

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1027 Transportation Department
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1456(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation		Pugh	Miller
2) Governmental Oversight & Productivity			
3) Transportation & Econ. Devel. Approps. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

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

HB 1027 addresses FDOT's internal organization and two peripheral FDOT issues.

It continues from 2003 a streamlining of its internal organization, giving the FDOT Secretary more authority to hire and assign department staff to meet FDOT's mission. For example, the bill changes from two to three the number of assistant secretaries who can be hired, but doesn't specify their areas of responsibilities. It also allows the Secretary, in consultation with the governor, to reorganize existing agency offices. The bill also deletes the prohibition against creation of an FDOT office with the authority level of a division without legislative approval.

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

The bill has no apparent fiscal impact on the state.

HB 1027 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: h1027.tr.doc
DATE: February 24, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

FDOT internal organization

Current Situation

Despite streamlining last session, FDOT continues to have one of the most detailed statutory descriptions of any state agency in terms of internal organization, the duties and responsibilities of agency officers, and reporting requirements. 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 adds a third assistant secretary, and deletes descriptions of the assistant secretaries' areas of responsibility. The bill also gives the FDOT Secretary the authority to appoint deputy assistant secretaries and directors to handle a broad range of policy or program areas. Additionally, the bill gives the Secretary the ability to combine, separate, or abolish FDOT program offices, as necessary, with the Governor's consultation, to achieve FDOT's responsibilities. The bill deletes the provision that no FDOT office or organization shall be created, at a level equal to or higher than a division, without specific legislative authority. HB 1027 also:

- o Creates the Office of Public Transportation, and renames the Office Planning and Environmental Management.
- o Deletes requirement that the Secretary appoint a state transportation development administrator, a state transportation operations administrator, and a state public transportation and modal administrator.
- o Allows FDOT district secretaries to appoint up to three district directors or, until July 1, 2005, up to four district directors.
- o Makes technical changes.

Utility right-of-way issues

Current Situation

The 2002 Legislature granted FDOT 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 FDOT facilities. Last year, the Legislature amended s. 337.401, F.S., to allow FDOT to work with other governmental entities, where appropriate, to delegate road-connection permitting and permitting of right-of-way use by utilities. FDOT 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 FDOT'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 FDOT, nor could a local government withhold a permit that otherwise would be granted by FDOT.

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 amends s. 95.361, F.S., and s. 337.401, F.S., to exempt public utilities from these provisions. Depending on how broadly the phrase "public utilities" is interpreted, s. 337.401, F.S., could be rendered moot. (See "Section III. C. DRAFTING ISSUES OR OTHER COMMENTS," below, for more details.)

C. SECTION DIRECTORY:

Section 1: Amends s. 20.23, .FS., related to FDOT reorganization. Gives FDOT Secretary authority to appoint three, rather than two, assistant secretaries. Gives FDOT Secretary authority to appoint deputy assistant secretaries or directors for programs within the agency's purview. Deletes 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 create exemption for public utilities from presumed public road dedications.

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

Section 4: Amends s. 337.401, F.S., to exempt public utilities from the permitting delegation process.

Section 5: 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:

Lobbyists for electric utilities have explained that, under their interpretation of s. 95.361, F.S, they would be forced to pay their entire relocation costs if FDOT or another governmental entity claimed ownership of a road, based on maintenance claims, that a utility owned in fee or on which a utility had an easement or a less-than-fee interest. In addition, they expressed concerns that the utilities will incur significant legal costs to defend their property interests if they must sue FDOT or local governments who use s. 95.361, F.S., to claim the utilities' fee or less-than-fee interests in land.

Section 337.401, F.S., also poses the potential for unexpected costs for the electric utility industry, if local governments that receive FDOT permit-delegation authority stall issuing permits for utility projects.

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 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:

Section 6, Article III, Florida Constitution, requires every "law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

HB 1027 contains provisions relating to FDOT's internal organizational structure and the impacts of transportation law on public utilities.

Because HB 1027 contains issues related to two matters that appear to be unrelated – FDOT's reorganization and public utilities – it can be argued that the bill contains more than one subject. Case law exists to support both the argument that the bill could violate the single-subject requirement and that it may not be in violation.

In Department of Highway Safety & Motor Vehicles v. Critchfield¹, the Fifth District Court of Appeals ruled that a 1998 law which included a number of DUI and driver's license-related provisions, and one provision allowing payees on worthless checks to hire private collection firms to try and collect before turning the matters over to State Attorney's Office for prosecution violated the single-subject provision. As the Court wrote in its opinion:

¹ 805 So. 2d 1034 (Fla. 5th DCA 2002)

“While the subject matter of an act may be as broad as the Legislature chooses, the matters included must have a natural or logical connection...

“... A natural or logical connection exists between driver’s licenses, vehicle registrations and operation of motor vehicles. However, no such connection exists with use of private debt collectors to collect debts evidenced by bad checks.”

In Heggs v. State², the Florida Supreme Court addressed a 1995 law that included a variety of provisions related to criminal sentencing guidelines, criminal penalties, monetary compensation to crime victims, and domestic violence. The Court ruled that the law was in violation of the constitutional single-subject requirement:

“In relation to chapter 95-184, however, the Legislature has not identified a crisis that would require combining the criminal provisions with the three sections dealing with civil remedies for victims of domestic violence. Instead, based on the text and legislative history of chapter 95-184, it seems clear that the chapter law constitutes a classic act of logrolling...”

Yet earlier in Heggs, the Court had noted that simply because legislation addresses a comprehensive subject does not mean it violates the single-subject rule:

“In each of those cases, the Legislature specifically identified a broad crisis that it was attempting to address through the passage of the comprehensive chapter laws at issue. See Burch, 558 So.2d at 2-3 (involving challenge to chapter 87-243, Laws of Florida, in which the Legislature identified crisis in increasing crime rate); Smith, 507 So.2d at 1085-87 (involving challenge to chapter 86-160, Laws of Florida, in which the Legislature identified crisis in the availability of commercial liability insurance); Chenoweth, 396 So.2d at 1124 (involving challenge to chapter 76-260, Laws of Florida, in which the Legislature identified crisis in the tort law/medical malpractice liability insurance system); Lee, 356 So.2d at 282- 83 (involving challenge to chapter 77-468, Laws of Florida, in which the Legislature identified crisis in tort law/automobile insurance system).”

In Burch v. State,³ the court explained:

“This constitutional provision, however, is not designed to deter or impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation. This Court has consistently held that wide latitude must be accorded the legislature in the enactment of laws...

“In Chenoweth v. Kemp, 396 So. 2d 1122 (Fla.1981), we debated whether chapter 76-260, Laws of Florida, was unconstitutional because it contained provisions covering medical malpractice, tort litigation, and insurance reform. Holding that the act did not violate article III, section 6, we said:

[T]he subject of an act "may be as broad as the Legislature chooses as long as the matters included in the act have a natural or logical connection."

“The fact that several different statutes are amended does not mean that more than one subject is involved. There is nothing in this act to suggest the presence of log rolling, which is the evil that article III, section 6, is intended to prevent. In fact, it would have been awkward and unreasonable to attempt to enact many of the provisions of this act in separate legislation.”

² 759 So. 2d 620,627 (Fla. 2000)

³ 558 So. 2d 1, 2-3 (Fla. 1990)

Based on the above rulings, it can be argued that HB 1027 does not violate the single-subject provision because each of the sections relate to the bill's purpose of revising transportation laws.

B. RULE-MAKING AUTHORITY:

FDOT has sufficient rule-making authority to implement the relevant provisions of HB 1027.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Committee staff has suggested that the term "public utilities" used in sections 2 and 4 of the bill be changed to "electric utilities," as defined in s. 366.02(2), F.S. This change better reflects the entities that have in the past expressed concerns about ss. 95.361 and 337.401, F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES