

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1475 CS Commission for the Transportation Disadvantaged
SPONSOR(S): Robaina and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1168, HB 1587

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Transportation & Economic Development Appropriations Committee</u>	<u>14 Y, 0 N</u>	<u>McAuliffe</u>	<u>Gordon</u>
3) <u>State Infrastructure Council</u>	<u>10 Y, 0 N, w/CS</u>	<u>Pugh</u>	<u>Havlicak</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Part I of chapter 427, F.S., creates and regulates Florida's Transportation Disadvantaged (TD) program. The TD program coordinates and helps fund transportation services for disabled, elderly, and low-income residents using a combination of local, state and federal funds, as well as farebox revenues. All 67 counties have some level of TD service.

HB 1475 w/CS makes a number of changes to the Commission for the Transportation Disadvantaged. Specifically, the bill:

- Reduces the number of commissioners from 27 to 15.
- Removes all member slots representing entities providing transportation services to eligible TD clients.
- Establishes term limits of two, four-year terms for commissioners.
- Prohibits TD commissioners from either being employed by, or benefiting financially from, community transportation coordinators or transportation providers.
- Requires all TD Commission candidates, before accepting appointment, to undergo background checks by the Florida Department of Law Enforcement and the FBI.
- Allows the TD Commission to establish three technical advisory committees to address TD issues related to TD transportation coordinators and providers, transportation planning, and business interests.
- Directs that 30 days after the release of the Governor's budget recommendations, the TD Commission must present to the Legislative Budget Commission for approval the allocation formula for the Medicaid non-emergency funding the TD Commission anticipates receiving from the Agency for Health Care Administration for the upcoming fiscal year. The TD Commission also must document the funds to be allocated to the counties. The TD Commission shall not reduce funding to any counties unless the General Appropriations Act reduces TD funding. Any such reductions implemented by the TD Commission shall be made in a fair and equitable manner.
- Directs the TD Commission to develop a methodology or formula that equitably distributes funds under its control using certain criteria.

HB 1475 w/CS does not raise any apparent constitutional or other legal issues, nor does the bill impact state revenues or expenditures.

The effective date of the bill is July 1, 2005.

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

STORAGE NAME: h1475f.SIC.doc
DATE: 4/22/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill reduces from 27 to 15 the number of members on the Commission for the Transportation Disadvantaged.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Transportation Disadvantaged program, created in 1979 by the Legislature pursuant to Part I of Chapter 427, F.S., coordinates a network of local and state programs providing transportation services for elderly, disabled and low-income citizens.

Over the years, the Legislature has modified the program's administrative structure, program responsibilities, and funding. A 27-member Commission sets state policy and oversees its statewide implementation, and distributes a share of its budgeted funds to the local providers, based on the Commission's criteria. Commissioners represent a broad spectrum of interested parties, including social service agencies, a public transit association, citizens' advocacy groups from rural and urban areas, transportation providers, the non-transportation business community, and the Florida Department of Transportation. Appointments to the Commission are made by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Currently, the Commission's members are:

- The secretary of the Department of Transportation or the secretary's designee.
- The secretary of the Department of Children and Family Services or the secretary's designee.
- The Commissioner of Education or the commissioner's designee.
- The secretary of the now-defunct Department of Labor and Employment Security or the secretary's designee.
- The executive director of the Department of Veterans' Affairs or the executive director's designee.
- The secretary of the Department of Elderly Affairs or the secretary's designee.
- The director of the Agency for Health Care Administration or the director's designee.
- A representative of the Florida Association for Community Action, who shall serve at the pleasure of that association.
- A representative of the Florida Transit Association, who shall serve at the pleasure of that association.
- A person over the age of 60 who is a member of a recognized statewide organization representing elderly Floridians. Such person shall be appointed by the Governor to represent elderly Floridians and shall be appointed to serve a term of four years.
- A person with a disability who is a member of a recognized statewide organization representing Floridians with disabilities. Such person is appointed by the Governor to represent handicapped Floridians and shall be appointed to serve a term of four years.
- Two citizen advocate representatives who shall be appointed by the Governor for a term of four years, one representing rural citizens and one representing urban citizens.
- A representative of the community transportation coordinators. Such person is appointed by the Governor to represent all community transportation coordinators and is appointed to serve a term of four years.
- One member of the Early Childhood Council. Such person is appointed by the Governor to represent maternal and child health care providers and is appointed to serve a term of four years.
- Two representatives of current private for-profit or private not-for-profit transportation operators each of which have a minimum of five years of continuous experience operating a broad-based system of ambulatory and wheelchair/stretchers type transportation, utilizing not less than 50

vehicles and including dispatch and scheduling responsibilities. Such persons are appointed by the Commissioner of Agriculture to serve a term of four years.

- Four representatives of current private for-profit or private not-for-profit transportation operators, each of which having a minimum of five years of continuous experience operating a broad-based system of ambulatory and wheelchair or stretcher-type transportation, utilizing not less than 50 vehicles, and including dispatch and scheduling responsibilities. Such persons are appointed by the Commissioner of Agriculture to serve a term of four years.
- Six citizens representing the nontransportation business community of the state, three members appointed by the President of the Senate and three members appointed by the Speaker of the House of Representatives.

The Commission is housed within the Florida Department of Transportation (FDOT) for administrative purposes only.

Florida's 67 counties are divided into 50 TD service areas. While most urban counties are single-county service areas, some rural counties are organized into multi-county service areas. All 67 counties have some level of TD service for their elderly, disabled, or needy residents. According to the commission's most recent annual report, in fiscal year 2003-2004 more than 56.8 million trips were provided to clients, about a 7-percent increase over 2002-2003. There were 888,241 people who received TD services last fiscal year. About half of the trips are to doctor's offices or medical facilities, and transportation to educational or training facilities ranks second.

Total funding for TD services in Florida – from public and private sources – was \$307 million in fiscal year 2003-2004.¹ Not all of those funds were expended directly by the Commission, which relied, until recently, on an average \$25 million to \$35 million it received from four statutory program earmarks and special appropriations from the Legislature.

For fiscal year 2004-2005, its state appropriation was \$38 million. As of November 1, 2004, with the signing of a memorandum of agreement with AHCA, the Commission also has spending authority over an estimated \$75 million in Medicaid funds for non-emergency transportation (NET) services for Medicaid clients.

The Commission uses an intricate structure to coordinate TD services, as follows:

- At the statewide level, the Commission assists communities in establishing coordinated transportation systems; manages contracts and memoranda of agreement; ensures that state agencies purchase transportation services from within the TD coordinated system, unless a more cost-effective provider outside the coordinated system can be found by the purchasing agency; and approves the local entities that manage the delivery of transportation services to eligible clients.
- At the local level, the TD program is implemented through a network of planning agencies, local advisory boards, community transportation coordinators (CTC's), and transportation operators. Local planning agencies, such as a metropolitan planning organization (MPO) or regional planning council, typically appoint and staff each local coordinating board. A local elected official chairs each coordinating board. These local boards also recommends the local community transportation coordinator (CTC) to the Commission.
- The CTC's are the entities responsible for the actual arrangement or delivery of transportation services within their local service area. A CTC may be a government entity, a transit agency, a private not-for-profit agency or a for-profit company. A CTC may function as a sole-source provider of TD services, or it may broker part or all of the trips to transportation operators. Typically, the Commission enters into a memorandum of agreement for services with a CTC. This agreement identifies the anticipated service population, service area, information regarding any subcontractors, and rates for services.

¹ Commission for the Transportation Disadvantaged, *2004 Annual Report*, available at:
http://www.dot.state.fl.us/ctd/2005/CTD/APR/HTM/APR_Directory.htm#2004%20Data

As managers of the NET program, the Commission identifies and enters into agreements with “subcontracted transportation providers,” and pays them a monthly lump-sum amount. These subcontracted transportation providers in turn use these funds to pay the local transportation operators actually providing the services.

Last year, as the TD Commission was working out its agreement with AHCA, it decided to re-evaluate its funding formula for the counties. When AHCA transferred to the Commission only \$67 million in Medicaid funds, rather than the \$75 million the Commission had budgeted for NET services, the Commission readjusted its formula to address the budget cut. Larger counties, such as Miami-Dade and Duval, as well as the Orange-Osceola-Seminole metropolitan area that is served by the same CTC, lost millions of dollars in anticipated Medicaid funds for their TD programs. AHCA eventually released the withheld funding. At that time, the Commission decided to base its revised formula on 2001 cost data, since it was the most recent year where complete information was available for all 67 counties. The Commission also has contracted with the Center for Urban Transportation to develop a new allocation formula.

Over the summer and fall of 2004, several legislators statewide expressed concerns about the Commission, the AHCA contract, and the TD funding formulas.

Effect of Proposed Changes

The bill makes a number of administrative and financial changes to the TD Commission. First, it reduces the Commission’s membership from 27 to 15 persons. The new members will be:

- The FDOT secretary or designee;
- The secretary of the Department of Children and Family Services. or designee;
- The director of the Agency for Workforce Innovation or designee;
- The executive director of the Department of Veterans’ Affairs or designee;
- The secretary of the Department of Elderly Affairs or designee;
- A person appointed by the Governor to chair the commission;
- The director of AHCA or designee;
- The director of the Agency for Persons with Disabilities or designee;
- Seven persons, from the seven FDOT districts, each appointed by the Governor for 4-year terms. One of these appointees shall be a person over the age of 60 who uses paratransit services. Another appointee shall be a disabled person who uses paratransit services. Two of the appointees must be rural communities as defined in s. 288.0656(2)(b), F.S., relating to criteria for the Rural Economic Development Initiative.

The bill also creates requirements for TD commissioners. These are:

- Commissioners represent the needs of transportation disadvantaged persons statewide, and they may not subordinate the transportation needs of persons statewide to favor a specific region of the state.
- Commissioners may not serve more than two full terms.
- Commissioners must be citizens of Florida and registered voters.
- Commissioners, other than local elected officials, may not be an employee or agent of a community transportation coordinator (CTC), a contractor or subcontractor of a CTC, or a director or indirect subcontractor to a contractor employed by a CTC.
- Commissioners, other than local elected officials, may not have any direct or indirect interest in any contract, franchise, privilege, or other benefit granted to or awarded by the TD Commission, AHCA, or the Department of Children and Family Services while serving on the commission and for two years afterward.
- The bill requires “level 2” background checks, pursuant to s. 435.04, F.S., of TD Commission candidates. Each candidate must supply to FDOT a complete set of his or her fingerprints, which in turn will be submitted to the Florida Department of Law Enforcement (FDLE) and the FBI. FDOT must review the results of each screening and shall report to the TD Commission any candidate that fails to meet the requirements of s. 435.04, F.S., which lists 47 criminal offenses that, if they show up in a person’s background check, means that person cannot serve.

The cost of the background screening may be borne by FDOT or by the candidate. Currently, the FDLE fingerprint check costs \$24 and the FBI fingerprint check costs \$25.

- TD commissioners may create three technical advisory committees, and set their membership, size, and focus. The committee members will serve without compensation but are entitled to per diem or travel expenses, pursuant to s. 112.061, F.S. One technical advisory committee will provide the TD Commission with information, advice and direction on community coordinated transportation and paratransit services; another on transportation planning issues; and the third on business-related issues, including insurance, marketing, economic development, and financial planning.

The bill also includes two finance-related provisions:

- Section 427.012, F.S., is amended. Thirty days after the release of the Governor's Executive Budget Recommendations, the TD Commission must present to the Legislative Budget Commission for approval the allocation formula for the Medicaid non-emergency funding the TD Commission anticipates receiving from the Agency for Health Care Administration for the upcoming fiscal year. The TD Commission also must document the funds to be allocated to the counties. The TD Commission shall not reduce allocations to any county unless the General Appropriations Act reduces the TD funding. Any such reductions implemented by the TD Commission must be made in a "fair and equitable manner."
- Section 427.013(12), F.S., is amended to direct the TD Commission to develop a funding methodology or formula that equitably distributes the funds under its control to counties, CTCs, and other entities. The methodology or formula must take into account such factors as actual per-trip costs and program efficiencies. Further, the methodology or formula must ensure that a "trip-credit process" is incorporated to ensure cost-effective transportation solutions are properly measured and taken into account by the TD Commission. The TD Commission is working with the Center for Urban Transportation Research to develop an allocation formula that includes trip-credits.

The effective date of the bill is July 1, 2005.

C. SECTION DIRECTORY:

Section 1: Amends s. 427.012, F.S., to amend membership of the TD Commission. Specifies requirements for commissioners. Provides for creation of technical advisory committees. Requires Legislative Budget Commission approval of Medicaid allocation formula. Specifies the TD Commission can only reduce Medicaid allocations to counties if the GAA appropriates less money to the TD Commission. Requires equitable reductions to counties in such circumstances.

Section 2: Amends s. 427.013, F.S., to require the Commission to develop equitable funding methodology or formula. Provides some criteria.

Section 3: Provides an effective date of July 1, 2005.

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:

See "D. FISCAL COMMENTS" below.

2. Expenditures:

See "D. FISCAL COMMENTS" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

The bill gives the Legislature more oversight of how the TD Commission plans to spend the Medicaid funds it expects to receive from AHCA, pursuant to their interagency contract, though its approval of the allocation formula.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 1475 w/CS because the legislation 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:

The Commission has sufficient rulemaking authority to implement the provisions of HB 1475 w/CS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its March 28, 2005, meeting, the Transportation Committee adopted without objection a strike-everything-after-the-enacting clause amendment. Briefly, that strike-all amendment:

- Reconfigured the TD Commission's membership to 15;
- Specified the members cannot serve more than two, four-year terms;
- Specified that no member, other than an elected local official, can be a contractor, employee, agent, or subcontractor to a CTC;
- Specified that members, other than an elected local official, can not receive financial benefit from the Commission, AHCA, or the Department of Children and Family Services while serving on the board and for two years after leaving the board;
- Established how vacancies are filled;
- Gave the TD Commission the discretion to create three technical advisory committees: one representing transportation providers and coordinators, one representing planners, and one representing business interests.
- Directed the TD Commission to present to the Legislative Budget Commission for its review and approval the Medicaid allocation formula and the amount of funding each county is expected to receive that fiscal year. The information is due to the Legislative Budget Commission 30 days prior to submittal of the TD Commission's legislative budget request. Provided a more detailed

description of what the TD Commission's allocation methodology or formula should consider as factors.

The committee then voted 15-0 to report the bill as favorable, with a committee substitute.

State Infrastructure Council

At its April 21, 2005, meeting, the Council adopted without objection a strike-everything-after-the-enacting-clause amendment that changed three portions of the bill. The key changes were:

- The membership stayed at 15, but some of the representatives changed. Deleted were Commissioner of Education and one of the Governor's nine appointees. Added was the executive director of the Department of Veterans' Affairs, the director of the Agency for Persons with Disabilities, and a person appointed by the Governor to serve as commission chair.
- The mix of Governor's appointees was slightly changed, as well. Seven of the Governor's appointees still must represent the seven FDOT districts, but of those: one must be a person over the age of 60 who uses paratransit; one must be a disabled person who uses paratransit, and two must be from rural counties.
- The LBC's role was reduced to only approving the Medicaid NET allocation formula, which will be presented to them by the TD Commission in March of each year, which is 30 days after the Governor releases his annual budget recommendations. Also, the TD Commission can not reduce Medicaid allocations to the counties unless its funding is reduced by the Legislature. The amendment also directed the TD Commission to fairly and equitably implement such reductions to the counties.
- The criteria to be included within the TD Commission's funding methodology or formula were streamlined.

The Council then voted 10-0 to report the bill as favorable with a Council Substitute.