

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1027 w/CS Transportation

SPONSOR(S): Reagan

TIED BILLS: **IDEN./SIM. BILLS:** SB 1456(c), SB 2576(c), SB 2602(c)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation	15 Y, 2 N w/CS	Pugh	Miller
2) State Administration		Brazzell	Everhart
3) Transportation & Econ. Devel. Approps. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

The Florida Department of Transportation (DOT) is responsible for the permitting, construction, maintenance, and safety of the state's highways, bridges, and other transportation systems.

HB 1027 w/CS addresses a number of issues related to the DOT.

It provides nearly complete flexibility in its organization. It deletes the list of offices which DOT is required to maintain, giving the DOT's Secretary the ability to structure the department as he or she chooses, in consultation with the Governor. It also provides the Secretary broader authority to hire and assign high-level department staff.

HB 1027 w/CS also exempts electric utilities from two sections of law – the DOT's ability to delegate utility right-of-way permitting to local governments, subject to consistency with DOT requirements, and governments' presumed ownership of right-of-way under specific circumstances.

Finally, the bill amends existing provisions allowing the DOT and the expressway authorities to enter into public-private partnerships for the purpose of constructing highways, bridges, or other transportation facilities that will improve access and reduce congestion.

The bill has no apparent fiscal impact on the state.

HB 1027 w/CS takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1027b.sa.doc

DATE: April 12, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. EFFECT OF PROPOSED CHANGES:

DOT internal organization

Current Situation

Pursuant to s. 20.23, F.S., the Secretary of the Department of Transportation (DOT) must appoint two assistant secretaries, one for Transportation Development and Operations and one for Transportation Support.

The following offices are established statutorily:

- Administration
- Planning and Environmental Management
- Design
- Highway operations
- Right-of-Way
- Toll operations
- Information systems
- Motor carrier compliance
- Management and budget
- Comptroller
- Construction
- Maintenance
- Materials

Section 20.23 provides that each office is required to be headed by a manager¹ appointed by the secretary; managers are to be classified at a level equal to a division director. No office at or above the division level may be established without specific legislative approval.

The agency is in the final phases of a five-year organizational efficiency plan where outsourcing and privatization efforts and other staffing efficiencies will result in 2,779 fewer positions by FY 05-06.

Effects of Proposed Changes

HB 1027 w/CS allows the Secretary to appoint assistant secretaries and deletes the descriptions of the current two assistant secretaries' areas of responsibility. The bill also gives the Secretary the authority to appoint deputy assistant secretaries and directors to handle a broad range of policy or program areas. The bill removes the statutory establishment of specific offices; rather, it provides the Secretary the ability to combine, separate, or abolish the DOT program offices, as necessary, with the Governor's consultation, to achieve the DOT's responsibilities. The bill deletes the provision that no DOT office or organization shall be created, at a level equal to or higher than a division, without specific legislative authority.

¹ Section 20.04(6), F.S., provides for the DOT's principal policy and program development unit to be an "office" headed by a director.

HB 1027 w/CS also:

- Deletes requirement that the Secretary appoint a state transportation development administrator, a state transportation operations administrator, and a state public transportation and modal administrator.
- Allows the DOT district secretaries to appoint up to three district directors or, until July 1, 2005, up to four district directors, and deletes the specification of their areas of responsibility.
- Makes technical changes.

Utility right-of-way issues

Current Situation

The 2002 Legislature granted the DOT the authority to enter into agreements delegating stormwater drainage permitting to a governmental entity in instances where the agency determines that permit issuance is based on requirements that are at least as stringent as its own and will ensure the safety and integrity of the DOT facilities. Last year, the Legislature amended s. 337.401, F.S., to allow the DOT to work with other governmental entities, where appropriate, to delegate road-connection permitting and permitting of right-of-way use by utilities. The DOT has supported permit delegation as a way to reduce its permitting staff, as well as create time and cost-saving efficiencies for permit applicants.

The electric utilities expressed concerns with the 2002 law change, saying they are comfortable with and well-versed in the DOT's requirements and processes for utility permitting or relocation in connection with public right-of-way improvements. Spread into the House and Senate Journals in the 2003 regular session were assurances that local governments could not require specifications different from those of the DOT, nor could a local government withhold a permit that otherwise would be granted by the DOT.

In a separate issue, electric utilities expressed concerns about the impact of changes to s. 95.361, F.S., intended to clear title in cases where ownership of a road was in question. First passed in 1957, the law was silent as to the ownership status of roads, built by private developer or whose origin is unknown, but which have been maintained for many years by a public entity. Based on 1982 case law, the law has been interpreted to prevent dedication of a road to a public entity unless it can be definitively proved that the road was constructed by a public entity. In Florida where roads were constructed many years ago and records have been lost or destroyed, but a city or county has been maintaining these roads, title insurers have refused to ensure access to property over these publicly maintained roads. Without title insurance, property owners have had difficulty obtaining loans to build on their land adjacent to these type of roads. The 2003 law change specified that a road which has been maintained by a public entity for at least seven years will vest to the maintaining public entity. Any person, firm, corporation or entity having or claiming any interest in these roads of unknown origin has one year from the effective date of the 2003 act to file a claim, or for a period of seven years from the initial date of regular maintenance or repair of the road in question to file a claim, whichever is greater.

Effect of Proposed Changes

HB 1027 w/CS amends s. 95.361, F.S., and s. 337.401, F.S., to exempt electric utilities, as defined in s. 366.02(2), F.S., from these provisions.

Public-Private Transportation Facilities

Current Situation

Section 334.30, F.S., was created in 1991 to allow for the development of private transportation facilities, such as toll roads or passenger rail service, that would serve to reduce burdens on public highway systems. The private entity developing the transportation facility would be able to charge tolls

or fares for its use, under agreement with the DOT, and the DOT could regulate the amount charged, if the proposal was determined to be unreasonable to users. No state funds were to be expended on these projects, except those with an "overriding state interest," in which case the DOT has the discretion to exercise eminent domain and other powers to assist in such projects, and any maintenance, law enforcement, or other services provided by the DOT had to be fully reimbursed by the private entity. According to the DOT, this section of law has never been used in the nearly 13 years since it was created.

A less-detailed provision exists in s. 348.0004(2)(m), F.S., for expressway authorities in counties defined in s. 125.011(1), F.S., and currently applicable only to the Miami-Dade County Expressway Authority. That provision also has not been implemented.

Over the last three years, the DOT has received a series of unsolicited trial proposals from the Toll Road Corporation of America for an "I-95 Reversible HOT Lane System" in Miami that could be a candidate for this program, if certain legislative changes are made. The proposed project involves the construction of reversible toll lanes in the median of I-95. This could make anywhere from 11 to 13 lanes, rather than the current 10, available for motorists' use.

Effect of Proposed Changes

HB 1027 w/CS rewrites s. 334.30, F.S., throughout. The section is renamed "public-private transportation facilities," and allows the DOT to make loans from the Toll Facilities Revolving Loan Trust Fund or the State Infrastructure Bank, or other resources (such as public right-of-way) for transportation projects on the State Highway System.

To be eligible for public financing, the project proposer must comply with the provisions of s. 338.251, F.S., related to the Toll Facilities trust fund, and must provide documentation from a nationally recognized rating agency that the senior bonds for the project will be investment grade, or provide a letter of credit or similar credit support to ensure that the loan will be fully repaid. The amended s. 334.30, F.S., also creates noticing requirements for solicited and unsolicited proposals; specifies that the DOT shall use the procurement and competitive negotiation laws in chapters 812 and 815, F.S.; and lists a number of criteria the DOT may use in ranking project proposals, such as project finance plans and the use of innovative engineering. The bill specifies that the DOT has the sole discretion to reject any and all proposals, at any point in the process up to the point of completing a contract with the private proposer.

The bill clearly specifies that the DOT's liability for any debt incurred by one of these projects is limited to the amount approved for it in the agency's 5-Year Work Program. Additionally, all reasonable costs to the state, and affected local governments and utilities, where applicable, related to transportation projects that are not part of the State Highway System or that are not publicly owned shall be borne by the private entity.

Also, the bill gives the DOT explicit rulemaking authority to implement the public-private partnership program.

The bill also includes nearly identical provisions for expressway authorities wishing to enter into public-private partnerships. It deletes the current reference in a. 348.0005(2)(m), F.S., because it is limited to only Miami-Dade County Expressway Authority, but creates a broader section of law applicable to all nine expressway authorities.

Representatives of various expressway authorities have said they have no immediate plans to enter into public-private partnerships but would like the flexibility to do so.

HB 1027 w/CS takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Amends s. 20.23, .FS., related to the DOT reorganization. Gives the DOT Secretary authority to appoint three, rather than two, assistant secretaries. Gives the DOT Secretary authority to appoint deputy assistant secretaries or directors for programs within the agency's purview. Deletes requirement for legislative approval for creation of offices equal to or higher than that of a division within the agency. Deletes certain position titles.

Section 2: Amends s. 95.361, F.S., to exempt electric utilities from presumed public road dedications.

Section 3: Amends s. 110.205, F.S., to correct a cross-reference.

Section 4: Amends s. 334.30, F.S., to revamp the public-private partnership provisions currently in law. Specifies the DOT's role. Specifies availability of public financing, if eligibility criteria are met. Creates noticing requirements. Gives the DOT ability to make rules to implement these provisions.

Section 5: Amends s. 337.401, F.S., to exempt electric utilities from the permitting delegation process.

Section 6: Amends s. 348.0004, F.S., to repeal language regarding unsolicited proposals. Creates new public-private partnership provisions for all expressway authorities. Specifies criteria for projects, availability of public financing, if eligibility criteria are met, and noticing requirements.

Section 7: Provides that this act shall take effect upon becoming a law.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 1027 w/CS because the bill does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

B. RULE-MAKING AUTHORITY:

The DOT has sufficient rule-making authority to implement most of the provisions of HB 1027 w/CS, and is specifically given rule-making authority in Section 3 of the bill to implement the public-private partnership provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 20.04(7)(a) provides that "additional . . . offices in the . . . Department of Transportation . . . may be established only by statutory enactment." The bill retains in new s. 20.23(3)(c) the provisions of current s. 20.23(3)(d) that "other offices may be established in accordance with s. 20.04(7)." However, the bill deletes all statutorily-enacted offices and instead provides in the new s. 20.23(3)(b) that "the secretary may combine, separate, or abolish offices as needed in consultation with Executive Office of the Governor." The deletion of statutorily-enacted offices and the latter provision conflict with the former two provisions.

The bill provides for the possibility of state funds being used to finance public-private endeavors to construct State Highway System facilities in which private entities may collect tolls from users. Given this, there are some protections for the public that could be included in the bill to ensure their benefit. For instance, in section 4, lines 303-307, and section 6, lines 509-513, regarding public-private partnerships, the bill provides that the DOT or the expressway authority "may" regulate tolls charged by private entities constructing transportation facilities. This leaves the possibility that such private entities could have total control over tolls for use of these facilities by the public. A requirement that the DOT or the expressway authority *shall* regulate tolls may increase state oversight. Other possible protections that the bill might require as part of any public-private partnership arrangement are a reasonable limit on the time span over which a private entity might collect tolls; a requirement that the facility revert to state or expressway authority ownership and control after a certain amount of revenue is received by the private entity; or requirements that costs incurred by the state or expressway authority in the facility's construction or operation be paid prior to the private entity's receipt of any toll or other revenue.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 15, 2004, meeting, the House Transportation Committee adopted five amendments. Three of the amendments clarified that "electric utilities," rather than the broader term "public utilities," would be exempt from the DOT permit-delegation program and from provisions of s. 95.361, F.S., related to presumed road dedications.

The two other amendments made changes to existing law on public private partnerships. One amended s. 334.30, F.S., to clarify the DOT's role in public-private partnerships and to specify when public funding could be available, and the final amendment amended s. 348.0004, F.S., to create similar language for the expressway authorities.