HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7075 PCB EEIC 07-05 An act relating to transportation funding
SPONSOR(S): Economic Expansion & Infrastructure Council & Rep. Cannon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Expansion & Infrastructure Council	14 Y, 0 N	Creamer	Tinker
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SUMMARY ANALYSIS

PCB EEIC 07-05 makes numerous changes to the Department of Transportation's (DOT) funding. Specifically the bill revises the following:

- Revises the amount of documentary stamp funds to be deposited into the State Transportation Trust Fund (STTF).
- Revises the matching fund formula for fixed-guideway revenue bonds to allow for various matching scenarios up to a limit of 50 percent on the state's share of the eligible project cost;
- Allows DOT to waive the requirement for contractors to be pre-qualified to bid on jobs when the project is under $500,000 and noncompliance will not endanger the public health, safety, or welfare;
- Increases, from $150,000 to $250,000, the maximum contract price threshold at which DOT may waive surety bond requirements;
- Allows DOT to waive surety bond requirement for contracts greater than $250 million provided the contractor can provide alternate means of security for the balance of the contract amount; and
- Raises the Turnpike Enterprise's revenue bond cap from $4.5 billion in bonds issued to $10 billion in bonds outstanding. This change gives the Turnpike Enterprise more immediate bond capacity and creates a revolving line of credit to issue more bonds as the Turnpike pays down its balance.

PCB EEIC 07-05 has a negative fiscal impact to the STTF of $100 million per fiscal year. However, the bill also provides DOT with additional flexibility within its existing programs. The bill reduces the amount the department is required to match on fixed-guideway bond projects; increases the Turnpike bonding cap which will provide an additional $900 million in transportation improvements; and revises the department's contract letting requirements to potentially encourage competitiveness for contract lettings, in turn reducing the bid levels that impact the funds available to the department for transportation improvements.

This bill is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Excise Tax on Documents

Current Situation

The documentary stamp tax levied under Chapter 201, F.S., provides funds to the General Revenue Fund and various trust funds. Section 201.15, F.S., provides the distribution of the documentary stamp taxes.

Currently, the DOT receives $541.75 million each year from the documentary stamp tax. The $541.75 million is distributed as follows:

- 10 percent of these funds are specified for the New Starts Transit Program (NSTP), authorized by Title 49, U.S.C. s. 5309 and pursuant to s. 341.051, F.S.;
- 5 percent of these funds are specified for the Small County Outreach Program (SCOP), specified in s. 339.2818;
- 75 percent of the funds remaining after funding the NSTP and SCOP are specified for the Strategic Intermodal System (SIS), pursuant to ss. 339.61, 339.62, 339.63, and 339.64, F.S.; and
- 25 percent of the funds remaining after funding the NSTP and SCOP are specified for the Transportation Regional Incentive Program (TRIP), pursuant to s. 339.2819, F.S.

Proposed Changes

PCB EEIC 07-05 provides that effective July 1,2007, the amounts distributed from documentary stamp tax collections to the DOT may not exceed $441.75 million in each fiscal year.

The $441.75 million is distributed as follows:

- 10 percent of these funds are specified for the NSTP, authorized by Title 49, U.S.C. s. 5309 and pursuant to s. 341.051, F.S.;
- 5 percent of these funds are specified for the SCOP, specified in s. 339.2818;
- 75 percent of the funds remaining after funding the NSTP and SCOP are specified for the SIS, pursuant to ss. 339.61, 339.62, 339.63, and 339.64, F.S.; and
- 25 percent of the funds remaining after funding the NSTP and SCOP are specified for the TRIP, pursuant to s. 339.2819, F.S.

The bill will reduce funds to the DOT by $100 million each fiscal year and increase General Revenue by the same amount.

DOT Fixed-Guideway Funding

Current Situation

A "fixed-guideway transportation system" is a public transit system for transporting people by a conveyance, or a series of interconnected conveyances, specifically designed for travel on a stationary rail or other guideway. Section 215.615, F.S., authorizes DOT or commuter rail authorities and regional transportation authorities to issue revenue bonds to fund fixed guideway projects. Each party is contractually liable for an equal share of the bond debt service. Projects must comply with DOT's major capital investment policy guidelines, and must be included in the work program. The DOT's share of debt service is payable from, and is limited to, a maximum of 2 percent of all state revenues deposited into the STTF. These debt service payments are part of the 15-percent of transportation revenues committed to public transportation projects pursuant to s. 206.46, F.S. The local share is payable from any available revenues other than revenues of DOT.

To date, the fixed-guideway revenue bond financing option has not been used. However, DOT is negotiating with local governmental entities and a private railroad company in Central Florida to develop a fixed-guideway commuter or light rail system. Bond counsel assisting DOT with the financing component of the project has suggested changes to the existing s. 215.615, F.S. The proposed changes allow for various matching scenarios with DOT's share being established per an interlocal agreement at "up to 50 percent" of the eligible project costs, which may include debt service. The changes would clear up terminology issues and allow local authorities to contribute more local dollars when the state's available match is insufficient to finance 50 percent of the project.

Proposed Changes

PCB EEIC 07-05 deletes the 50/50 state/local matching requirement for fixed guideway revenue bonds. The proposed changes allow for various matching scenarios with an upward limit on DOT's share being established at up to 50 percent of the eligible project cost. This would allow local authorities to contribute more local dollars when the state's available match is insufficient to finance 50 percent of the project.

<u>DOT Contracting Issues</u>

Current Situation
Pursuant to s. 337.18, F.S., for transportation contracts and s. 255.05, F.S. for all other state or local governmental projects, any person or entity entering into a contract for the construction or repair of a public building or public works, must execute, deliver to the owner, and record a payment and performance bond purchased from a surety company. A payment bond guarantees that the contractor will pay certain subcontractors, laborers, and material suppliers associated with the project. A performance bond protects the owner from financial loss should the contractor fail to perform the contract in accordance with its terms and conditions. A surety bond is equal to 100 percent of the contract price, to enable DOT to complete the project should the contractor fail to complete the project according to the terms of the contract.

Certain contracts may be exempted from the bond requirement, depending on the amount of the contract and whether the governmental entity agrees. For example, s. 337.18, F.S., allows DOT to waive all or a portion of surety bond requirements for contracts of no more than $150,000 if the project is non-critical and if non-performance of the contract will not endanger the public health, safety, or property. Also, DOT may accept other types of financial guarantees (such as certified checks or postal money orders) for contracts valued at no more than $25,000. Also, s. 337.11, F.S., requires DOT to advertise in a local newspaper of general circulation a solicitation for bids on all construction projects with a contract price of no more than $250,000.

The rising material and labor costs of transportation projects are resulting in project bids coming in much higher than DOT has projected. Contractors for so-called "mega projects" costing more than $500 million are discovering that few surety bond companies worldwide are writing coverage in excess of that amount. Also, DOT is awarding more multi-year contracts than it used to, but surety bonds typically are an upfront, and not phased-in, cost based on the entire amount of the contract. For these reasons, the agency believes adjustments to its surety bond requirements would facilitate the "mega" and "multi-year" projects as described above.

Proposed Changes
PCB EEIC 07-05 makes a number of changes to DOT's contracting procedures specified in c. 337, F.S.

The bill:

- Amends s. 337.11(3),F.S., to specify that the newspaper advertising requirement doesn't apply to construction contracts valued at less than $500,000 for which DOT has waived prequalification requirements;
- Amends s. 337.14(1), F.S., to waive pre-qualification requirements for construction contracts of no more than $500,000 if DOT determines the project is non-critical in nature and failure to complete the project as agreed does not endanger the public health, safety, or property; and
- Amends s. 337.18, F.S., to allow DOT to waive, at its discretion, incremental annual surety bonds for multi-year maintenance contracts. The bill also amends this section of law to increase the minimum threshold from $150,000 to $250,000 for contracts that need a surety bond and to give the agency the discretion to reduce surety bond requirements or require alternative financial security for contracts valued at a minimum $250 million. Alternative security in lieu of a surety bond could include a line-of-credit, parent company guarantees, or cash collateral.

<u>Florida Turnpike Bond Cap</u>

Current Situation
Florida's Turnpike Enterprise is a 450-mile system of limited-access toll highways. The Turnpike's mainline passes through 11 counties from North Miami to a junction with Interstate 75 in north central Florida. In addition to the 265-mile mainline, the Turnpike system includes: the 47-mile Homestead Extension, which takes motorists to the top of the Florida Keys; the 23-mile Sawgrass Expressway/Toll 869 in Broward County; the 19-mile Seminole Expressway/Toll 417 in Seminole County; the 15-mile Veterans Expressway/Toll 589 in Tampa; an eight-mile portion of the Bee Line Expressway/Toll 528 in Orlando; the six-mile Southern Connector Extension of the Central Florida GreeneWay/Toll 417 in Orlando; the 25-mile Polk Parkway; and the 42-mile Suncoast Parkway.

The 1990 Florida Legislature passed legislation implementing a financing plan for Florida's Turnpike system to use the bonding capacity of the Turnpike to finance new transportation projects on a statewide basis. The bonds are repaid through tolls collected over time. Section 338.2275, Florida Statutes, establishes a ceiling on the amount of Turnpike bonds that can be issued to fund Turnpike projects. In 1997, the Florida Legislature authorized the continued expansion of Florida's Turnpike System by approving additional initiatives such as increasing the Turnpike's bonding capability from $1.5 billion to $3 billion and identifying additional statewide projects. In 2003, the bond cap was again increased to reach its current $4.5 billion level.

The current Work Program includes planned bond issues which will exhaust the Turnpike's current legislative bond cap by Fiscal Year 2010. The Work Program supports:

- The completion of the Western Beltway, Part C;
- Adding 150 lane miles through widening of the Turnpike System at a cost of nearly $1 billion;
- Adding 4 new interchanges and improving 3 other interchanges at a cost of $200 million to improve access to the Turnpike System;
- Converting the Sawgrass Expressway to a fully electronic, open road tolling project and adding SunPass Express lanes at other locations;
- Improving Toll and Intelligent Transportation System (ITS) to better manage the System and increase capacity and throughput at the toll plazas; and
- Continuing improvements for safety and preservation of the existing System.

In order to fund the significant capital program during the upcoming five-year period, the

Turnpike is planning five bond issues totaling approximately $2.2 billion. The long-range financial planning model for the Turnpike includes numerous system improvements providing access and capacity to the existing system, as well as significant funding for preservation, safety, modernization, and replacement of toll equipment technology.

Proposed Changes
PCB EEIC 07-05 raises the cap on Turnpike bonds from $4.5 billion to $10 billion, and changes the limitation to a maximum amount outstanding rather than amount issued, thereby providing for a "line of credit" that the Turnpike can utilize for long-term planning. According to DOT staff, this cap increase will allow the Turnpike to complete currently planned projects and to continue a proactive approach to building tolled facilities to handle future transportation needs. This would give the Turnpike Enterprise financial capacity to bond at a higher level, and add up to $900 million in new transportation improvements over the next five to ten years.

An increase in the bond cap will not impact the state of Florida's debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

C. SECTION DIRECTORY:

Section 1. Amends s. 201.15, F.S., to revise the amount of funds appropriated to the STTF from revenues collected for excise tax on documents.

Section 2. Amends s. 215.615, F.S., to make technical changes to fixed-guideway revenue bonding statute.

Sections 3-5. Amends ss. 337.11, 337.14, and 337.18, F.S., to make various changes to DOT's requirements on performance and surety bonds. Raises the minimum contract amount needing a surety bond $150,000 to $250,000. Allows multi-year maintenance contracts to obtain annual surety bonds. Allows DOT to waive surety bond requirement for projects in excess of $250 million if other less-traditional financial guarantees are available.

Section 6. Amends s. 338.2275, F.S., to change the Florida Turnpike's bond cap to $10 billion of bonds outstanding.

Section 7. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Section 1 of the bill reduces the recurring revenues collected from the excise tax on documents stamps that are currently appropriated to the STTF from $541.75 million to $441.75 in each fiscal year. This section also increases the General Revenue Fund by $100 million each fiscal year.

   Section 6 of the bill would raise the Florida Turnpike Enterprise's bond cap from an absolute $4.5 billion in bonds issued to a limit of $10 billion in bonds outstanding. Therefore, as the Turnpike retires outstanding bond issues, the Turnpike may issue more, as long as it does not exceed $10 billion outstanding at any time. This would give the Turnpike Enterprise financial capacity to bond at a higher level, and add up to $900 million in new transportation improvements over the next five to ten years.

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:

An increase in the bond cap will not impact the State of Florida's debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

The Legislature last raised the Turnpike bond cap in 2003, from $3 billion to $4.5 billion.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES