

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1615 Southwest Florida Expressway Authority
SPONSOR(S): M. Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2938(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation	17 Y, 3 N w/CS	Pugh	Miller
2) Transportation & Econ. Dev. Apps. (Sub)		McAuliffe	Hawkins
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

Nine expressway authorities have been created in chapter 348, F.S., by the Florida Legislature. Their purpose is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include local-government officials who decide on projects and expenditure of funds.

HB 1615 w/CS creates the Southwest Florida Expressway Authority (the Authority) in a new Part X of Chapter 348, F.S. The Authority will have the general powers and duties of all expressway authorities, such as the ability to enter into contracts, acquire land, set tolls, and hire staff. Bonds for the Authority's projects may either be issued on the Authorities behalf by the state Division of Bond Finance or by the Authority itself. Provisions unique to the Authority created in this bill include:

- o An eight-member governing board comprised of: one permanent resident each from Collier and Lee counties, appointed by the Governor; one permanent resident of Collier County appointed by the Collier County Commission; one permanent resident of Lee County appointed by the Lee County Commission; one member each from the Collier and Lee county commissions; the executive director of the Southwest Florida Regional Planning Council; and the secretary of the Florida Department of Transportation (FDOT) district that includes Collier and Lee counties. The FDOT district secretary is a non-voting member.

- o Projects are limited to tolled expressway lanes and support facilities on Interstate 75 in Collier and Lee counties. Although not stated in the bill, the Authority also must obtain federal and state approval before building tolled lanes on I-75.

- o The Authority contemplates entering into a lease-purchase agreement with FDOT, whereby FDOT would operate and maintain the tolled facilities and at some point would own the system and make it part of the state road system.

- o The act creating the Authority will "sunset" in 12 years after its effective date if the Authority has no outstanding debt, no studies or project designs underway, or no projects under construction, and if it is not operating or maintaining the system.

- o The Authority will receive a \$2.5 million loan from FDOT's Toll Facilities Revolving Loan Trust Fund to help fund its start-up costs.

The bill raises no apparent constitutional or other legal issues.

HB 1615 w/CS takes effect upon passage of resolutions from the Collier and Lee county commissions, but no sooner than July 1, 2004.

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

STORAGE NAME: h1615b.ap.doc
DATE: April 14, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

Reduce Government

HB 1615 w/CS does not reduce government because it creates another arm of government, the Southwest Florida Expressway Authority, with the power to acquire property, enter into agreements and contracts, establish and collect fees, and to engage in eminent domain proceedings. These are powers shared by all expressway authorities in Florida.

B. EFFECT OF PROPOSED CHANGES:

Background

Collier and Lee counties are among the fastest-growing areas in Florida, and with that population growth comes traffic congestion. FDOT District 1 recently completed a preliminary design and engineering study on the I-75 corridor in Collier and Lee counties, and it provided alternatives for six-laning the interstate from State Road 951 in Collier County north to State Road 78 in Lee County, plus interchange improvements. Based on FDOT’s adopted FY 03-04 to FY 07-08 Work Program:

- o In the Lee County section of the project, right-of-way acquisition will begin in 2006 at an estimated cost of \$46 million; environmental permitting is scheduled for 2007 at a cost of \$361,000; and construction is scheduled to begin in 2008 at an estimate cost of \$96 million.
- o In the Collier County section of the project, right-of-way acquisition is scheduled to begin in 2007, at an estimated cost of \$23 million.

FDOT District 1 indicates the total six-laning project could cost \$200 million.

The PD&E studies also considered an alternative of widening this section of I-75 to eight lanes – six general-use lanes and two special-purpose lanes that also could serve as an envelope for passenger rail service based on future decisions. FDOT’s Long-Range Transportation Plan indicates the need to expand I-75 to 10 lanes by 2030. The Florida Turnpike Enterprise also is studying the feasibility of adding tolled lanes to I-4 and I-75 in the future.

For at least the last two years, elected officials, residents, and business leaders in Collier and Lee counties have debated how to plan and expedite regional transportation improvements. Legislation filed in 2003 to create a “Southwest Florida Regional Transportation Authority” was withdrawn by the sponsor because of local concerns. After working with all the interested local parties over the interim and attempting to address their concerns, the same sponsor has filed HB 1615.

