

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 311 Orlando-Orange County Expressway Authority

**SPONSOR(S):** Transportation & Highway Safety Subcommittee, Nelson

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	10 Y, 2 N, As CS	Johnson	Miller
2) Local & Federal Affairs Committee	18 Y, 0 N	Flegiel	Rojas
3) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Davis	Davis
4) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill renames the Orlando-Orange County Expressway Authority Law as the Central Florida Expressway Authority Law. Specifically, the bill:

- Creates the Central Florida Expressway Authority (CFX) and provides for the transfer of governance and control, legal rights and powers, responsibilities, terms and obligations of the Orlando-Orange County Expressway Authority (OOCEA) to CFX.
- Provides for the composition of the governing body of CFX and the appointment of its officers.
- Provides that the area served by CFX is within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties.
- Removes the existing OOCEA requirement that the route of a project be approved by a municipality before the right-of-way can be acquired.
- Requires that CFX encourage the inclusion of local-, small-, minority-, and women-owned businesses in its procurement and contracting opportunities.
- Removes the existing OOCEA authority to waive payment and performance bonds for certain public works projects awarded pursuant to an economic development program.
- Provides that upon termination of the lease-purchase agreement of the Central Florida Expressway System, title will be retained by the state, and extends the terms of lease-purchase agreements from 40 to 99 years.
- Provides for the transfer of the Osceola County Expressway System to CFX and provides for the repeal of part V of ch. 348, F.S., when the Osceola County Expressway System is transferred to CFX.
- Makes numerous conforming, grammatical, and editorial changes.

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### **Orlando Orange County Expressway Authority**

The Orlando Orange County Expressway Authority (OOCEA), created in part III of ch. 348, F.S.,<sup>1</sup> currently serves Orange County and is authorized to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards in the county, as well as outside the jurisdictional boundaries of Orange County with the consent of the county within whose jurisdiction the activities occur.<sup>2</sup>

The OOCEA's governing body consists of five members. The Governor appoints three members who are citizens of Orange County and who serve four year terms and may be reappointed. The Orange County Mayor and the Department of Transportation's (DOT) district five secretary serve as *ex-officio* members of the Board.<sup>3</sup>

The OOCEA currently owns and operates 105 centerline miles of roadway in Orange County, which includes:

- 22 miles of the Spessard L. Holland East-West Expressway (SR 408);
- 23 miles of the Martin Andersen Beachline Expressway (SR 528);
- 33 miles of the Central Florida GreeneWay (SR 417);
- 22 miles of the Daniel Webster Western Beltway (SR 429); and
- 5 miles of the John Land Apopka Expressway (SR 414).

Pursuant to an existing Memorandum of Understanding (MOU) and lease-purchase agreement between DOT and OOCEA, OOCEA will independently finance, build, own, and manage certain portions of the Wekiva Parkway. In order to ensure that funds are available to DOT for the Wekiva Parkway, in 2012, the Legislature codified references to the existing MOU and lease-purchase agreements, and established a repayment schedule for OOCEA to reimburse DOT for the costs of operation and maintenance of the Orlando-Orange County Expressway System in accordance with terms of the MOU.<sup>4</sup>

The OOCEA was required to pay DOT \$10 million on July 1, 2012, and is required to pay \$20 million every July 1 thereafter to pay off the long-term debt obligation to DOT. When the debt has been fully repaid, DOT's obligation to pay any cost of operation, maintenance, repair, or rehabilitation of the OOCEA system will terminate, and ownership of the system will remain with OOCEA. DOT advises that OOCEA's current long-term debt is over \$211 million.<sup>5</sup>

##### **Osceola County Expressway Authority**

Created in 2010, as part V of ch. 348, F.S.,<sup>6</sup> the Osceola County Expressway Authority (OCX) currently serves Osceola County and has the purposes and powers identified in the Florida Expressway Authority Act,<sup>7</sup> including the power to acquire, hold, construct, improve, maintain, operate, and own an expressway system.<sup>8</sup>

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<sup>1</sup> Part III of ch. 348, F.S., consists of ss. 348.751 through 348.765, F.S.

<sup>2</sup> S. 348.754(2)(n), F.S.

<sup>3</sup> S. 348.753(2), F.S.

<sup>4</sup> Ch. 2012-128, L.O.F.

<sup>5</sup> Florida Department of Transportation bill analysis of SB 230. On file with Transportation & Highway Safety Subcommittee staff.

<sup>6</sup> Part V of ch. 348, F.S., consists of ss. 348.9950 through 348.9961, F.S.

<sup>7</sup> Part I of ch. 348, F.S.

<sup>8</sup> S. 348.0004, F.S.

The OCX governing board consists of six members. Five members, one of which must be a member of a racial or ethnic minority, must be residents of Osceola County. Three of the five members are appointed by the governing body of the county and the remaining two are appointed by the Governor. DOT's district five secretary serves as an *ex-officio*, non-voting member.<sup>9</sup>

OCX is not currently operating any facility and has no funding or staffing. Staff assistance and other support have been provided by Osceola County. The Florida Transportation Commission indicates that in 2012, DOT provided \$2.5 million in funding to OCX, which will primarily be used for two Project Development & Environment Studies to be conducted by Florida's Turnpike Enterprise. OCX has developed a master plan that includes construction of four proposed tolled expressways: Poinciana Parkway, Southport Connector Expressway, Northeast Connector Expressway, and Osceola Parkway Extension. OCX has an agreement with Osceola County under which the county will advance funds for operation and startup costs until OCX has a revenue-producing project and which requires OCX to repay the county within 15 years of receiving the funds. A 2012 agreement calls for the issuance of bonds by the county to pay for the Poinciana Parkway project costs incurred by OCX. OCX will design and construct the parkway pursuant to a lease-purchase agreement with the county.<sup>10</sup>

### **Seminole County and Lake County**

In 2011, the Legislature abolished the Seminole County Expressway authority,<sup>11</sup> and Seminole County is currently not served by an expressway authority. Lake County is also not currently served by an expressway authority.

### **Proposed Changes**

#### **Short Title (Section 1)**

The bill amends s. 348.751, F.S., changing the short title of part III of ch. 348, F.S., from the "Orlando-Orange County Expressway Authority Law" to the "Central Florida Expressway Authority Law."

#### **Definitions (Section 2)**

The bill amends s. 348.752, F.S., revising various definitions used in part III of ch. 348, F.S.

The bill defines "Central Florida Expressway Authority" to mean the body politic and corporate and agency of the state created by this part.

The bill defines "Central Florida Expressway System" to mean any expressway or appurtenant facilities within the jurisdiction of the authority, including all approaches, roads, bridges, and avenues for the expressway and any rapid transit transportation system, tram, or fixed-guideway system located within the right-of-way of an expressway.

The bill defines "transportation facilities" to mean and include the mobile and fixed assets, and the associated real or personal property or rights, used in the transportation of persons or property by any means of conveyance and all appurtenances, such as, but not limited to, highways; limited or controlled access lanes, avenues of access, and facilities; vehicles; fixed guideway facilities, including maintenance facilities; and administrative and other office space for the exercise by the authority of the powers and obligations granted in this part.

The bill deletes the definitions for "city" and "county," and revises various definitions making plain-language changes and conforming terminology to the renaming.

The bill removes a provision providing that the singular includes the plural and vice versa, and words importing persons include firms and corporations. This provision is redundant to s. 1.01, F.S., regarding general statutory construction.

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<sup>9</sup> S. 348.9952, F.S.

<sup>10</sup> Florida Transportation Commission *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 171.

<sup>11</sup> Ch. 2011-64, L.O.F.

### **Central Florida Expressway Authority (Section 3)**

The bill amends s. 348.753, F.S., changing the catchline from Orlando-Orange County Expressway Authority to Central Florida Expressway Authority.

The bill provides that effective July 1, 2015; the Central Florida Expressway Authority (CFX) assumes the governance and control of the OOCEA system, including its assets, personnel, contracts, obligations, liabilities, facilities, and tangible and intangible property. Any rights in such property and other legal rights of the authority are transferred to CFX. CFX succeeds and assumes the powers, responsibilities, and obligations of OOCEA on July 1, 2015.

The transfer is subject to the terms and covenants provided for the protection of the OOCEA bondholders and in the lease-purchase agreement and the resolutions adopted in connection with the issuance of the bonds. Further, the transfer does not impair the terms of the contract between the OOCEA and the bondholders, does not act to the detriment of the bondholders, and does not diminish the security of the bonds.

After the transfer, CFX shall operate and maintain the expressway system and any other facilities of the OOCEA in accordance with the terms, conditions, and covenants contained in the bond resolutions and lease-purchase agreement securing the bonds of the authority. CFX shall collect toll revenues and apply them to the payment of debt service as provided in the bond resolution securing the bonds and shall expressly assume all obligations relating to the bonds to ensure that the transfer will have no adverse impact on the security for the bonds. The transfer does not make the obligation to pay the principal and interest on the bonds a general liability of CFX or pledge additional expressway system revenues to payment of the bonds.

Revenues that are generated by the expressway system and other facilities of CFX which were pledged by OOCEA to payment of the bonds will remain subject to the pledge for the benefit of the bondholders. The transfer does not modify or eliminate any prior obligation of DOT to pay certain costs of the expressway system from sources other than revenues of the expressway system.

The bill also provides for an 11 member governing board for CFX. The chairs of the boards of the county commissions of Seminole, Lake, and Osceola Counties each appoint one member, who may be a commission member or chair. The Governor appoints six citizen members; two must be citizens of Orange County, one member each must be a citizen of Seminole, Lake, or Osceola Counties, and one member may be a citizen of any of the identified counties. The 10<sup>th</sup> member is the mayor of Orange County and the 11<sup>th</sup> member is the mayor of the City of Orlando. The executive director of the Florida Turnpike Enterprise serves as a non-voting advisor to the governing body of the authority.

Each board member appointed by the Governor serves a four-year term, and county appointed members serve a two-year term. Standing board members complete their terms. Except as provided, a person who is an officer or employee of a municipality or county is not eligible for appointment to the authority.

### **Purposes and Powers (Section 4)**

The bill amends s. 348.754, F.S., relating to the purposes and powers of CFX. The bill provides that except otherwise specifically provided; the area served by the authority is within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties. The bill authorizes CFX to construct the Central Florida Expressway System including rapid transit, trams, fixed guideways, thoroughfares, and boulevards.

To ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by DOT, CFX may not, without prior consent of the secretary of DOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

The bill changes from 40 years to 99 years the length of time CFX is authorized to enter into and make lease-purchase agreements with DOT.

The bill provides that CFX is a party to a lease-purchase agreement between DOT and OOCEA dated December 23, 1985, as supplemented by a first supplement to the lease purchase agreement dated November 25, 1986, and a second supplement to the lease-purchase agreement dated October 28, 1988. CFX may not enter into another lease-purchase agreement with DOT and may not amend the existing agreement in a manner that expands or increases DOT's obligation unless DOT determines that the agreement or amendment is necessary to permit the refunding of bonds issued before July 1, 2013.

The bill provides that toll revenues attributable to an increase in toll rates charged on or after July 1, 2015, for use of a facility or portion of a facility may not be used to construct or expand a different facility unless a two-thirds majority of the members of the authority votes to approve such use. This requirement does not apply if and to the extent that:

- Application of the requirement would violate any covenant established in a resolution or trust indenture under which bonds were issued by OOCEA on or before July 1, 2015; or
- Application of the requirement would cause the authority to be unable to meet its obligations under the terms of the MOU between the authority and DOT as ratified by the OOCEA board on February 22, 2012.

Notwithstanding s. 338.165, F.S.,<sup>12</sup> except as otherwise prohibited by part III of ch. 348, F.S., to the extent revenues of the expressway system exceed amounts required to comply with any covenants made with holders of the bonds, revenues may be used, within the right-of-way of the expressway system, for the financing or refinancing the planning design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of an intermodal facility of facilities, a multimodal corridor or corridors, or any programs or projects that will improve the levels of service on the expressway system, provide the expenditures are consistent with the metropolitan planning organization's long-range plan.

The bill provides that CFX shall encourage the inclusion of local businesses, small businesses, and minority-owned and women-owned businesses in its procurement and contracting opportunities.

The requirement for approval of the municipal governing board of a project route prior to the acquisition of right-of-way for a project within the boundaries of Orange County is removed, as are provisions authorizing CFX to waive payment and performance bonds on certain construction contracts and related small business provisions.

### **Conforming Changes (Sections 5 through 11)**

The bill amends the following sections conforming terminology, and make grammatical and editorial changes:

- Section 348.7543, F.S., relating to improvements, bond financing authority for.
- Section 348.7544, F.S., relating to Northwest Beltway Part A, construction authorized; financing.
- Section 348.7545, F.S., relating to Western Beltway part C, construction authorized; financing.
- Section 348.7546, F.S., relating to Wekiva Parkway, construction authorized; financing.
- Section 348.7547, F.S., relating to Maitland Boulevard Extension and Northwest Beltway Part A Realignment construction authorized; financing.
- Section 348.755, F.S., relating to bonds of the authority.
- Section 348.756, F.S., relating to remedies of the bondholders.

### **Lease-Purchase Agreements (Section 12)**

The bill amends s. 348.757, F.S., providing that upon the termination of the current lease-purchase agreement between OOCEA and DOT, title in fee simple absolute to the former OOCEA system must be transferred to the state. The bill also makes conforming, grammatical, and editorial changes to that section.

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<sup>12</sup> Section 338.165, F.S., relates to the continuation of tolls.

### **Conforming Changes (Sections 13 through 18)**

The bill amends the following sections conforming terminology, and make grammatical and editorial changes:

- Section 348.758, F.S., relating to appointment of DOT as agent of authority for construction.
- Section 348.759, F.S., relating to acquisition of land and property.
- Section 348.760, F.S., relating to cooperation with other units, boards, agencies, and individuals.<sup>13</sup>
- Section 348.761, F.S., relating to covenant of the state.
- Section 348.765, F.S., relating to this part complete and additional authority.
- Section 369.317, F.S., relating to the Wekiva Parkway.

### **Wekiva River Basin Commission (Section 19)**

The bill amends s. 369.324(1), F.S., removing and replacing references to the OOCEA and previously repealed Seminole County Expressway Authority, and revises the composition of the Wekiva River Basin Commission due to the previous repeal of the Seminole County Expressway Authority.

### **Transfer of the Osceola County Expressway System (Section 20)**

The bill provides that effective upon the completion of the Poinciana Parkway,<sup>14</sup> a limited-access facility of approximately nine miles in Osceola County between the intersection of County Road 54 and U.S. 17/U.S. 92 and the intersection of Rhododendron and Cypress Parkway, described in OCX's May 8, 2012, master plan,<sup>15</sup> all powers, governance, and control of the Osceola County Expressway System<sup>16</sup> is transferred to CFX, and the assets, liabilities, facilities, tangible and intangible property and any rights in the property, and any other legal rights of OCX are transferred to CFX. The effective date of the transfer shall be extended until completion of construction of such portions of the Southport Connector Expressway, the Northeast Connector Expressway, such portions of the Poinciana Parkway to connect to State Road 429, and the Osceola Parkway Connection, as each is described in OCX's May 8, 2012, Master Plan, which are included in any design contract executed by OCX before July 1, 2020. Since it is based on contingencies, there is not a date certain when OCX will be transferred to CFX. Part V of Ch. 348, F.S.,<sup>17</sup> is repealed on the same date that the OCX is transferred to CFX.

The bill requires CFX to reimburse any and all obligations of any other governmental entities with respect to the Osceola County Expressway System, including any obligations of Osceola County with respect to operations and maintenance of the Osceola County Expressway System and any loan repayment obligations, including repayment obligations with respect to state infrastructure bank loans. Such reimbursement shall be made from revenues available for such purpose after payment of all amounts required:

- Otherwise by law;
- By the terms of any resolution authorizing the issuance of bonds by CFX, OOCEA, or OCX;
- By the terms of any resolution under which bonds are issued by Osceola County for the purpose of constructing improvements to the Osceola County Expressway System; and
- By the terms of the MOU between OOCEA and DOT as ratified by the board of OOCEA on February 22, 2012.

### **Effective Date (Section 21)**

The bill has an effective date of July 1, 2015.

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<sup>13</sup> This section also removes a reference to the previously repealed Seminole County Expressway Authority.

<sup>14</sup> Information on the Poinciana Parkway is available at: [http://www.osceolaxway.com/ocx/297-21261-21262/poinciana\\_parkway\\_project.cfm](http://www.osceolaxway.com/ocx/297-21261-21262/poinciana_parkway_project.cfm) (Last visited November 14, 2013).

<sup>15</sup> The Poinciana Parkway is expected to be completely open to traffic in June 2016. *Ground Broken on Poinciana Parkway*. Lakeland Ledger, December 18, 2013. Available at: <http://www.theledger.com/article/20131218/NEWSCHIEF/131219179> (Last Visited: February 10, 2014).

<sup>16</sup> The Osceola County Expressway System is created pursuant to part V of Ch. 348, F.S.

<sup>17</sup> Part V of ch. 348, F.S., consists of ss. 348.9950 through 348.9961, F.S.

**B. SECTION DIRECTORY:**

- Section 1 Amends s. 348.751, F.S, providing a short title.
- Section 2 Amends s. 348.752, F.S., providing definitions.
- Section 3 Amends s. 348.753, F.S., relating to the Central Florida Expressway Authority.
- Section 4 Amends s. 348.754, F.S., relating to purposes and powers.
- Section 5 Amends s. 348.7543, F.S., relating to improvements, bond financing authority for.
- Section 6 Amends s. 348.7544, F.S., relating to Northwest Beltway Part A, construction authorized; financing.
- Section 7 Amends s. 348.7545, F.S., relating to Western Beltway Part C, construction authorized; financing.
- Section 8 Amends s. 348.7546, F.S., relating to Wekiva Parkway, construction authorized; financing.
- Section 9 Amends s. 348.7547, F.S., relating to Maitland Boulevard Extension and Northwest Beltway Part A Realignment construction authorized; financing.
- Section 10 Amends s. 348.755, F.S., relating to bonds of the authority.
- Section 11 Amends s. 348.756, F.S., relating to remedies of bondholders.
- Section 12 Amends s. 348.757, F.S., relating to lease-purchase agreements.
- Section 13 Amends s. 348.758, F.S., relating to appointment of the department as agent of authority for construction.
- Section 14 Amends s. 348.759, F.S., relating to acquisition of lands and property.
- Section 15 Amend s. 348.760, F.S., relating to cooperation with other unites, boards, agencies, and individuals.
- Section 16 Amends s. 348.761, F.S., relating to covenant of the state.
- Section 17 Amends s. 348.765, F.S., relating to this part complete and additional authority.
- Section 18 Amends s. 369.317, F.S., relating to the Wekiva Parkway.
- Section 19 Amends s. 369.324, F.S., relating to the Wekiva River Basin Commission.
- Section 20 Provides for the transfer of the Osceola County Expressway Authority to the Central Florida Expressway Authority.
- Section 21 Provides an effective date.

**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:

The bill provides that the existing lease-purchase agreement may not be amended to expand or increase DOT's obligations unless the department determines that such amendment is necessary to permit the refunding of bonds issued before July 1, 2013. OOCEA's current long-term debt is over \$211 million.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In section 7, the bill makes conforming changes to s. 348.7545, F.S. This statute authorizes OOCEA to construct the Western Beltway, Part C. According to DOT, since the statute's original passage, Western Beltway, Part C, has been constructed and opened. However, although the statute authorizes OOCEA to build the entire roadway segment, OOCEA only built one half of the segment. This section could be corrected to reflect the roadway limits actually constructed, owned, and operated by OOCEA.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A