

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 Appropriations

BILL: CS/CS/SB 898

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Infrastructure and Security Committee; and Senator Diaz

SUBJECT: Transportation

DATE: April 22, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Miller	IS	Fav/CS
2. McAuliffe	Hrdlicka	ATD	Recommend: Fav/CS
3. McAuliffe	Kynoch	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 898 contains various provisions relating to transportation. More specifically, the bill:

- Repeals the Miami-Dade Expressway Authority and creates and transfers all assets, powers, and duties to the Greater Miami Expressway Agency, effective upon the bill becoming a law.
- Prohibits the Greater Miami Expressway Agency from raising toll rates until July 1, 2029, or as necessary to comply with bond covenants.
- Creates the Florida Sunshine Rebate Program within the Greater Miami Expressway Agency providing that at the time that any toll is incurred to provide a 25 percent rebate to all SunPass holders registered in Miami-Dade County.
- Prohibits the FDOT or the Florida Turnpike Enterprise from charging a toll that is more than \$1.25 per mile on any HOT lane or express lane in a county as defined in s. 125.011(1), F.S.; *i.e.*, Miami-Dade County.
- Requires the FDOT and Florida Turnpike Enterprise to submit certain toll-related reports to the Miami-Dade County Board of County Commissioners and the Miami-Dade County Transportation Planning Organization by October 1 each year, beginning in 2020.
- Relocates public-private partnership authorization and related provisions from the repealed Florida Expressway Authority Act to provisions relating specifically to the Tampa-Hillsborough County Expressway Authority and the Central Florida Expressway Authority.

- Reduces the membership of the Miami-Dade Transportation Planning Organization and prohibits the organization from charging a fee to members.
- Revives the pilot rebuilt motor vehicle inspection program overseen by the Department of Highway Safety and Motor Vehicles in Miami-Dade County that was repealed on July 1, 2018, for three additional years (until June 30, 2022) and provides additional requirements for program participants and facilities.
- Requires the FDOT to approve design plans for projects impacting its rights-of-way if the plans meet FDOT standards.
- Revises the FDOT's authorization for innovative highway projects to innovative transportation projects demonstrating innovative techniques of bridge design and requires all proposed projects to be designed and constructed using the English system of units, with a proposed design speed of 70 miles per hour, and based upon certain FDOT publications.
- Repeals the Osceola County Expressway Authority, which has transferred its projects to the Central Florida Expressway Authority.
- Requires the Office of Program Policy Analysis and Government Accountability to conduct a study and make a report by December 1, 2019, on a rebate program for SunPass users of the Florida Turnpike system.

The bill has a fiscal impact to both state and local government expenditures and revenues. See Section V.

Except as otherwise provided, the bill takes effect July 1, 2019.

II. Present Situation:

This bill addresses a wide variety of transportation issues related to the FDOT, expressway authorities, toll lanes and revenues, transportation surtaxes, and motor vehicles. For ease of organization and readability, the Present Situation for the provisions in each section of the bill is discussed in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Florida Expressway Authority Act

Present Situation

The Florida Expressway Authority Act (FEAA), codified in part I of ch. 348, F.S.,¹ authorizes any county or two or more contiguous counties within a single Florida Department of Transportation (FDOT) district,² to form an expressway authority as an agency of the state, by resolution adopted by the board (or boards) of county commissioners.³

¹ Part I of ch. 348, F.S., consists of ss. 348.0001 through 348.0012, F.S.

² The FDOT is statutorily organized into seven districts, each headed by a district secretary, and a turnpike enterprise and a rail enterprise, each headed by an executive director. Section 20.23(4)(a), F.S. For a map of the FDOT districts, see https://fdotwww.blob.core.windows.net/sitefinity/images/default-source/content1/info/moredot/district-map-lg.jpg?sfvrsn=4afe7389_2 (last viewed March 25, 2019).

³ Section 348.0003(1), F.S.

Section 348.0003, F.S., provides for the formation and membership of an expressway authority established under the FEAA, including an authority's voting membership, election of officers, appointment of employees, and application of ethics requirements only to the MDX.⁴

Section 348.0004, F.S., provides the purposes and powers of an expressway authority created pursuant to the FEAA. These authorities may acquire, hold, construct, improve, maintain, operate, and own an expressway system.⁵ Section 348.0004, F.S., also authorizes each authority to exercise various powers required to carry out its purpose. Finally, s. 348.0004, F.S., contains provisions applicable to the MDX relating to tolling, the maximum percentage of revenues that may be used for administrative expenses, the dedication of some of its surplus revenues⁶ for transportation projects in Miami-Dade County, the authority to borrow money and refund bonds, a mandatory toll decrease for SunPass⁷ users, and financial audit requirements.

Section 348.0005, F.S., authorizes bonds to be issued on an authority's behalf pursuant to the State Bond Act.⁸ The MDX may issue its own bonds that do not pledge the full faith and credit of the state; these are considered approved for purposes of s. 11(f), Art. VII of the State Constitution.⁹

Section 348.0007, F.S., authorizes an authority to appoint the FDOT as its agent for the purpose of constructing improvements and extensions to an expressway system and for the system's completion.

Section 348.0008, F.S., authorizes expressway authorities to acquire land and property, including by eminent domain proceedings.

Section 348.0009, F.S., expressly authorizes other units, boards, agencies, and individuals to enter into contracts and other agreements with an expressway authority.

Section 348.0010, F.S., provides the state's pledge to expressway authority bondholders that the state will not limit or alter the rights vested in an authority and the FDOT until all bonds are fully paid and discharged.

⁴ Section 348.0003(5), F.S.

⁵ Section 348.0002(9), F.S., defines "expressway system" as any and all expressways within the geographic boundaries of an expressway authority established pursuant to the FEAA and appurtenant facilities thereto, including, but not limited to, all approaches, roads, bridges, and avenues of access for such expressway. In any county as defined in s. 125.011(1), F.S., for purposes of this part, an expressway system includes a public transportation facility. A "county" as defined in s. 125.011(1), F.S., means Miami-Dade County.

⁶ Section 348.0002(12), F.S., defines "surplus revenues" as revenues in Miami-Dade County, *id.*, derived from rates, fees, rentals, tolls, and other charges for the services and facilities of an expressway system as may exist at the end of a fiscal year after payment of all annually required operating and maintenance expenses for the fiscal year and all debt service payable in the fiscal year on bonds issued or other debts incurred for any purpose in connection with an expressway system, including debt incurred to finance the construction, extension, repair, or maintenance of an expressway system.

⁷ SunPass is the state's primary electronic toll collection system.

⁸ Sections 215.57 through 215.83, F.S.

⁹ Section 11(f), Art. VII of the State Constitution requires each project, building, or facility to be financed or refinanced with revenue bonds to first be approved by the Legislature by an act relating to appropriations or by general law.

Section 348.0011, F.S., provides a specified tax exemption for expressway authorities and provides that the authority's bonds are exempt from taxation except for income tax on interest, income, or profits on debt obligations owned by corporations.

Section 348.00115, F.S., requires the MDX to post specified information on its website including board meeting minutes, bond covenants, budgets, and contracts.

Section 348.0012, F.S., exempts a county in which an expressway authority has been created in another part of ch. 348, F.S.,¹⁰ or the Jacksonville Transportation Authority from the requirements of the FEAA, except as expressly provided.¹¹

Miami-Dade County Expressway Authority (MDX)

The Miami-Dade County Commission created the MDX in 1994 through adoption of an ordinance pursuant to the authorization in the FEAA allowing formation of an expressway authority as an agency of the state.¹² The MDX is the only expressway authority operating under the FEAA. The MDX system consists of the following roadways in Miami-Dade County:

- S.R. 112/Airport Expressway,
- S.R. 836/Dolphin Expressway,
- S.R. 874/Don Shula Expressway,
- S.R. 878/Snapper Creek Expressway, and
- S.R. 924/Gratigny Parkway.¹³

Recent Legislation and Litigation

In 2017, legislation was enacted to require the MDX, subject to compliance with its bond covenants, to reduce the toll charged on any of its toll facilities by at least five percent, but not more than 10 percent, for each SunPass account in good standing.¹⁴

In 2018, legislation was enacted to require the MDX's governing body, by October 1, 2018, to submit information to the Governor regarding its compliance with the minimum five percent toll reduction required in 2017. If the required toll reduction had not taken place, effective October 31, 2018, the existing board was to be dissolved and, except for the FDOT district secretary, a new board was to be appointed by that date. The 2018 legislation also prohibited a member of the board on October 1, 2018, from being appointed to the new board. Qualifications and

¹⁰ Chapter 348, F.S., also creates the Tampa-Hillsborough County Expressway Authority, the Central Florida Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority.

¹¹ The Jacksonville Transportation Authority is created in ch. 349, F.S.

¹² See Miami-Dade County Code of Ordinances, Part III, Chapter 2, Article XVIII, available at http://miamidade.fl.elaws.us/code/coor_ptiii_ch2_artxviii (last viewed March 25, 2019).

¹³ MDX, *About MDX*, available at <https://www.mdxway.com/about/mdx> (last viewed March 25, 2019). Operational and financial control of the system, comprised of the identified expressways, was transferred by the FDOT to the MDX in 1996 (copy of the Transfer Agreement on file in the Senate Infrastructure and Security Committee). The FDOT retains the underlying title to the facilities. See The Florida Senate Committee on Transportation Issue Brief 2011-227, *Toll Facility Lease-Purchase Agreements*, October 2010, p. 7, available at http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-227tr.pdf (last viewed March 25, 2019).

¹⁴ Section 4, ch. 2017-182, L.O.F.

appointments to the new board remained the same.¹⁵ On May 29, 2018, the MDX's board approved a toll rate reduction on the authority's facilities, providing a 5.7 to 8 percent reduction in the toll rate, depending upon the existing toll rate. The new toll rates took effect on July 1, 2018.¹⁶

The MDX has challenged the legality of some portions of the 2017 and 2018 legislation on grounds that the legislation violates the constitutional prohibition against an impairment of contracts and violates a statutory covenant of the state that the state will not alter the rights vested in the authority until all bonds are fully paid and discharged.¹⁷

Effect of Proposed Changes

Repeal of the FEAA, including the MDX

Section 11 repeals part I of ch. 348, F.S., repealing the FEAA and the MDX. Repeal of the FEAA, including the MDX, will preclude any other county, or two or more contiguous counties within a single FDOT district, from creating an expressway authority under that part. **Section 32** dissolves the MDX. **Section 31** transfers the governance and control of the MDX to the Greater Miami Expressway Agency, effective upon the bill becoming a law.

Section 12 redesignates part I of ch. 348, F.S., as the "Greater Miami Expressway Agency."

Section 13 creates s. 348.0301, F.S., to title the part as the "Greater Miami Expressway Agency Act."

Section 14 creates s. 384.0302, F.S., to apply the part only to Miami-Dade County ("a county as defined in s. 125.011(1), F.S.").

Sections 15 through 30 create multiple new statutes within that chapter to apply to only the Greater Miami Expressway Agency. The new statutes for the most part reflect the same definitions, purposes, powers, and ethics requirements as in the FEAA, amended to only apply to the Greater Miami Expressway Agency.

Section 15 creates s. 348.0303, F.S., to provide definitions for the part similar to those in s. 348.0002, F.S.

Section 16 creates s. 348.0304, F.S., creating the Greater Miami Expressway Agency as a body politic and corporate and agency of the state. The governing body of the agency consists of seven voting members who must be permanent residents of the county, may not hold elected office, and may serve only two 4-year terms. The Miami-Dade County Commission will appoint four members; two must live in the unincorporated areas of Miami-Dade County within 15 miles of

¹⁵ Chapter 2018-145, L.O.F.

¹⁶ Miami-Dade Expressway Authority Press Release, *MDX Board of Directors Approves Toll Reduction*, July 11, 2018, available at https://www.mdxway.com/press_releases/downloads/592/original_TOLL_REDUCTION_PRESS_RELEASE_FINAL.pdf?1531322342 (last viewed March 25, 2019).

¹⁷ *Miami Dade County Expressway Authority v. State of Florida*, Case No. 2018 CA 002300, Second Judicial Circuit, Leon County, Florida.

the area with the highest amount of toll roads and the other two must live in municipalities of Miami-Dade County, but cannot be from the same municipality. The Governor will appoint three members living in Miami-Dade County, but each may not be from the same municipality. A person who served as a member of the governing body of the former Miami-Dade County Expressway Authority may not be appointed to the new agency.

Initial appointments must be made by July 31, 2019, and the first board meeting of the agency must be held within 15 days after all appointments are made. Each voting member must take and subscribe to an oath that he or she will honestly, faithfully, and impartially perform his or her duties and that he or she will not neglect any duties imposed upon them.

Section 17 creates s. 348.0305, F.S., providing ethics requirements which largely reflect the current requirements in s. 348.0003, F.S., which apply to the MDX, except that the new s. 348.0305, F.S., subjects all members and employees of the Greater Miami Expressway Agency to part III of ch. 112, F.S. Part III of ch. 112, F.S., is the code of ethics for public officers and employees and provides standards of ethical conduct and disclosures applicable to public officers, employees, candidates, lobbyists, and others in state and local government.

Section 18 creates s. 348.0306, F.S., reflecting the current purposes and powers of the MDX provided in s. 348.0004, F.S. However, the bill prohibits the new Greater Miami Expressway Agency from raising tolls until July 1, 2029, except as may be necessary to comply with bond covenants. The Greater Miami Expressway Agency is made subject to the procurement and contracting requirements in chs. 287 and 337, F.S., and must have an annual financial audit conducted by an independent certified public accountant and post the findings on the agency's website.

Section 19 creates s. 348.0307, F.S., creating the Florida Sunshine Rebate Program within the Greater Miami Expressway Agency. Subject to any bond covenants, at the time that a toll is incurred, the agency must provide a 25 percent rebate to all SunPass holders registered in Miami-Dade County. Such SunPass holders must be automatically enrolled in the rebate program, but the agency must provide a mechanism to opt out.

Section 20 creates s. 348.0308, F.S., to create similar requirements for the agency to enter into public-private partnerships as in s. 348.0004, F.S.

Section 21 creates s. 348.0309, F.S., reflecting the current bonding authority of the MDX; however, each project, building, or facility that has been or will be financed by the issuance to bonds or other indebtedness that does not pledge the full faith and credit of the state, or any refinancing of such debt is subject to review and approval by the Legislative Budget Commission.

Section 22 creates s. 348.0310, F.S., to create similar provisions related to construction as in s. 348.0007, F.S.

Section 23 creates s. 348.0311, F.S., to create similar provisions related to land acquisition as in s. 348.0008, F.S.

Section 24 creates s. 348.0312, F.S., to create similar provisions related to cooperation with other agencies as in s. 348.0009, F.S.

Section 25 creates s. 348.0313, F.S., to create similar provisions related to covenants of the state as in s. 348.0010, F.S.

Section 26 creates s. 348.0314, F.S., to create similar provisions related to exemption from taxation for the agency as in s. 348.0011, F.S.

Section 27 creates s. 348.0315, F.S., reflecting the current public accountability requirements for MDX; however, the section provides that beginning October 1, 2020, and annually thereafter, the agency must submit to the board of county commissioners and the metropolitan planning organization a report showing the amount of tolls collected and how those tolls were used in the previous fiscal year. This report must be posted on the agency's website.

Section 28 creates s. 348.0316, F.S., providing that any bonds or other obligations issued pursuant to the Greater Miami Expressway Agency Act constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries, and for all state, municipal, or other public funds.

Section 29 creates s. 348.0317, F.S., providing that any pledge of the FDOT of "rates, fees, revenues, county gasoline tax refunds or other funds, as rentals, to the agency, or any covenants or agreements relative thereto," are enforceable against the agency or the department in court by the bondholders.

Section 30 creates s. 348.0318, F.S., providing that the powers conferred by part I of ch. 348, F.S., as amended by the bill, supersede any conflicting laws and provide a complete method for the exercise of the agency's powers.¹⁸

Section 31 creates an undesignated section of law which provides that the transfers from MDX to the Greater Miami Expressway Agency includes the assets, facilities, tangible and intangible property and any rights in such property, any other legal rights of the MDX, and the expressway system operated by the MDX. The Greater Miami Expressway Agency succeeds to all powers of the MDX. The operation and maintenance of the expressway system are deemed under the control of the Greater Miami Expressway Agency. Revenues collected on the expressway system are considered to be revenues of the Greater Miami Expressway Agency, subject to the lien of the trust indentures securing MDX bonds. The Greater Miami Expressway Agency also assumes all liability for the satisfaction of any judgement against MDX as a result of litigation commenced prior to the bill becoming law.

The Greater Miami Expressway Agency, in consultation with the Division of Bond Finance, is directed to review all contracts, financial obligations, and contractual relationships and liabilities of the MDX and is authorized to assume the obligations determined to be necessary or desirable for the continued operation of the expressway system.

¹⁸ This is similar to statutes created for other expressway authorities. *See* ss. 348.70 and 348.765, F.S.

MDX employees, officers, and members are prohibited from selling, disposing, encumbering, transferring, or expending MDX assets as reflected in the MDX's financial statements for the fiscal year ended June 30, 2018, other than in the ordinary course of business. The bill provides that incurring debt or issuing bonds for projects contained in the 5-year work program adopted by the MDX on December 5, 2017, is not considered the ordinary course of business, but the bill does not prevent the MDX from designing and planning projects contained in that adopted 5-year work program.¹⁹ The bill requires the Greater Miami Expressway Agency, to prioritize S.R. 836/Dolphin Expressway Southwest Extension (Kendall Parkway) project; the project may not be negatively impacted by any loss of revenue from toll rate reductions or rebates paid to SunPass holders under the required Florida Sunshine Rebate Program.²⁰

The transfer of the MDX to the Greater Miami Expressway Agency is subject to all terms and covenants provided for the protection of holders of MDX bonds in the trust indentures or resolutions adopted in connection with issuance of such bonds. Additionally, the bill provides that the transfer does not impair the terms of the contract between the MDX and the bondholders, does not act to the detriment of the bondholders, and does not diminish the security for the bonds. The Greater Miami Expressway Agency expressly assume all obligations relating to the bonds to ensure the transfer will have no adverse impact on the security for the bonds.

After the transfer, the bill directs the Greater Miami Expressway Agency to:

- Operate and maintain the expressway system and any other facilities of the MDX in accordance with the terms, conditions, and covenants in the trust indentures or bond resolutions securing the bonds.
- Collect toll revenues and apply them to the payment of debt service as provided in the indentures or resolutions.

Technical Revisions Related to the FEAA Repeal and the MDX Transfer

Section 1 amends s. 20.23(2)(b)8., F.S., to require the Florida Transportation Commission to monitor agencies created under ch. 348, F.S., and repeals reference to “any authority formed using part I of chapter 348.”

Section 2 of the bill relocates the statutory provision requiring financial disclosure forms to be filed by other transportation and expressway authorities and agencies from s. 348.0003(4)(c), F.S., which the bill repeals, to s. 112.3144(1), F.S. The actual financial disclosure requirements do not change.

Section 3 amends s. 215.68(2), F.S., which currently authorizes bond issuance under the State Bond Act as well as various related terms and conditions. The statute specifies that those terms and conditions do not supersede the limitations of the FEAA relating to bond issuance. The bill repeals this provision, thus conforming the statute to the repeal of the FEAA. **Section 30** creating s. 348.0318, F.S., previously discussed above, includes a provision that s. 215.68, F.S., does not supersede the limitations of the amended part I of ch. 348, F.S.

¹⁹ See MDX, *FY 2019-2023 Work Program*, Board Approved December 5, 2017, available at https://www.mdxway.com/pdf/work_programs/FY2019-2023_Work_Program.pdf (last viewed April 18, 2019).

²⁰ The bill refers to the “consumer rebate for SunPass holders.”

Section 7 amends s. 338.165, F.S., to remove references to s. 348.0004, F.S., relating in part to uses of MDX revenues, as the bill repeals that statute contained in the FEAA.

Section 10 amends s. 343.1003(6), F.S., to update a reference to conform to the repeal of s. 348.0003(4)(c), F.S. The obligation of the members of the Northeast Florida Regional Transportation Commission to file statements of financial interests remains unchanged.

Miami-Dade Transportation Planning Organization

Present Situation

Metropolitan planning organizations (MPO) are federally mandated transportation planning organizations (TPO) comprised of representatives from local governments and transportation authorities. The MPO's role is to develop and maintain the required transportation plans for a metropolitan area in order to ensure federal funds support local priorities.²¹ In Florida, MPOs are also referred to as TPOs and transportation planning agencies. There are currently 27 MPOs in Florida.²²

Section 339.175(3), F.S., provides for the voting membership of an MPO. Specifically, s. 339.175(3)(d), F.S., authorizes any county chartered under Section 6(e), Art. VIII of the State Constitution (which includes Miami-Dade County) to have the county commission serve as the MPO if the MPO's jurisdiction is wholly contained in that county. If a charter county elects this option, the county commission will constitute the voting membership of the MPO as well as four additional voting members appointed by the Governor. The Governor's appointments must include: one elected official representing a municipality in the county; one member of the expressway authority; one person who does not hold elected office and resides in an unincorporated portion of the county; and one school board member.

Section 339.176, F.S., provides that, in addition to the membership requirements in s. 339.175(3), F.S., the Miami-Dade MPO must include an additional voting member for each city in the county with a population of 50,000 or more residents appointed by the city's governing body.

The Miami-Dade Transportation Planning Organization's current governing board includes:

- The 13 Miami-Dade County Board of County Commissioners;
- Eight elected officials, one from each of the eight municipalities with a population over 50,000; and
- The four Governor's appointees.

The Miami-Dade Transportation Planning Organization is mainly funded through federal grant funds (\$14.8 million of a \$17.8 million budget). However, the organization does receive about \$489,000 in funds from a participation fee. "TPO Resolution #33-17 dated July 20, 2017,

²¹ Federal Highway Administration and Federal Transit Administration, Transportation Planning Capacity Building Program, *The Transportation Planning Process: Key Issues*, pp. 3-5, available at https://www.planning.dot.gov/documents/briefingbook/bbook_07.pdf (last viewed April 6, 2019).

²² See Florida Metropolitan Planning Organization Advisory Council, *2019 Membership List*, March 26, 2019, available at https://www.mpoac.org/download/mpoac_materials/2019-Membership-List.pdf (last viewed April 4, 2019).

establishes a calendar year financial participation fee of \$22,222 commencing in FY 2017-2018 and every year thereafter for non-County governmental agencies with voting membership on the TPO Governing Board.”²³

Effect of Proposed Changes

Section 9 amends s. 339.175(3)(d), F.S., to remove the constitutional reference to charter counties and applies the paragraph to only Miami-Dade County. The bill reduces the required membership of the MPO in Miami-Dade County by reducing Governor’s appointees from four to three, eliminating the appointment of a person who does not hold elected office and resides in an unincorporated portion of the county.

The bill further amends s. 339.175, F.S., by prohibiting the Miami-Dade MPO from assessing any fees on municipalities, counties, or other governmental entities that are members of the MPO.

High Occupancy Toll Lanes and Express Lanes

Present Situation

A high-occupancy-vehicle (HOV) lane is generally a lane of a public roadway designated for use by vehicles in which there is more than one occupant.²⁴ A high-occupancy toll (HOT) lane is an HOV lane, the use of which requires payment of a toll.

Current law does not define the terms “high-occupancy toll lane” or “express lane.” However, the FDOT provides the following descriptions:²⁵

Managed lanes are a [] strategy in which a set of lanes within an existing highway facility proactively implements a managed response to changing traffic conditions. A combination of tools such as access control, vehicle eligibility, and dynamic pricing²⁶ are used for a managed lane, and there are several different types of managed lanes such as High-occupancy Vehicle (HOV) lanes, high-occupancy toll lanes, express toll lanes, reversible lanes and bus lanes.

Express lanes are a type of managed travel lane that is physically separated from the general use or general toll lanes within an existing roadway corridor. FDOT implements express lanes for congestion management purposes by designing them to operate at free-flow speed. Free-flow conditions in the express lanes are established when vehicles

²³ Miami-Dade Transportation Planning Organization, *Unified Planning Work Program for Transportation Planning Activities – Fiscal Years 2019 and 2010*, April 26, 2018, pp. 15 and 31, available at <http://www.miamidadetpo.org/library/reports/upwp/2019-2020-unified-planning-work-program-2018-06-08.pdf> (last viewed April 6, 2019).

²⁴ Section 316.0741(1)(a), F.S.

²⁵ See FDOT, SIS Connections, *Florida’s Strategic Intermodal System*, December 2018, at pp. 5-6, available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/systems/sis_newsletter_winter2019.pdf?sfvrsn=d6a066fc_4 (last viewed March 25, 2019).

²⁶ Also known as “variable pricing.” See s. 338.166(4), F.S.

can safely operate at speeds of 45 miles per hour or higher, [and toll] amounts in the express lanes are dynamically updated to support free-flow conditions.

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 may 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.²⁷

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.

Effect of Proposed Changes

Section 8 amends s. 338.166, F.S., to prohibit the FDOT from charging a toll that is more than \$1.25 per mile on any HOT lane or express lane (owned either by the FDOT or the MDX) in a county as defined in s. 125.011(1), F.S.; *i.e.*, Miami-Dade County.²⁸ The FDOT's ability to manage congestion through variable pricing in such lanes may be negatively affected.

Further, beginning October 1, 2020, and annually thereafter, the FDOT must submit to Miami-Dade County's board of county commissioners and the metropolitan planning organization a report showing the amount of tolls collected in Miami-Dade County and how those tolls were used in the previous fiscal year.

The bill specifies that both provisions apply to both the FDOT and the Florida Turnpike Enterprise.

Expressway Authority Public-Private Partnerships

Present Situation

The FEAA authorizes any expressway authority, transportation authority, bridge authority, or toll authority to receive or solicit proposals and enter into public-private partnership agreements, for the building, operation, ownership, or financing of authority transportation facilities or new transportation facilities within the authority's jurisdiction which increase transportation capacity. The statute provides determinations that must be made regarding a proposed project, requires certain costs to be borne by the private entity, provides how transportation authorities are to provide notice of certain proposals, and allows these authorities to exercise certain powers related to these agreements.²⁹

²⁷ Section 338.166, F.S., expressly does not apply to the turnpike system.

²⁸ For more information on Florida's express lanes, including a map of those in Miami-Dade County, *see* FDOT, *Florida Express Lanes*, available at <http://floridaexpresslanes.com/> (last viewed March 25, 2019).

²⁹ Section 348.0004(10), F.S. The FDOT's similar authority is contained in s. 334.30, F.S.

Effect of Proposed Changes

Sections 33 and 34 create s. 348.635, F.S., relating to the Tampa-Hillsborough County Expressway Authority, and s. 348.7605, F.S., relating to the Central Florida Expressway Authority, to generally relocate public-private partnership authorization and related provisions that the bill repeals in the FEAA. The relocated provisions are substantively the same as the statutory provisions currently in the FEAA. Any other expressway, transportation, bridge, or toll authority currently relying on the FEAA provisions for authorization to engage in public-private partnerships will no longer be authorized.

Rebuilt Motor Vehicle Inspection Program

Present Situation

In 2013, the Legislature created s. 319.141, F.S., creating a Pilot Rebuilt Motor Vehicle Inspection Program in Miami-Dade and Hillsborough counties through June 30, 2018.³⁰ The Department of Highway Safety and Motor Vehicles (DHSMV) set standards for the program and certified private sector inspection facilities in Miami-Dade County. The program's purpose was to evaluate private sector alternatives for rebuilt inspection services, including the feasibility of using private facilities, the cost impact to consumers, and the potential savings to the DHSMV. The DHSMV was required to establish a memorandum of understanding allowing private parties participating in the pilot program to conduct rebuilt vehicle inspections and specifying requirements for oversight, bonding and insurance, procedures, forms, and the electronic submission of documents.

To be approved for the program, an applicant was required to:

- Have and maintain a surety bond or irrevocable letter of credit in the amount of \$100,000, executed by the applicant;
- Secure and maintain a facility at a permanent structure at an address recognized by the U.S. Postal Service where the only services provided were rebuilt inspection services;
- Annually attest that he or she was not employed by or did not have an ownership interest in or financial arrangement with a motor vehicle repair shop, motor vehicle dealer, towing company, storage company, vehicle auction, insurance company, salvage yard, metal retailer, or metal rebuilder, from which he or she received remuneration for the referral of customers for rebuilt inspection services;
- Have and maintain garage liability and other insurance required by the DHSMV;
- Have completed criminal background checks of the owners, partners, and corporate officers and the inspectors employed by the facility; and
- Meet any additional criteria that the DHSMV determined necessary to conduct proper inspections.³¹

³⁰ Section 319.14(1)(c)3., defines "rebuilt vehicle" for purposes of that section as a motor vehicle or motor home built from salvage or junk.

³¹ Section 319.141(4), F.S.

As required by law, in 2015, the DHSMV submitted a report³² that summarized the implementation of the pilot program and program results. The DHSMV certified eight private businesses in the Miami area to conduct rebuilt vehicle inspections.³³ The DHSMV employees in Miami-Dade County were responsible for conducting rebuilt vehicle inspections at the DHSMV Regional Office and at various off-site locations and for monitoring the businesses to ensure inspections were conducted in accordance with program standards.

According to the DHSMV, each of the eight pilot program participants met all of the statutory requirements and the requirements of the memorandum executed with the DHSMV.³⁴ Statutorily authorized state rebuilt inspection fees (\$40) and re-inspection fees (\$20) were collected and remitted to the state as required. In addition, each pilot program participant was allowed to assess customers a service fee for each inspection. Service fees ranged from \$50 to \$85 and were not regulated in any manner by the DHSMV.³⁵

As provided in its authorizing legislation, the program was repealed on July 1, 2018, as it was not saved from repeal or reauthorized by the Legislature.

Effect of Proposed Changes

Section 4 of the bill revives, reenacts, and amends s. 319.141, F.S., reviving the pilot rebuilt motor vehicle inspection program in Miami-Dade County notwithstanding its repeal on July 1, 2018. The bill requires the DHSMV to implement a pilot program in Miami-Dade County by October 1, 2019, for rebuilt inspection services offered by existing private sector participants. The DHSMV may select up to four applicants that it deems to be the most qualified. As of December 2017, there were still 8 participants in the pilot program prior to its expiration; the bill would limit participation to only 4 participants.³⁶ However, the bill does not set forth any standards for the DHSMV to determine how to deem an applicant “to be the most qualified.”

The bill also authorizes the DHSMV to examine all records pertaining to any inspection or related service performed under the pilot program.

The bill creates additional, minimum requirements for applicants to the ones discussed above:

- Requires the surety bond or irrevocable letter of credit that each participant in the pilot program must maintain to be issued by entities licensed to do business in Florida and in favor of the DHSMV.
- Requires the participant’s facility to be at a permanent *fixed* structure, evidenced by proof of ownership or written lease at an address identified by a county-issued tax folio number, in addition to the being recognized by the U.S. Postal Service.

³² DHSMV, *Florida’s Private Rebuilt Vehicle Inspection Program – Pilot Program Report* (Jan. 30, 2015), available at <http://www.flhsmv.gov/pdf/cabinetreports/privaterebuiltreport.pdf> (last viewed March 25, 2019). No entities from Hillsborough County applied to participate in the pilot program.

³³ DHSMV, Office of Inspector General, *Rebuilt Vehicle Inspection Program Audit Report 201617-24* (Dec. 5, 2017), available at <https://www.flhsmv.gov/pdf/igoffice/20161724.pdf> (last viewed March 25, 2019).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

- Requires the participant's facility to:
 - Have permanent signage that advertises that only private rebuilt inspection services are provided at the location;
 - Post business hours;
 - Have a designated office area and customer waiting area;
 - Have a rebuilt inspection area separate and visually obstructed from any area accessible to the customer;
 - Have surveillance cameras with recording capabilities for the rebuilt inspection area;
 - Have sufficient on-site customer parking;
 - Be large enough to accommodate all of the vehicles being inspected; and
 - Have a covered area to accommodate at least two vehicles during inclement weather.
- In addition to attestations described above, requires the participant to annually attest that:
 - He or she does not have a direct or indirect interest in any motor vehicle that a facility has inspected or proposes to inspect;
 - There have been no changes to the ownership structure of the approved facility; and
 - The only services being provided by the participant at the facility are rebuild inspection services.
- Maintain garage liability insurance coverage with at least \$100,000 single-limit liability coverage that includes bodily injury and property damage protection, in addition to any other insurance required by the DHSMV.
- Requires the required criminal background checks of owners, partners, corporate officers and inspectors employed by the facility to demonstrate the persons have not:
 - Pled guilty or nolo contendere to or been convicted of a felony; or
 - Been incarcerated for a felony in the last 10 years.³⁷
- Prohibits a participant from conducting an inspection of a vehicle in complete rebuilt condition without prior approval by the DHSMV.

The bill specifies that only a participant selected and approved by the DHSMV can charge or receive a fee for providing or facilitating rebuild inspection services. The bill also specifies that no person or entity may conduct rebuilt inspection services, other than the DHSMV or authorized participants. The bill requires the DHSMV to conduct quarterly on-site facility inspections.

The bill provides that any person that fails an initial rebuilt inspection may only have that vehicle re-inspected by the DHSMV or the facility that conducted the original inspection.

The bill authorizes the DHSMV to adopt rules to implement and enforce the pilot program and grants the department nonexclusive power to define any term as long as the definition is consistent with this section of the bill.

The DHSMV must submit a written report by July 1, 2021, to the President of the Senate and Speaker of the House of Representatives evaluating the effectiveness of the program and recommending whether to expend the program to other counties.

³⁷ The first requirement, that a person has not pled guilty or nolo contendere or been convicted of a felony, in effect already excludes the second requirement, that a person has not been incarcerated for a felony in the last 10 years. In order to have been incarcerated, the person would have pled guilty or nolo contendere or been convicted of a felony.

The pilot program is repealed on July 1, 2022, unless reenacted by the Legislature.

FDOT Review of Design Plans

Present Situation

Section 334.175, F.S., requires all design plans and surveys prepared by or for the FDOT to be signed, sealed, and certified by the duly registered professional engineer or surveyor, architect, or landscape architect responsible for the project work. However, while FDOT may review plans for highway projects that impact the FDOT right-of-way, the FDOT is not required to approve the design plans.

Effect of Proposed Changes

Section 5 of the bill amends s. 334.175, F.S., requiring the FDOT to approve design plans for all transportation projects on, under, over, or abutting right-of-way owned by FDOT, if the plans meet FDOT design standards. This requirement would apply regardless of the transportation project's funding source.

Innovative Transportation Projects and Techniques

Present Situation

Section 337.025, F.S., entitled *innovative highway projects*, authorizes the FDOT to establish a program for highway projects demonstrating innovative techniques of highway construction, maintenance, and finance which have the intended effect of controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway construction and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. The FDOT may annually enter into up to \$120 million in contracts for innovative transportation projects. However, the annual cap does not apply to turnpike enterprise projects and to certain transportation projects funded in the past by the federal government.

The FDOT's Office of Design and the three divisions under it, the Roadway Design Office, the Production Support Office, and the Structures Design Office, develops policy, procedures, criteria, and standards for the design of the state's roadways, bridges, and other structures.³⁸ The offices regularly issue notices, bulletins, memos, and other publications to guide construction.

Effect of Proposed Changes

Section 6 of the bill amends s. 337.025, F.S., revising its title to *innovative transportation projects* and authorizing the FDOT to establish a program for such projects, including those demonstrating innovative techniques of bridge design (along with those of highway, construction, maintenance, and finance), which in addition to controlling time and cost increases have the intended effect of measuring resiliency and structural integrity.

³⁸ FDOT, Office of Design, available at <https://www.fdot.gov/design/> (last viewed April 6, 2019).

The bill further provides that all proposed innovative transportation projects, including all different alternatives, must be designed and constructed using the English system of units³⁹ with a proposed design speed of 70 miles per hour. Plans and specification must be prepared in accordance with FDOT's most recent design standards, Plans Preparation Manual, and drainage manual, Flexible Pavement Design Manual, and American Association of State Highway Transportation Officials,⁴⁰ and all current department memorandums.⁴¹

It is unclear why every design project must have a proposed design speed of 70 miles per hour. Chapter 316, F.S., sets maximum speed limits for vehicles in certain areas – 30 miles per hour in business or residence districts; 55 miles per hour in all other locations; 70 miles per hour on limited access highways; and 65 miles per hour on other highways outside of urban areas of 5,000 or more persons and that have at least four lanes divided by a median strip.⁴²

Osceola County Expressway Authority

Present Situation

In 2010, the Legislature created the Osceola County Expressway Authority Law, codified in part V of ch. 348, F.S.⁴³ The Osceola County Expressway Authority law contains many references to the FEAA. The Osceola County Expressway Authority (OCX) operated the Poinciana Parkway in Osceola County.

In 2014, the Legislature created the Central Florida Expressway Authority (CFX), in part III of ch. 348, F.S.⁴⁴ In summary, the Legislature transferred the former Orlando-Orange County Expressway Authority to the CFX. At the time of its creation, the CFX included Lake, Osceola, Orange, and Seminole Counties. Brevard County was subsequently added to the authority.

The 2014 act limited the exercise of the OCX's powers. Under that act, the OCX could only exercise its powers for the purpose of studying, planning, designing, financing, constructing, operating, and maintaining projects that were identified in its May 8, 2012, master plan and an additional, specified extension of the Osceola Parkway Extension.

The 2014 act provided for the future transfer of all powers, governance, and control of the Osceola County Expressway System and all assets, liabilities, facilities, tangible and intangible property, any rights in such property, and any other legal rights of the OCX to the CFX. The effective date of the transfer was December 31, 2018, or extended until the date on which the current and forecasted total debt service coverage ratios of the OCX could be certified to be

³⁹ Generically, the "English system of units" measures weight in pounds, height in feet, inches, and miles, and speed in miles per hour.

⁴⁰ The American Association of State Highway Transportation Officials is a nonprofit, nonpartisan association representing highway and transportation departments. It creates publications for use by state departments of transportation to "foster the development, operation, and maintenance of an integrated national transportation system." See American Association of State Highway Transportation Officials, *AASHTO Overview*, available at <https://www.transportation.org/home/organization/> (last viewed April 6, 2019).

⁴¹ FDOT document can be found at the Office of Design's Documents and Publication webpage, available at <https://www.fdot.gov/design/publicationslist.shtm> (last viewed April 6, 2019).

⁴² Sections 316.183 and 316.187, F.S.

⁴³ Chapter 2010-225, L.O.F. Part V of ch. 348, F.S., consists of ss. 348.9950 through 348.9961, F.S.

⁴⁴ Chapter 2014-171, L.O.F.

equal to or greater than 1.5 for each and every year during which debt obligations are outstanding. Through the extension the OCX can only exercise its powers through a contract with another governmental entity (or entities).⁴⁵

The 2014 act repeals part V of ch. 348, F.S., on the same date that the OCX is transferred to the CFX. Following the repeal and transfer, uncompleted elements of the OCX's May 8, 2012, master plan will be included in the CFX's master or long-range plan,⁴⁶ including the additional, specified extension of the Osceola Parkway Extension.

The OCX entered into a lease purchase agreement with Osceola County to acquire the Poinciana Parkway, a facility owned by the county and financed by Osceola County, Polk County, and the FDOT. Toll revenues from Poinciana are pledged to the repayment of the bonds that Osceola County issued. The OCX, Osceola County, and the CFX have entered into an interlocal agreement addressing the operation of the Poinciana, services provided by the CFX, and the potential acquisition of the Poinciana by the CFX. The OCX, Osceola County, and the CFX are working on the transfer of the lease purchase agreement to the CFX. The OCX does not own other facilities and has not issued bonds to finance facilities.⁴⁷

On December 11, 2018, the OCX board voted to transfer all of its projects to the CFX.⁴⁸

Effect of Proposed Changes

Section 35 of the bill repeals the Osceola County Expressway Authority Law codified in part V of ch. 348, F.S. Due to the OCX's board vote to transfer all of its projects to the CFX, the OCX is effectively dissolved, and this repeal will have no impact on its or other entities' operations.

SunPass

Present Situation

SunPass is the prepaid toll program in Florida for Florida's toll roads. Its use has increased over the years as many toll roads in the state convert to all-electronic, no cash tolling. The transponder works to pay tolls on all Florida toll roads, including the express lanes, most Florida bridges, and on toll roads in Georgia and North Carolina; it can also be used to pay for parking at certain venues and airports.⁴⁹

⁴⁵ The powers exercised pursuant to contract may only be for the purpose of operating and maintaining those projects which were completed before such date, in accordance with the requirements of any agreement, resolution, or indenture under which bonds or other debt obligations were issued to finance such projects, and completing construction of those projects for which financing of the full estimated costs of acquisition, design, and construction was obtained and construction began before December 31, 2018.

