when the Miami-Dade County Commission adopted ordinance 94-215.<sup>27</sup> MDX is the only expressway authority created under the act. MDX's system consists of the following roadways in Miami-Dade County:

- Airport Expressway (SR 112);
- Dolphin Expressway (SR 836);
- Don Shula Expressway (SR 874);
- Snapper Creek Expressway (SR 878); and
- Gratigny Parkway (SR 924).

Section 348.0003, F.S., requires the governing body of the MDX to consist of 9 members:

- The district secretary of the affected DOT district as a voting member;
- Five voting members, two of which may be elected officials, appointed by the county commission; and
- Three voting members appointed by the Governor.

Section 348.0004, F.S., provides the purposes and powers of expressway authorities created under the act. Section 348.0004(2)(e), F.S., authorizes expressway authorities to fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system. The tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the act. However, such right and power may be assigned or delegated by the authority to the DOT.

### ***2017 Legislation For MDX Toll Reduction***

In 2017, the legislature amended s. 348.0004, F.S., to require the MDX, subject to compliance with any of its bond covenants, to reduce the toll charged on any of its toll facilities by at least 5

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<sup>23</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

<sup>24</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

<sup>25</sup> Part I of ch. 348, F.S., is comprised of ss. 348.0001 through 348.0012, F.S.

<sup>26</sup> Section 348.0003(1), F.S.

<sup>27</sup> Art. XVIII, Code of Miami-Dade County.

percent, but not more than 10 percent for each SunPass user having an account in good standing and the license plate of the vehicle incurring the toll registered to the SunPass account at the time the toll is incurred.<sup>28</sup> The MDX may not impose any additional conditions on a SunPass user to receive the reduced toll amount. Under s. 348.0010, F.S., the state agreed not to alter or limit the rights vested in an expressway authority and the rights of bondholders until all bonds are fully paid and discharged.

### **III. Effect of Proposed Changes:**

#### **Fire Station 63 on I-75/Alligator Alley**

The bill amends s. 338.26(3)(a), F.S., to extend the date through which the FDOT is statutorily obligated to reimburse Collier County for the direct actual costs of operating the MM63 fire station to no later than June 30, 2019.

#### **Toll Exemptions**

The bill amends s. 338.155(1), F.S., exempting law enforcement officers while on official law enforcement business from paying tolls. "Official law enforcement business" includes, but is not limited to, patrol operations, investigative activities, crime prevention activities, or traffic operations. The bill also changes references to "handicapped persons" to "disabled persons" and makes other technical changes.

#### **Miami-Dade County Expressway Authority**

The bill amends s. 348.0004(6), F.S., to require the MDX to submit to the Governor, by October 1, 2018, information regarding the toll reduction required in s. 348.0004, F.S. If the reduction has not taken place, then the existing board is dissolved effective October 31, 2018, and a new board must be appointed by that date.

The requirements for the appointment of members to the new board are the same as current requirements. However, except for the DOT district secretary, a person who was a member of the board as of October 1, 2018, may not be appointed to the new board.

The bill takes effect on July 1, 2018.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>28</sup> Chapter 2017-182, L.O.F. Section 348.0004(6), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 10 of the State Constitution prohibits any law that would impair a contract. If a court determines that this bill impairs the master bond resolution of the Turnpike or Alligator Alley by exempting for law enforcement officers operating unmarked vehicles while on official law enforcement business from the payment of tolls, then such provisions of the bill may be found unconstitutional.

If a court determines that this bill impairs the rights of any bondholders of an expressway authority created under part I of ch. 348, F.S., by requiring the reduction of tolls for certain users of the road, then such provision of the bill may be found unconstitutional.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**Fire Station 63 on I-75/Alligator Alley**

The bill requires the FDOT to continue funding the County's direct actual costs of operating the MM63 fire station from the fees generated from tolls collected on the Alley through July 1, 2019. Under current law, the FDOT is authorized to use the fees for the other required or authorized uses described in the statute. The impact on toll bonds or other agreements is unknown at this time because the FDOT has not provided an analysis of the bill.

Collier County will receive funding for an additional year for actual operating and capital costs related to the fire station, and thus will only have to expend county funds for expenses above the costs agreed to in the interlocal agreement. The exact amount of such funding is unknown but will likely be based on an agreed-upon estimated schedule of expenses incorporated into a new interlocal agreement or extension of the current interlocal agreement.

**Toll Exemptions**

On November 3, 2017, the Revenue Estimating Conference reviewed the effect of the exemption from tolls for law enforcement vehicles (marked and unmarked vehicles) and

estimated that revenues would be reduced by an indeterminate amount for the State Transportation Trust Fund, Turnpike trust funds, and local trust funds.<sup>29</sup>

The Florida Department of Law Enforcement estimated that a similar bill could save the department about \$80,000 annually in toll expenditures.<sup>30</sup> The Department of Highway Safety and Motor Vehicles estimated that a similar bill would have a minimal impact to the department.<sup>31</sup> Local law enforcement and other law enforcement agencies will likely experience similar reduced annual expenditures for tolls.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

The DOT has stated that any risk of violating bondholder rights associated with the statutory change to the toll exemptions could be avoided by limiting the exemption to toll facilities managed by the DOT, the revenues of which are not pledged to the repayment of bonds.<sup>32</sup>

## **VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 338.26, 338.155, and 348.0003.

## **IX. Additional Information:**

### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Appropriations on March 2, 2018:**

The committee substitute exempts law enforcement officers operating unmarked vehicles while on official law enforcement business from paying tolls on toll facilities. The CS defines “official law enforcement business” and changes references to “handicapped persons” in the toll exemption statute to “disabled persons,” along with other technical changes.

The CS removes the provision providing that toll reductions for SunPass users are subject to MDX’s bond covenants. The CS instead requires the MDX to submit to the Governor, by October 1, 2018, information regarding the toll reduction required in s. 348.0004, F.S. If the reduction has not taken place, then the existing board is dissolved effective October 31, 2018, and a new board must be appointed by that date.

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<sup>29</sup> Office of Economic and Demographic Research, Revenue Estimating Conference, *Law Enforcement Exemption, HB 141*, November 3, 2017, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/pdf/page82.pdf> (last visited Feb. 8, 2018). The conference methodology assumed that “[c]hanging the toll exemption from ‘handicapped person’ to ‘person with a disability’ will have no effect on eligibility.”

<sup>30</sup> Florida Department of Law Enforcement, *2018 FDLE Legislative Bill Analysis: SB 356*, Sept. 28, 2017.

<sup>31</sup> Department of Highway Safety and Motor Vehicles, *2018 Agency Legislative Bill Analysis: HB 141*, Nov. 17, 2017.

<sup>32</sup> Department of Transportation, *2018 Agency Legislative Bill Analysis: SB 356*, Oct. 8, 2017.

Lastly, the CS extends the MM63 fire station interlocal agreement for an additional year, instead of three years.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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