

**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.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: CS/SB 250

INTRODUCER: Transportation Committee and Senator Artiles

SUBJECT: High-occupancy Toll Lanes and Express Lanes

DATE: March 23, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	<b>Fav/CS</b>
2.			ATD	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 250 specifies that the Florida Department of Transportation (FDOT) may only collect tolls on high-occupancy toll (HOT) lanes or express lanes for the discharge of certain bond indebtedness on a project existing before July 1, 2017. The bill eliminates tolls on HOT lanes or express lanes after the discharge of any bond indebtedness related to such project and prohibits creating HOT lanes or express lanes after July 1, 2017. Upon elimination of such tolls, the bill authorizes such lanes to continue in existence, but not as HOT lanes or express lanes.

The bill also specifies the FDOT may collect tolls on express lanes that exist or are under construction on any part of the Florida Turnpike System before July 1, 2017, but such collection may be only for the discharge of any bond indebtedness that relates to the expense of constructing the express lanes. After the discharge, the toll must be eliminated. Except for express lanes that exist or are under construction on any part of the Turnpike System before July 1, 2017, such lanes may continue to exist, but not as express lanes.

The bill takes effect July 1, 2017.

The bill has an indeterminate but potentially significant negative fiscal impact on state government. See section V., "Fiscal Impact Statement," for details.

## II. Present Situation:

A high-occupancy-vehicle (HOV) lane is a lane of a public roadway designated for use by vehicles in which there is more than one occupant.<sup>1</sup> A high-occupancy toll lane is an HOV lane, the use of which requires payment of a toll. Tolleed HOV lanes are referred to as high-occupancy toll lanes, or HOT lanes.<sup>2</sup>

Current law does not define the terms “HOT lane” or “express lane.” However, the FDOT’s Topic No. 525-030-020-a, *Tolling for New and Existing Facilities on the State Highway System*,<sup>3</sup> provides the following definitions:

- “Managed Lanes” - Highway facilities or sets of lanes within a highway facility where operational strategies are proactively implemented and managed in response to changing conditions with a combination of tools. These tools may include accessibility, vehicle eligibility, pricing, or a combination thereof. Types of managed lanes include high occupancy vehicle (HOV) lanes, high occupancy toll (HOT) lanes, truck only lanes, truck only toll lanes, bus rapid transit lanes, reversible lanes, and express lanes.
- “Express Lanes” - A type of managed lane where dynamic pricing through electronic tolling is applied to lanes with through traffic, having fewer access points. Express lanes can co-locate within an existing non tolled facility to manage congestion and provide a more reliable trip time.

Section 338.166, F.S., authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on HOT lanes or express lanes established on FDOT-owned facilities. The FDOT is authorized to continue to collect the tolls on HOT lanes or express lanes after any bond debt is discharged. Such tolls must first be used to pay the annual cost of operation, maintenance, and improvement of the HOT lanes or express lanes project or associated transportation system.

The FDOT must use any remaining toll revenue from HOT lanes or express lanes 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.<sup>4</sup>

The FDOT advises that no bonds have been issued for which HOT lane or express lane toll revenues have been pledged. However, such revenues have been planned for “availability payments” for the FDOT’s I-595 and I-4 Ultimate projects.<sup>5</sup> The FDOT advises the debt on the I-

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<sup>1</sup> Section 316.0741(1)(a), F.S.

<sup>2</sup> Except that vehicles in HOT lanes must have three or more occupants. *See* the FDOT’s SB 250 (2012) Agency Bill Analysis at 2. (On file in the Senate Transportation Committee.)

<sup>3</sup> On file in the Senate Transportation Committee. The directive expressly does not apply to Florida Turnpike facilities.

<sup>4</sup> Section 338.166, F.S., expressly does not apply to the turnpike system. The Florida Turnpike Enterprise is not currently operating any express lanes. *See* the FDOT’s SB 1570 (2012) Agency Bill Analysis, at 8. (On file in the Senate Transportation Committee.)

<sup>5</sup> The Federal Highway Administration (FHWA) describes availability payments as a form of public-private partnership that involves risk transfer without necessarily involving tolls. The private sector (developer) receives availability payments over the concession agreement term in exchange for constructing, operating, and maintaining a facility at a certain performance level. Payments can be reduced or eliminated if standards are not met. The private sector takes on most of the risks of design, construction, financing, operation, and maintenance, and the public sector takes on the long-term obligation of making the

595 project will be paid off in Fiscal Year 2044. The debt on the I-4 Ultimate project will be paid off in Fiscal Year 2055.<sup>6</sup> Availability payments must be included in the FDOT's debt and debt-like contractual obligations load report under s. 339.139, F.S.

### III. Effect of Proposed Changes:

The bill amends s. 338.166, F.S., relating to "termination of" HOT lanes or express lanes. The bill restricts the FDOT's authority to collect a toll on HOT lanes or express lanes only to tolls collected for the discharge of any bond indebtedness related to a HOT lane or express lane project that exists before July 1, 2017. The bill eliminates the toll on the HOT lanes or express lanes after the discharge of any bond indebtedness relating to such projects. Upon elimination of tolls on existing HOT lanes or express lanes once bond indebtedness is discharged, the lanes may continue to exist but not as HOT lanes or express lanes. Additionally, the bill prohibits creating HOT lanes or express lanes on or after July 1, 2017.

Additionally, the bill creates s.338.2225, F.S., with the stated purpose of eliminating all express lanes that exist or are under construction on any part of the Florida Turnpike System,<sup>7</sup> and prohibiting the creation of such express lanes. The bill authorizes the FDOT to collect tolls on express lanes that exist or are under construction on any part of the Turnpike System before July 1, 2017. However, such collection may be only for the discharge of any bond indebtedness that relates to the expense of constructing the express lanes. After such discharge, the toll on the express lanes must be eliminated. Once the tolls are eliminated, the lanes may continue to exist as part of the Turnpike System, but not as express lanes. Except for express lanes that exist or are under construction on any part of the Turnpike System before July 1, 2017, the bill prohibits express lanes on any part of the Turnpike System.

These changes appear to benefit customers using HOT lanes or express lanes by eventually eliminating tolls on those facilities, but according to the FDOT, the bill may result in a number of potentially negative impacts including the following:

- Overall reduction in corridor performance, leading to increased congestion.
- Elimination from the FDOT's work program of planned HOT or express lane projects intended to relieve current congestion.
- Elimination of revenues for maintenance, repair, and rehabilitation of lanes once tolls are eliminated.
- Renegotiation of existing agreements to remove HOT or express lanes.<sup>8</sup>

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payments. Availability payments, in lieu of toll revenues, can be used by State DOTs to attract private financing for long-term projects. See the FHWA website available at:

[https://www.fhwa.dot.gov/ipd/pdfs/fact\\_sheets/tifia\\_availability\\_payments.pdf](https://www.fhwa.dot.gov/ipd/pdfs/fact_sheets/tifia_availability_payments.pdf). (Last visited March 20, 2017.)

<sup>6</sup> See the FDOT's email to Senate Transportation Committee Staff, March 17, 2017. (On file in the Senate Transportation Committee.)

<sup>7</sup> Section 338.221(6), F.S., defines "turnpike system" to mean those limited access toll highways and associated feeder roads and other structures, appurtenances, or rights previously designated, acquired, or constructed pursuant to the Florida Turnpike Enterprise Law and such other additional turnpike projects as may be acquired or constructed as approved by the Legislature.

<sup>8</sup> See the FDOT's SB 250 (2012) Agency Bill Analysis at 2-6. (On file in the Senate Transportation Committee.)

**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:

The bill ultimately eliminates tolls on existing HOT or express lanes and prevents any future tolls on such lanes. The FDOT will collect less toll revenue on express lane facilities where tolls are eliminated and according to FDOT, this reduction will be \$53.8 million in the 2017-2018 Fiscal Year.<sup>9</sup> The amount of this reduction is expected to grow significantly in future years.

## B. Private Sector Impact:

The bill ultimately eliminates tolls on existing HOT or express lanes and prevents any future tolls on such lanes. Users of these lanes would no longer pay a toll, but according to the FDOT, users may experience increased costs associated with congestion. HOT or express lane projects currently planned to alleviate congestion may be deleted from the FDOT's work program.<sup>10</sup> To the extent that such projects are deleted, private sector companies that provide design, construction, operation and maintenance of express lane projects will have less business.

## C. Government Sector Impact:

The bill ultimately eliminates tolls on existing HOT or express lanes and prevents any future tolls on such lanes. The FDOT will collect less toll revenue, resulting in less revenue for construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the toll revenues would have been collected, or less for supporting express bus service on the facility where the toll revenues would have been collected. According to FDOT, this reduction in toll revenues will be \$53.8 million in the 2017-2018 Fiscal Year, with the amount of this reduction growing significantly in future years.<sup>11</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

According to the FDOT, annual and periodic maintenance, repair, and rehabilitation costs previously funded by HOT or express lane revenues will have to be funded with other funding sources. Additionally, the FDOT anticipates potential costs associated with renegotiating existing agreements to remove from the agreements any HOT or express lanes. The FDOT also advises that costs to reconfigure current express lane facilities is significant.<sup>12</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 338.166

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Transportation on March 22, 2017:**

The CS adds the following provisions to the bill:

- Authorizes the FDOT to collect tolls on express lanes that exist or are under construction on any part of the Florida Turnpike System before July 1, 2017, but only for the discharge of any bond indebtedness relating to the express lanes;
- Eliminates the toll after the discharge of bonds and, once eliminated, authorizes the lanes to continue to exist as part of the Turnpike System, but not as express lanes.
- Prohibits express lanes on any part of the Turnpike System, except for express lanes that exist or are under construction before July 1, 2017.

- B. **Amendments:**

None.

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

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<sup>12</sup> *Id.*