

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 961 Transportation  
**SPONSOR(S):** Artiles  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Ports Subcommittee	11 Y, 0 N	Willson	Vickers
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Davis	Davis
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

HB 961 relates to the operations of various toll agencies and facilities. In summary, the bill:

- Provides for the application of specified requirements to the transportation and expressway authorities of the state, counties, and municipalities.
- Requires toll agencies to adopt a policy for removal of directors due to ethical violations or lack of attendance.
- Requires toll agencies to post audio and video records of certain meetings to their website within 30 days after the meeting is held.
- Requires toll agencies to provide an accounting for the disbursement of certain penalties.
- Directs the Florida Transportation Commission (FTC) to conduct a study relating to the potential for the display of estimated travel times in addition to toll rates.
- Authorizes the FTC to retain experts as necessary to complete the study and requires the Department of Transportation to pay for such experts.
- Directs the FTC to provide a written report of its findings to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriations committees of the Legislature by October 31, 2016.
- Provides that an electronic toll collection system must make information available to enrollees for a specified period of time.
- Provides that paper invoices and online statements for electronic toll collection systems must disclose applicable processing fees in a specified manner.

The bill does not appear to have a significant impact on state or local government.

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Toll Agencies**

In addition to the Department of Transportation (DOT), various authorities are currently operating toll facilities and collecting and reinvesting toll revenues. Aside from Florida's Turnpike Enterprise (which is part of DOT), most, but not all, of the toll authorities are established under ch. 348, F.S., entitled "Expressway and Bridge Authorities." Section 343.1002, F.S., defines "Transportation authorities" as the department and any entity created under chapter 343, chapter 348, or chapter 349.

##### *Regional Transportation Authorities*

The following regional transportation authorities are created in and governed by chapter 343, F.S.:

- Northeast Florida Regional Transportation Authority
- South Florida Regional Transportation Authority
- Central Florida Regional Transportation Authority
- Northwest Florida Transportation Corridor Authority
- Tampa Bay Area Regional Transportation Authority

The Regional Transportation Authorities were created to improve mobility, promote economic development, and implement transportation projects, including multimodal and public transit systems, within their respective jurisdictions. They are governed by boards composed of as few as 5 to as many as 16 voting members, who are drawn from both the public and private sector either as appointees or by virtue of their position.

##### *Expressway and Bridge Authorities*

Toll facilities have been used throughout Florida as a means of financing road and bridge construction for many years. Early in the state's history, most toll roads and bridges were constructed by private individuals or firms. Later, state governmental entities (DOT and the Florida Turnpike Authority) began constructing toll facilities.

More recently, toll facilities have been financed and constructed by specially created units of government operating primarily under local government control through boards or commissions. Those units under local government control, usually characterized as expressway or bridge authorities, arrange for construction of the facilities, including the required debt financing. Generally, toll facilities are designed to be self-supporting projects, i.e., the costs of construction, operation, and maintenance are recovered from toll revenues generated by users of the facility.

Chapter 348, F.S., creates various expressway and bridge authorities, and also contains the model expressway authority under which the Miami-Dade Expressway Authority is created. Each expressway authority act contains various provisions regarding the governance of the individual authority.

The expressway and bridge authorities governed by chapter 348, F.S. include:

- Miami-Dade Expressway Authority
- Tampa-Hillsborough Expressway Authority
- Central Florida Expressway Authority
- Santa Rosa Bay Bridge Authority
- Osceola County Expressway Authority

The Expressway and Bridge Authorities were created to construct, improve, maintain and operate the expressway systems and facilitate transportation for the benefit of the people within their respective jurisdictions. They are governed by boards composed of as few as 6 to as many as 13 voting members, who are drawn from both the public and private sector either as appointees or by virtue of their position.

### *Florida Turnpike Enterprise*

Florida's Turnpike Enterprise (FTE), part of the Florida Department of Transportation, oversees a 483-mile system of limited-access toll highways: Florida's Turnpike, extending north from Homestead in Miami-Dade County to Wildwood in Sumter County, the Seminole Expressway and Southern Connector (Toll 417) in Seminole, Orange and Osceola counties, the Beachline Expressway West (Toll 528) in Orange County, the Polk Parkway (Toll 570) in Polk County, the Veterans Expressway and Suncoast Parkway in Hillsborough, Pasco and Hernando counties (Toll 589), the Sawgrass Expressway (Toll 869) in Broward County, and the Daniel Webster Western Beltway (Toll 429) in Orange and Osceola Counties and the I-4 Connector in Hillsborough County.<sup>1</sup> FTE also collects tolls for eight off-system facilities.

The members of each expressway authority, transportation authority, bridge authority, or toll authority must comply with the financial disclosure requirements of article II, section 8 of the Florida Constitution.<sup>2</sup> Many of the authorities are subject to additional ethical provisions as provided for in their respective statutory enacting sections.

### **Tolling**

Transportation and expressway authorities provide limited access facilities for public use.<sup>3</sup> Limited access facilities are designed to allow high-speed and high-volume traffic movements within the state.<sup>4</sup> These authorities may exist at the state, county, or municipal level.<sup>5</sup>

Federal law generally prohibits the imposition of tolls on facilities constructed with federal funds; however, exemptions are provided. For example, 23 USC 129 permits the imposition of tolls on free non-Interstate highways, bridges, and tunnels and certain tolled facilities pursuant to the provisions of this section. In addition, 23 USC 166 permits the conversion of high occupancy vehicle lanes into high occupancy toll lanes. The federal authorization act passed in 2005 (SAFETEA-LU) also continued and established new exemptions to 23 USC 301 (e.g., Value Pricing Pilot Program, Express Lanes Demonstration Program).

Chapter 338, F.S., sets forth several provisions related to tolling. Section 338.155, F.S., requires the payment of tolls on toll facilities with some exceptions (e.g., any person operating a fire or rescue vehicle when on official business). Section 338.165, F.S., authorizes the collection of tolls on a revenue-producing project after the discharge of any bond indebtedness, and allows tolls to be increased. Except for high occupancy toll lanes or express lanes, no tolls may be charged for the use of an interstate highway where tolls were not charged as of July 1, 1997.<sup>6</sup> DOT's toll rate schedule is published by rule.<sup>7</sup>

In order to help offset project costs, the DOT may establish tolls on the following facilities:

- New limited access facilities on the State Highway System (SHS)

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<sup>1</sup> See <http://www.dot.state.fl.us/contractsadministrationturnpike/> (last visited January 12, 2016)

<sup>2</sup> s 348.0003(4)(c), F.S.

<sup>3</sup> s 338.01(2), F.S.

<sup>4</sup> s 338.01(1), F.S.

<sup>5</sup> s 338.01(2), F.S.

<sup>6</sup> s. 338.165(5), F.S.

<sup>7</sup> See Rule 14-15.0081, F.A.C. "Toll Facilities Description and Toll Rate Schedule" Facilities included in the schedule are as follows: Alligator Alley (Everglades Parkway), Sunshine Skyway Bridge, Pinellas Bayway, Florida Department of Transportation segment of Wekiva Parkway, Florida's Turnpike Mainline (Southern Coin, Ticket, and Northern Coin Systems, the Homestead Extension of Florida's Turnpike, and Beachline West Expressway), Polk Parkway, Sawgrass Expressway, Southern Connector Extension, Seminole Expressway, Suncoast Parkway, Veterans Expressway, Florida's Turnpike System segment of the Western Beltway Part C, I-4 Connector, Beachline East Expressway and First Coast Expressway.

- Lanes added to existing limited access facilities on the SHS
- New major bridges over waterways on the SHS
- Replacements for existing major bridges on the SHS<sup>8</sup>

Section 338.151, F.S., prohibits DOT from establishing a new toll on an untolled lane that existed prior to July 1, 2012. However, high-occupancy vehicle lanes, express lanes, and the turnpike system are exempted from this prohibition.

Toll revenues collected on Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway may be used to secure bonds that fund transportation projects located within the county(s) where the facility is located.<sup>9</sup>

If toll revenues are collected on a county road system, any remaining tolls must be used for the construction, maintenance, or improvement of a state or county road in the same county(s) as the toll was collected.<sup>10</sup> The Miami-Dade Expressway (MDX) is exempted from this requirement. Surplus revenues from tolls collected by MDX may be used for the following purposes:

- To finance or refinance the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of a public transportation facility or transportation facilities owned or operated by the county,
- An intermodal facility or facilities, multimodal corridor or corridors, including, but not limited to, bicycle facilities or greenways that will improve transportation services within the county, or
- Any programs or projects that will improve the levels of service on an expressway system, subject to approval of the governing body of such county after public hearing.<sup>11</sup>

### **Nontoll Revenues**

Section 338.161(3)(c), F.S., provides that if DOT finds that it can increase nontoll revenues or add convenience or other value to its customers, it is authorized to enter into agreements with private or public entities for DOT's use of its electronic toll collection and video billing systems to collect tolls, fares, administrative fees, or other applicable charges imposed in connection with transportation facilities of the private or public entities that become interoperable with DOT's electronic toll collection system. DOT may modify its rules regarding toll collection and procedures and the imposition of an administrative charge to be applicable to toll facilities that are not part of the turnpike system or otherwise owned by DOT.<sup>12</sup> This is not to be construed to limit the authority of DOT under any other provision of law or any agreement entered into prior to July 1, 2012.

### **Records**

Section 338.231(3)(c), F.S., provides that notwithstanding any other provision of law to the contrary, any prepaid toll account of any kind which has remained inactive for three years is presumed unclaimed and its disposition is handled by the Department of Financial Services in accordance with the applicable statutory provisions regarding the disposition of unclaimed property and the prepaid toll account is closed.

### **Electronic Tolling Systems**

Electronic Toll Collection (ETC) systems use vehicle-to-roadside communication technologies to perform an electronic monetary transaction between a vehicle passing through a toll station and the toll agency. ETC systems require onboard units (such as a transponder), vehicle detection and classification, as well as enforcement technologies. ETC equipment removes the need for manual collection of tolls at toll booths. ETC also allows transactions to be performed while vehicles travel at almost highway cruising speed. SunPass is an ETC system used by DOT. Florida motorists may

<sup>8</sup> s. 338.151, F.S.

<sup>9</sup> s. 338.165(4), F.S.

<sup>10</sup> s. 338.165(5), F.S.

<sup>11</sup> ss. 348.0004(2)(e), and 348.0004(7), F.S.

<sup>12</sup> See Rule Chapter 14-100, F.A.C., Toll Enforcement.

purchase a SunPass transponder which can be used electronically to pay tolls on Florida's toll roads and most toll bridges.

Drivers passing through a SunPass toll station may encounter one or more of the following types of toll collection lane:<sup>13</sup>

- SunPass Only Lanes
- SunPass Express Lanes
- Exact Change/SunPass Lanes
- Change Provided/SunPass Lanes
- Change Provided Lanes
- Exact Change Lanes

“All-electronic tolling” refers to a toll station that uses open-road toll collection exclusively, without an option for cash payment. All-electronic tolling is expanding within the tolling industry in Florida, and many all-electronic locations already exist, including:

- Florida's Turnpike between Ft. Lauderdale and Miami/Homestead
- Sawgrass Expressway, west of Ft. Lauderdale
- Veteran's Expressway
- I-4 Connector
- Lee-Roy Selmon Expressway
- the MDX expressways<sup>14</sup>

When a motor vehicle passes through a toll collection facility and the toll payment is not made by either using cash or an electronic transponder, a photographic image of the vehicle's license plate will be captured at the toll lane.<sup>15</sup> An invoice is mailed to the vehicle's registered owner for the monthly accumulated toll amounts and a \$2.50 administrative charge.

### **Express Lanes<sup>16</sup>**

According to FTE, Turnpike express lanes are managed lanes that utilize a combination of driver choice and pricing to offer a transportation benefit to the traveling public while simultaneously improving traffic management efficiency in the corridor. Toll rates are based on traffic volume, operating speeds and level of service, and rates will be adjusted up or down based on the supply of free-flow traffic as well as driver demand.<sup>17</sup>

Section 338.166, F.S., authorizes DOT to request the issuance of bonds secured by revenues collected on high occupancy toll lanes or express lanes. DOT is authorized to implement variable rate tolls on these lanes, which run parallel to the general purpose lanes. Prior to reaching the entrance to the express lane, dynamic message signs alert drivers to the current toll price from the point of entry to one or more exit locations.<sup>18</sup>

FTE operates variable rate express lanes on I-595 in Broward County and Interstate 95 in Broward and Miami-Dade Counties (95 Express). Express lane tolls must be paid electronically using a SunPass (or interoperable<sup>19</sup> transponder) linked to a prepaid account.<sup>20</sup> If a driver uses an express lane in a vehicle

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<sup>13</sup> SUNPASS, <https://www.sunpass.com/howLanesWork>, (last visited January 14, 2016)

<sup>14</sup> The last remaining MDX cash plazas closed on November 14, 2014. MDX operates and maintains the: SR 924/Gratigny Parkway, SR 112/Airport Expressway, SR 836/Dolphin Expressway, SR 924/Don Shula Expressway and SR 878/Snapper Creek Expressway.

<sup>15</sup> TOLL-BY-PLATE, <https://www.tollbyplate.com/faq>, (last visited January 14, 2016)

<sup>16</sup> Section 316.0741(6) provides that “Vehicles having decals by virtue of compliance with the minimum fuel economy standards under 23 U.S.C. s. 166(f)(3)(B), and which are registered for use in high-occupancy-vehicle toll lanes or express lanes in accordance with Department of Transportation rule, shall be allowed to use any HOV lanes redesignated as high-occupancy-vehicle toll lanes or express lanes without requiring payment of a toll.”

<sup>17</sup> Florida's Turnpike System, *Comprehensive Annual Financial Report for fiscal years 2015 and 2014*, at 10

<sup>18</sup> Rule 14-100.003(6), F.A.C. establishes criteria for the display of toll amounts for express lane tolling by DOT.

<sup>19</sup> Interoperable transponders include E-PASS and LeeWay transponders (Florida-based), as well as Peach Pass (GA) and NC Quick Pass transponders (NC).

that does not have prepaid SunPass account, the driver is charged \$25 per trip plus the applicable toll amount.<sup>21</sup> Certain vehicle types may qualify for a toll exemption on the 95 Express system.<sup>22</sup>

Once outstanding bonds are discharged, toll revenue must first be used to pay for the operation, maintenance and improvement costs of the high-occupancy toll or express lanes, or associated transportation system. Any remaining revenues are to be used by DOT for the construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the toll revenues were collected, or to support express bus service on the facility where the toll revenues were collected.

### **Florida Transportation Commission**

The Florida Transportation Commission is created under s. 20.23, F.S., to serve as a citizen's oversight board for DOT, provide policy guidance on issues of statewide importance, maintain oversight and public accountability for DOT, and other statutorily specified transportation authorities. The Commission is assigned to DOT for administrative and fiscal purposes; otherwise, it functions independently of the control and direction of DOT.

### Proposed Changes

The bill creates s. 338.162(1), F.S., requiring that each toll agency adopt a policy for the removal of directors due to ethical violations or lack of attendance. Comprehensive information concerning the policy must be posted on the toll agency's website.

The bill creates s. 338.162(2), F.S., providing that, within 30 days of a board meeting or a board committee meeting, a toll agency must post to its website both video and audio files of the meeting. The files must be in a format that can be viewed or listened to within the user's Internet browser.

The bill creates s. 338.162(3), F.S., providing that when a toll payer is assessed a penalty, the toll agency must provide an accounting of how the penalties are disbursed.

The bill creates s. 338.162(4), F.S., providing that s. 338.162, F.S., applies to the transportation and expressway authorities of the state, counties, and municipalities.

The bill creates s. 338.168(1), F.S., requiring the Florida Transportation Commission to study the potential for express toll lanes to display estimated travel times. The bill authorizes FTC to retain such experts as are reasonably necessary to complete the study, and provides that DOT must pay for the experts. A written report of the findings and conclusions of the study must be provided to the Governor, the president of the Senate, the Speaker of the House of Representatives, and the chairs of the respective Legislative appropriation committees by October 31, 2016.

The bill creates s. 338.168(2), F.S., providing that an electronic tolling system must offer a minimum of 18 months of information to system enrollees in a simple search, including monthly and annual totals.<sup>23</sup>

The bill creates s. 338.168(3), F.S., providing that paper invoices and online statements from electronic toll systems must disclose any applicable processing fees. Such fees must be expressed in both percentage and total dollar amounts.

## **B. SECTION DIRECTORY:**

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<sup>20</sup> Rule 14-100.003, F.A.C.

<sup>21</sup> Rule 14-100.003(7), F.A.C. If a violator does not pay the invoice within 30 days, a second invoice will be sent. If the toll violations amounts are not paid within 30 days from the date of the second invoice, a Uniform Traffic Citation will be issued or the amounts owed by the violator will be pursued to collection.

<sup>22</sup> Rule 14-100.004, F.A.C. Upon proper registration, exempt vehicles include carpools, vanpools, Inherently Low Emission Vehicles or Hybrid vehicles, certain transit and school buses, Over-the-Road buses, and motorcycles.

<sup>23</sup> According to DOT, 18 months is the industry standard for such information.

- Section 1      Creates s. 338.162, F.S., relating to toll agencies and facilities.
- Section 2      Creates s. 338.168, F.S., relating to toll facilities and collection systems.
- Section 3      Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, but insignificant negative fiscal impact on state workload and expenditures. The FTC is required to study the display of travel times for express toll lanes and the DOT is further required to pay for such experts as are reasonably necessary to complete the study. Toll agencies may also incur additional workload and expenses associated with the provisions relating to posting files online, reporting the disbursement of penalties, and the recording of applicable fees and other tolling information. These costs will be absorbed within existing resources.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, but likely insignificant negative impact on local governments. Toll agencies may incur additional workload and expenses associated with the provisions relating to posting files online, reporting the disbursement of penalties, and the recording of applicable fees and other tolling information.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction to the percentage of state tax shared with municipalities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 338.162(3), F.S. refers to “a penalty” and “penalties”. It is unclear whether this term applies to administrative fees, variable rate pricing, the pricing difference between SunPass rates and Toll-By-Plate Rates, express lane violations, unpaid toll violations or other traffic infraction or noncriminal citation related to toll facilities, or another type of penalty not mentioned here.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**