

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 401 Southwest Florida Transportation
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 102 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N	Pugh	Miller
2) Local Government Council	(ref. removed)		
3) Finance & Tax Committee	(ref. removed)		
4) Transportation & Economic Development Appropriations Committee	16 Y, 0 N	McAuliffe	Gordon
5) State Infrastructure Council	9 Y, 0 N	Pugh	Havlicak

SUMMARY ANALYSIS

Nine expressway authorities have been created in chapter 348, F.S., by the Florida Legislature. The expressway authorities' 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 a combination of local-government officials and Governor appointees who decide on projects and expenditure of funds.

HB 401 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 could either be issued on its behalf by the state Division of Bond Finance or by the Authority itself. Provisions unique to this Authority include:

- 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 1 secretary is a non-voting member.
- 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.
- 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.
- 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.

The bill raises no apparent constitutional or other legal issues.

HB 401 takes effect upon passage of resolutions from the Collier and Lee county commissions, but no sooner than July 1, 2005.

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

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DATE: 3/15/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: HB 401 would create a tenth expressway authority in Florida Statutes, the Southwest Florida Expressway Authority, with the power to issue revenue bonds to finance its projects, acquire property, enter into agreements and contracts, establish and collect fees, and engage in eminent domain proceedings. There are currently only four active expressway authorities in Tampa, Orlando, Miami-Dade, and Santa Rosa County.

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 last year 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. The six-laning project is estimated to cost around \$200 million.

The Preliminary Design & Engineering studies also considered an alternative of widening this section of I-75 to eight lanes, which would be six general use lanes and two special purpose lanes that 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.

Effect of Proposed Changes

HB 401 creates a new Part X, Chapter 348, F.S., relating to the "Southwest Florida Expressway Authority" (the Authority). The Authority will have the general powers and duties of the other nine expressway authorities. The Authority is governed by a board of directors and has the ability to enter into contracts and agreements; acquire land and other property; engage in eminent domain proceedings pursuant to chapters 73 and 74, F.S.; sue and be sued; borrow funds; set and collect tolls, fees, or charges; plan projects; and hire staff. Additionally, the Authority will have standard obligations to its bondholders.

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 is currently only assigned to the Orlando-Orange County Expressway Authority.

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 could eventually be deeded the tolled facilities.

As with each of the existing expressway authorities, this new authority will have some unique requirements or provisions. They include:

- Projects are limited to tolled expressway lanes and support facilities on I-75 within Collier and Lee counties.
- 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.

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 consists of seven voting members and one non-voting member, the FDOT District 1 secretary. The makeup of the seven voting members is:

- One permanent resident each from Collier and Lee counties, appointed by the Governor to four-year terms. The Governor selects 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.
- 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 would serve a four-year term. As with the governor appointees, none of these appointees can be an elected official, or any person who is an employee of Lee or Collier county, or of any municipality within those two counties.
- One member each from the Collier and Lee county commissions for two-year terms.
- The executive director of the Southwest Florida Regional Planning Council.

Each member of the governing board will be eligible for reappointment. The members will 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 selected in the same manner as the appointment of the Lee and Collier members. The regional planning council representative would join the FDOT District 1 secretary as a non-voting member.

HB 401 takes effect upon passage of resolutions from the Collier and Lee county commissions, but no sooner than July 1, 2005.

C. SECTION DIRECTORY:

Section 1: Creates Part X of chapter 348, F.S., specifically ss. 348.993-348.9947, 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 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, 2005, 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:

Revenues are not generated until an expressway project is built and tolls are collected. There is no timetable for the construction of any Southwest Florida Expressway Authority project.

2. Expenditures:

None in fiscal year 2005-2006. However, once the Authority is established, the Authority would be eligible for loans from the Toll Facilities Revolving Trust Fund (TFRTF) and the State Infrastructure Bank (SIB). FDOT is authorized by s. 338.251, F.S., to advance funds from the TFRTF for preliminary engineering, traffic, revenue and environmental impact studies, as well as right-of-way activities and purchases to expressway authorities and the Turnpike. Section 339.55, F.S., authorizes FDOT to lend funds from the SIB for credit enhancements and capital costs for transportation facilities on the State Highway System.

It is not known at this time if the Authority would utilize any of these loan programs to help finance the new express lanes.

Further, the bill provides the Authority may enter into a lease purchase agreement with FDOT. Depending on the provisions of the agreement, FDOT may be responsible for operations and maintenance of the facility or other costs associated with the development of the facility.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill does not specify how startup costs for the Authority, such as hiring staff and consultants, will be paid. Since the TFRTF and the SIB may not be used for administrative costs, presumably Lee and Collier counties will contribute funds to pay startup costs for the expressway authority, but it is not known how much will be contributed.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 401 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:

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:

FDOT does not oppose HB 401, according to the agency's legislative director.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES