

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 772

INTRODUCER: Transportation Committee and Senator Garcia

SUBJECT: Expressway Authorities

DATE: April 8, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Price | Eichin | TR | Fav/CS |
| 2. | White | Yeatman | CA | Favorable |
| | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 772 revises provisions of ch. 348, F.S., governing the Miami-Dade County Expressway Authority (MDX), the Tampa-Hillsborough County Expressway Authority (THEA), the Orlando-Orange County Expressway Authority (OOCEA), and the Osceola County Expressway Authority (OCX), to impose certain membership restrictions, post-employment restrictions, and ethics and financial disclosure requirements. More specifically, the bill:

- Prohibits members of the authorities from serving on certain other transportation-related entities while serving on an authority.
- Prohibits lobbyists from serving as a member of any of the authorities.
- Provides certain post-employment restrictions for authority members or executive directors and penalties for violations.
- Requires certain conflict of interest disclosures by board members, employees, or consultants of the authorities.
- Requires an authority's general counsel to serve as ethics officer and to review the required disclosure forms, except that an authority's executive director is required to review the forms filed by the general counsel.
- Requires the authorities to outline the conflict of interest process in each authority's Code of Ethics.
- Requires each ethics officer to review, update, and present for board approval at least once every two years each authority's Code of Ethics policy.
- Prohibits employees and consultants of the authorities from serving on the governing body of an authority while employed by or under contract with that authority.

- Requires employees to be adequately informed and trained on the ethics code and to continually participate in ongoing ethics education.

The bill also revises the powers of the THEA to authorize construction, operation, and maintenance of certain transportation facilities, including those within the jurisdictional boundaries of a consenting contiguous county, similar to the OOCEA's current authority.

II. Present Situation:

Miami-Dade County Expressway Authority

The Florida Expressway Authority Act (Act), codified in part I of ch. 348, F.S., authorizes any county or two or more contiguous counties within a single district of the Florida Department of Transportation (FDOT) to form an expressway authority by resolution adopted by the board of county commissioners. The MDX is the only expressway authority created under the Act.¹ The MDX was created by the Miami-Dade County Commission in 1994, pursuant to Chapter 2 Article XVIII of the Miami-Dade County Code of Ordinances.²

MDX's system consists of the following roadways in Miami-Dade County:

- Airport Expressway (State Road 112);
- Dolphin Expressway (State Road 836);
- Don Shula Expressway (State Road 874);
- Snapper Creek Expressway (State Road 878); and
- Gratigny Parkway (State Road 924).

Tampa-Hillsborough County Expressway Authority

The THEA is created in part II of ch. 348, F.S., and is authorized to construct, reconstruct, improve, extend, repair, maintain, and operate an expressway system in Hillsborough County.³ The THEA owns the four-lane Selmon Expressway, which is a 15-mile limited access toll road crossing the City of Tampa from Gandy Boulevard in south Tampa, through downtown Tampa and east to I-75 and Brandon.

Orlando-Orange County Expressway Authority

The OOCEA, created in part III of ch. 348, F.S., 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.⁴ The OOCEA currently owns and operates 105 centerline miles of roadway in Orange County consisting of:

- 22 miles of the Spessard L. Holland East-West Expressway (SR 408);

¹ While MDX is the only authority created pursuant to the Act, Part V of ch. 348, F.S., creating the Osceola County Expressway Authority contains numerous references to the Act.

² Miami-Dade County Regulations, Art. XVII, Miami-Dade County Expressway Authority, available at http://miamidade.fl.eregulations.us/rule/coor/coor_ptiii_ch2_artxviii (Last visited Apr. 4, 2014).

³ Section 348.53, F.S.

⁴ Section 348.754(2)(n), F.S.

- 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).

Osceola County Expressway Authority

The 2010 Legislature created the Osceola County Expressway Authority in part V of ch. 348, F.S. The OCX currently serves Osceola County and has the purposes and powers identified in the Florida Expressway Authority Act,⁵ including the power to acquire, hold, construct, improve, maintain, operate, and own an expressway system.⁶ The 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 OCX has recently begun construction of the Poinciana Parkway pursuant to an agreement with Osceola County.⁷

III. Effect of Proposed Changes:

MDX, THEA, OOCEA and OCX (Sections 1, 2, 5, and 6)

The bill applies the same ethics and accountability requirements to each of the identified authorities by amending, respectively:

- Section 348.0003, F.S., under which the MDX is currently created;
- Section 348.52, relating to the THEA;
- Section 348.753, F.S., relating to the OOCEA; and
- Section 348.9952, F.S., relating to the OCX.

Membership and Service

The bill prohibits a member of an authority appointed by the governing board of the county or appointed by the Governor from serving as a member of any other transportation-related board, commission, or organization with audit oversight of an authority while serving as a member of that authority. Lobbyists⁸ are prohibited from being appointed or serving as a member of an authority. Authority employees and consultants are prohibited from serving on an authority's governing board while employed by or under contract with that authority.

⁵ Part I of ch. 348, F.S.

⁶ Section 348.0004, F.S.

⁷ FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 171.

⁸ Section 112.3215(1)(h), F.S., defines "lobbyist" as "a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.
2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.
3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.
4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017."

Post-Employment Restrictions

A member or an executive director of an authority is prohibited from the following:

- Personally representing another person or entity for compensation before an authority within two years after vacating his or her position; and
- After vacating a board member or executive director position, having an employment or contractual relationship with a business entity other than an agency⁹ in connection with a contract in which the member or executive director personally and substantially participated while a member or employee of an authority.

Violations of the restrictions are punishable in accordance with s. 112, 317, F.S., generally punishable by a number of measures. The possible penalties range, for example, from impeachment or removal from office, suspension or dismissal from employment, and loss of some portion of salary, to public censure and reprimand, a \$10,000 civil penalty, and restitution of any benefits received because of a violation.

Ethics, Disclosure, and Accountability

An authority board member, employee, or consultant holding a position that may influence authority decisions may not engage in any relationship that would adversely affect his or her judgment in carrying out authority business. Each such member, employee, or consultant is required to annually make the following disclosures on a disclosure form to prevent such conflicts:

- Any relationship which affords a current or future financial benefit to such person, or to a relative or business associate of such person, and which reasonable person would conclude has the potential to create a prohibited conflict of interest;
- Whether a relative of such person is a registered lobbyist and, if so, the names of the lobbyist's clients, which names must be provided in writing to the ethics officer; and
- All interests in real property that such person has, if the property is located within, or within a half mile radius of, any actual or prospective authority roadway project. The executive director is required to provide a corridor map and a property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment map with a list of associated owners to all board members, employees, and consultants.

Each authority's general counsel is required to serve as the authority's ethics officer, who must review the described disclosure forms, except that the executive director is required to review forms filed by the general counsel. The ethics officer must review, update, and present for board approval at least biannually the ethics policy. Employees must be adequately informed and trained on the Code of Ethics and continually participate in ongoing ethics education.

The bill also relocates in each of the amended sections, and conforms in the latter, existing language relating to members' removal from office by the Governor and reimbursement for

⁹ Section 112.312(2), F.S., defines "agency" as "any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university."

travel and other expenses. Likewise, existing language relating to constitutional financial disclosure requirements and their applicability is relocated.

THEA (Sections 3 and 4)

The bill amends s. 348.53, F.S., revising the Legislative declaration of the THEA's purposes for the benefit of the people to include managed lanes.

The bill also amends s. 348.54, F.S., to authorize the THEA, with the consent of a contiguous county within whose jurisdiction the activities occur, and similar to the OOCEA's current authorization, to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, boulevards, and managed lanes outside Hillsborough County, together with the right to construct, operate, and maintain facilities and electronic toll payment systems thereon or incidental thereto.

Section 7 conforms a cross-reference necessitated by other changes in the act.

Section 8 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Whether any transportation-related board, commission, or organization has “audit oversight” of any of the identified authorities is unclear.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 348.003, 348.52, 348.53, 348.54, 348.753, 348.9952, and 343.0003.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on April 3, 2014:

The CS revises provisions governing the MDX, the THEA, the OOCEA, and the OCX, to:

- Prohibit certain authority members from serving as a member of any other transportation-related entity with audit oversight of an authority while serving as a member of that authority;
- Prohibit lobbyists from serving as a member of an authority;
- Provide post-employment restrictions for an authority member or executive director and penalties for violations of the restrictions;
- Provide ethics, conflict of interest, and disclosure requirements for members, employees, and consultants of an authority; and
- Authorize the THEA, with the consent of a contiguous county, to construct, operate, and maintain certain transportation facilities, including managed lanes, outside Hillsborough County, as well as the right to construct, operate, and maintain facilities and electronic toll payment systems.

The CS removes the following from the original bill:

- Revisions to the MDX governing board membership;
- Authorization of the MDX to increase tolls to adjust for inflation under certain conditions;
- Revisions to the authorized use of any surplus revenues realized from tolls collected on the MDX expressway system;
- Elimination on July 1, 2014, of the MDX’s authority to borrow money and issue notes, bonds, and other forms of indebtedness, except for refunding bonds; and
- Biannual provision by the MDX to the County Commission of a complete financial audit.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
