

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			
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 w/CS addresses a number of issues related to FDOT.

It continues from 2003 a streamlining of FDOT's internal organization, giving the agency 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 w/CS also exempts electric 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.

Finally, the bill amends existing provisions allowing FDOT 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. These public-private ventures likely would be tolled facilities, whose revenues would be used first to pay debt service on the bonds sold to finance them, and to pay operation and maintenance costs.

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: h1027a.tr.doc

DATE: March 22, 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"/> |

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 w/CS 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 w/CS 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 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 FDOT, and FDOT 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 FDOT 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 FDOT had to be fully reimbursed by the private entity. According to FDOT, 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, FDOT 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 FDOT 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 FDOT shall use the procurement and competitive negotiation laws in chapters 812 and 815, F.S.; and lists a number of criteria FDOT may use in ranking project proposals, such as project finance plans and the use of innovative engineering. The bill specifies that FDOT 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 FDOT'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 FDOT 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 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 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 FDOT's role. Specifies availability of public financing, if eligibility criteria are met. Creates noticing requirements. Gives FDOT 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 unused language. 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:

FDOT 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:

None.

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 FDOT 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 FDOT'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.