

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 777 High-occupancy Toll Lanes and Express Lanes

**SPONSOR(S):** Willhite

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	6 Y, 8 N	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

The bill provides that Department of Transportation (DOT) 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 DOT from 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 DOT 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 has an indeterminate but potentially significant negative fiscal impact on state government. See Fiscal Analysis for details.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Current law does not define the terms “HOT lane” or “express lane.” However, the DOT’s Topic No. 525-030-020-a, *Tolling for New and Existing Facilities on the State Highway System*,<sup>1</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 DOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on HOT lanes or express lanes established on DOT-owned facilities. DOT may continue to collect the tolls on HOT lanes or express lanes after any bond debt is discharged. Such toll revenues 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.

DOT is required to 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>2</sup>

DOT 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 DOT’s I-595 and I-4 Ultimate projects.<sup>3</sup> DOT advises the debt on the I-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>4</sup> Availability payments must be included in the DOT’s debt and debt-like contractual obligations load report under s. 339.139, F.S.<sup>5</sup>

##### Proposed Changes

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<sup>1</sup> On file with the Transportation & Infrastructure Subcommittee. The directive expressly does not apply to Florida Turnpike facilities.

<sup>2</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 (2017) Agency Bill Analysis, at 8.

<sup>3</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 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>4</sup> See the FDOT’s email to Senate Transportation Committee Staff, March 17, 2017. (Copy on file with Transportation & Infrastructure Subcommittee.)

<sup>5</sup> Section 339.139, F.S., relates to Transportation debt assessment.

The bill amends s. 338.166, F.S., relating to “termination of” HOT lanes or express lanes. The bill restricts DOT’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.

The bill creates s. 338.2225, F.S., whose purpose is to eliminate all express lanes that exist or are under construction on any part of the Florida Turnpike System and prohibit the creation of such express lanes. The bill authorizes DOT to collect a toll on express lanes that existed or were under construction on any part of the turnpike system before July 1, 2017, but such collection may be only for the discharge of any bond indebtedness relating to the expense of constructing the express lanes. After the bond indebtedness is discharged, the toll on the express lanes must be eliminated.

Except for express lanes that exist or are under construction, on any part of the turnpike system, no express lanes may be on any part of the turnpike system. Upon eliminating the tolls on express lanes, those lanes are no longer considered express lanes.

According to the DOT, 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 DOT’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>6</sup>

#### B. SECTION DIRECTORY:

Section 1 amends s. 338.166, F.S., relating to high-occupancy toll lanes or express lanes.

Section 2 creates s. 338.2225, F.S., prohibiting express lanes on any part of the turnpike system.

Section 3 provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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

##### 2. Expenditures:

DOT has indicated the cost to reconfigure current express lane facilities is estimated to be \$1 Million per mile for a total of \$468 Million. The cost to maintain completed and planned express lane facilities is estimated to be \$55 Million annually, which includes resurfacing and routine

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<sup>6</sup> DOT’s HB 777 Bill Analysis pages 2-6. (On file with the Transportation & Infrastructure Subcommittee.)

maintenance. This funding would now come from the STTF, which will result in additional projects being deferred in DOT's Work Program.

Additionally, the Urban Partnership Agreement for I-95 Express from I-395 in Miami-Dade to I-595 in Broward states that: "(USDOT) The Department reserves the right to de-obligate funds obligated under any of the Grant Agreements (or to require the return of such funds) in the event a recipient breaches or otherwise fails to perform under any of the Grant Agreements". Subject to legal review, it appears USDOT may require the return of funds and DOT may be liable for up to \$62.9 Million in federal grants.<sup>7</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

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 DOT, users may experience increased costs associated with congestion. HOT or express lane projects currently planned to alleviate congestion may be deleted from the DOT's work program. To the extent that such projects are deleted, private sector companies that provide design, construction, operation and maintenance of express lane projects will be negatively impacted.

**D. FISCAL COMMENTS:**

The bill ultimately eliminates tolls on existing HOT or express lanes and prevents any future tolls on such lanes. DOT 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.

**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:**

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<sup>7</sup> DOT bill analysis of HB 777; Page 4; (On file with Transportation & Infrastructure Subcommittee).

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.