Effect of Proposed Changes

HB 1615 w/CS creates a new Part X, Chapter 348, F.S., relating to the “Southwest Florida Expressway Authority” (the Authority), and would join nine other expressway authorities created pursuant to state law. Most of the provisions of this bill are common to all of the other expressway authorities – the entity is governed by a board of directors and has the ability to enter into contracts and agreements; acquire

land and other property; to engage in eminent domain proceedings pursuant to chapters 74 and 75, F.S.; to sue and be sued; borrow funds; set and collect tolls, fees, or charges; plan projects; have certain responsibilities to bondholders; and hire staff. Bonds for the Authority's projects could either be issued on its behalf by the state Division of Bond Finance or by the Authority itself, a power that only the Orlando-Orange County Expressway Authority currently has.

The Authority created by this bill will have additional requirements or provisions. They include:

- o Projects are limited to tolled expressway lanes and support facilities on I-75 within Collier and Lee counties.
- o The Authority plans to enter into a lease-purchase agreement with FDOT, which would act as the construction agent for projects, would operate and maintain the tolled facilities, and eventually be deeded the tolled facilities.
- o The act creating the Authority will "sunset" in 12 years after its effective date if the Authority has no outstanding indebtedness, no studies or project designs underway, or no projects under construction, and if it is not operating or maintaining the system. This is to ensure that a dormant Authority doesn't continue to exist in law, and provides some impetus for the Authority, if created, to expedite its goals.
- o The Authority will receive a \$2.5 million loan from FDOT's Toll Facilities Revolving Loan Trust Fund to help fund its start-up and administrative costs.

The Authority is specifically prohibited from pledging any revenues of the state, or of Collier and Lee counties, or municipalities within those counties, and its fiscal obligations are not the responsibility of the state or other political subdivisions.

An eight-member governing board will manage the Authority's operations. The membership will consist of seven voting members and one non-voting member, the FDOT District 1 secretary. The makeup of the seven voting members is:

- o One permanent resident each from Collier and Lee counties, appointed by the Governor to four-year terms. The Governor must select his appointees from separate lists of five names developed by each County Commission. No elected official, or any person who is an employee of Lee or Collier county, or of any municipality within those two counties may be appointed.
- o One permanent resident of Collier County appointed by the Collier County Commission and one permanent resident of Lee County appointed by the Lee County Commission. Each shall serve a four-year term. As with the governor appointees, none of these appointees shall be an elected official, or any person who is an employee of Lee or Collier county, or of any municipality within those two counties.
- o One member each from the Collier and Lee county commissions for two-year terms.
- o The executive director of the Southwest Florida Regional Planning Council.

Each member of the governing board shall be eligible for reappointment. The members shall elect from their number a chairperson; they also may select a treasurer and a secretary who are not required to be authority members. Four members constitute a quorum, and a majority of members must be present for the authority to take action. Authority members are entitled to receive per diem and other expenses incurred in connection with Authority business, pursuant to s. 112.061, F.S.,

The bill also provides a mechanism by which Charlotte County can join the expressway authority if all three county commissions agree, and such expansion is warranted. In that case, the voting membership of the Authority would be nine, with three new voting members representing Charlotte County and the regional planning council representative becoming a non-voting member.

HB 1615 w/CS takes effect upon passage of resolutions from the Collier and Lee county commissions, but no sooner than July 1, 2004.

C. SECTION DIRECTORY:

Section 1: Creates Part X of chapter 348, F.S., specifically ss. 348.993-348.99456, F.S. Names this the "Southwest Florida Expressway Authority." Defines terms used in this part. Specifies membership on expressway authority board of directors. Specifies terms and duties. Allows hiring of staff. Specifies powers of governing board. Specifies that only projects shall be toll expressways on I-75. Specifies bond financing pursuant to s. 11(f), Art. VII of the State Constitution, and that the bonds may be issued by the State Division of Bond Finance on behalf of the expressway authority, or by the authority itself. Specifies process and conditions for issuing bonds, and remedies for bond holders. Allows the authority to enter into a lease-purchase agreement with FDOT for any transportation facilities built by the authority. Allows authority to appoint FDOT as its agent for purposes of constructing aforementioned facilities. Exempts authority from certain taxation. Specifies that no approval from voters shall be necessary before bonds can be issued.

Section 2: Specifies that the expressway authority shall sunset 12 years after this act takes effect if the authority has no outstanding debt, no studies or project design underway, and no projects under construction, nor is operating or maintaining any part of the system it was established to create.

Section 3: Specifies that notwithstanding the provisions of s. 338.251, F.S., the authority is given a \$2.5 million loan from the Toll Facilities Revolving Loan Trust Fund for fiscal year 2004-2005, and that it can spend all or a portion of the money on administrative or startup costs.

Section 4: Specifies this act shall take effect upon passage of resolutions by the Lee and Collier county commissions in support of this act no sooner than July 1, 2004, in the event the county commissions pass such resolutions before that date. Otherwise, this section shall take effect upon the bill becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None, at least in the immediate future.

2. Expenditures:

HB 1615 w/CS provides for a \$2.5 million loan from the State Toll Facilities Revolving Loan Trust Fund in FY 04-05 for administrative and start-up expenses. Such expenses are not an authorized use of funds from the State Toll Facilities Revolving Loan Trust Fund (see Fiscal Comments section of this analysis).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motorists in Collier and Lee counties who choose to drive on the proposed expressway's lines on Interstate 75 will pay tolls of an undetermined amount.

D. FISCAL COMMENTS:

FDOT has expressed two concerns about HB 1615 w/CS. First, section 3 of the bill says that "notwithstanding the provisions of s. 338.251, F.S., there is hereby appropriated the sum of \$2.5 million to initially fund the Southwest Florida Transportation Authority...(and) all or a portion of this appropriation may be used for administrative and other startup costs of the Authority and system, including, but not limited to, the hiring of an executive director, consultants, and staff."

Section 338.251, F.S., creates the Toll Facilities Revolving Trust Fund and specifies its uses, which are limited to actual construction, engineering and project-related costs, right-of-way acquisition, and with legislative approval, cash advances to defray toll revenue shortfalls. The section also limits advances to any eligible entity to \$1.5 million annually, without a specific appropriation. However, the fact that HB 1615 "notwithstands" the section's provisions would mean the expressway authority could receive \$2.5 million and use part of it for expenses not typically allowed. FDOT has concerns about the implications of using the trust fund monies for start-up expenses.

Also, FDOT has expressed concerns about the wording of provisions related to activities on I-75, cautioning that the Federal Highway Administration must be consulted about all construction and maintenance activities on interstates.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 1615 w/CS because the Legislature 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:

None.

B. RULE-MAKING AUTHORITY:

Expressway authorities created in chapter 348, F.S., are exempt from the Chapter 120, F.S., Administrative Procedures Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Federal and state regulations about tolled lanes on the federal interstate highway system

Title 23 U.S.C. Chapter 3, Section 301, generally states that no federal highways may be tolled, except as provided in Section 129, which provides several exemptions, such as for certain new construction of lanes, bridges and tunnels on existing interstates. Section 129 also requires that the first call on the toll revenues is debt service, with operations and maintenance and a return on private investment secondary considerations.

Section 338.165(6), F.S., also specifies that no tolls may be charged for use of an interstate highway system where tolls were not charged as of July 1, 1997. This could be construed to mean existing lanes of an interstate highway system.

In any event, the Authority would have to enter into an agreement with the Federal Highway Administration before it could charge tolls on its proposed new lanes for I-75 in Collier and Lee counties. The bill's sponsor and its supporters say they are aware that the proposed Authority would need to obtain permission from the Federal Highway Administration and FDOT before pursuing any tolled-lane project on I-75.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 23, 2004, meeting, the Transportation Committee adopted without objection three amendments filed by the bill's sponsor. Briefly:

- o Amendment #1: Deleted language from an earlier version of the bill that was inadvertently left in by original drafter. Would have allowed other projects by the expressway authority if approved by the Lee and Collier county commissions.
- o Amendment #2: Clarified that the \$2.5 million is a loan, not a direct appropriation, from the Toll Facilities Revolving Loan Trust Fund.
- o Amendment #3: Provided an option for Charlotte County to join the expressway authority in the future.

The committee then voted 17-3 to report the bill favorably as a committee substitute.