⁴⁶ The CFX's master or long-range plan will define the term "master plan" or "long range plan."

⁴⁷ FDOT, *2019 Agency Legislative Bill Analysis: SB 898*, February 12, 2019, at p. 3 (On file in the Senate Infrastructure and Security Committee).

⁴⁸ Stephanie Bechara, Spectrum News 13, *Osceola County Expressway Authority Coming to an End*, December 11, 2018, available at <https://www.mynews13.com/fl/orlando/news/2018/12/11/osceola-county-expressway-authority-coming-to-an-end> (last viewed March 27, 2019).

⁴⁹ SunPass, *Program Explanation*, available at <https://www.sunpass.com/en/about/program.shtml> (last viewed April 6, 2019).

Some toll roads and bridges offer discount plans for frequent users and commuters. “These special discount plans may have residency requirements, vehicle occupancy requirements, time-of-day restrictions, or number-of-trips requirements.” The transaction will only count towards the rebate if there are sufficient funds in the SunPass user’s account at the time of the toll transaction. There are currently seven counties that offer discount plans.⁵⁰

Effect of Proposed Changes

Section 36 requires the Office of Program Policy Analysis and Government Accountability to conduct a feasibility analysis of the Florida Turnpike Enterprise conducting a rebate program for SunPass users. The report of findings and recommendations must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2019.

Effective Date

Except as otherwise expressly provided, the bill is effective on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

In **Section 4** the bill requires the DHSMV to select four applicants that it deems to be the most qualified to continue the revived Rebuilt Motor Vehicle Inspect Program pilot. The original program that expired on June 30, 2018, had eight participants. The bill does not set forth any standards for the DHSMV to use to determine how to determine applicants to be the most qualified. While the bill does set forth certain minimum requirements that an applicant must meet, the delegation of authority to deem an applicant “to be the most

⁵⁰ SunPass, *Tolls – SunPass Discounts and Rebates*, available at <https://www.sunpass.com/en/tolls/tollsSunPass.shtml> (last viewed April 6, 2019).

qualified” may be determined to be vague and an improper delegation of legislative authority.⁵¹

Section 8 provides that, notwithstanding any other law, a toll for a high-occupancy lane or express lane, including any lane on the Florida Turnpike System or MDX facilities, may not exceed \$1.25 per mile in Miami-Dade County (a county defined in s. 125.011(1), F.S.).

Section 338.227, F.S., authorizes the FDOT to borrow money as provided in the State Bond Act⁵² to pay all or any part of the cost of any one or more legislatively approved Florida Turnpike System projects. The principal of, and the interest on, these bonds is paid solely from revenues pledged for their payment. In s. 338.229, F.S., in connection with the issuance of Turnpike bonds, the state agreed not to limit or restrict the rights vested in the FDOT to establish and collect tolls for the use of the Turnpike System and to fulfill the terms of any agreements made with bondholders. The agreement includes not impairing the rights or remedies of the bondholders until the bonds, together with interest on the bonds, are fully paid and discharged.⁵³

At present, about \$2.7 billion of Turnpike System bonds have been issued that remain outstanding. Repayment of those bonds has been pledged and is based on ss. 338.227 and 338.229, F.S.⁵⁴ Additionally in Miami-Dade County, there are multiple express lanes under construction or in planning or design.⁵⁵

Article I, section 10 of the United States Constitution and Section 10, Art. I of the State Constitution prohibit making any law that would impair a contract. **Section 8** of the bill provides no exception for existing bonds and bond covenants (i.e., contracts) regarding high-occupancy lanes or express lanes. Accordingly, a court may determine that **section 8** of the bill impairs the master bond resolution of the Turnpike by limiting tolls in HOT or express lands to \$1.25 per mile; if so, **section 8** of the bill may be unconstitutional.

Section 16 of the bill creates the Greater Miami Expressway Agency in s. 348.0304, F.S. Section 348.0304(2), F.S., provides, at lines 620 through 623 of the bill, that persons who served on the former MDX “may not be appointed to the governing body of the” Greater Miami Expressway Agency. A *permanent* prohibition of a member of the MDX being appointed as a member of the Greater Miami Expressway Agency may constitute a prohibited bill of attainder. Article I, sections 9 and 10 of the United States Constitution

⁵¹ See *United Faculty of Fla. v. Fla. State Bd. of Educ.*, 157 So. 3d 514, 518 (Fla. Dist. Ct. App. 2015) (“fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”) (citing *Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978)).

⁵² Sections 215.57 – 215.83, F.S. Statutes creating the state’s expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.

⁵³ Statutes creating the state’s expressway and bridge authorities contain similar provisions. See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.

⁵⁴ Florida Turnpike Enterprise, *Fitch Affirms Florida Turnpike Enterprise’s Rev Bonds at ‘AA’; Outlook Stable*, available at http://www.floridasturnpike.com/documents/investors/Turnpike_Fitch_Rating_Report.pdf (last viewed April 8, 2019).

⁵⁵ FDOT, *Florida Express Lanes, Southeast Florida*, available at <http://floridaexpresslanes.com/southeastfl/> (last viewed April 6, 2019).

and Section 10, Art. I of the State Constitution prohibit passage of any bill of attainder. A bill of attainder is “a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.”⁵⁶ The United State Supreme Court, in *United States v. Brown*, 381 U.S. 437, 85 S.Ct 1707 (1965), held that:

[L]egislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution. . . This permanent proscription from any opportunity to serve the Government is punishment, and of a most severe type. (quoting *United States v. Lovett*, 328 U.S. 303, 66 S.Ct. 1073, 90 L. Ed. 1252 (1946).)

An amendment to limit the prohibition of appointments of former MDX members for a reasonable time period should be considered.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Travelers in Miami-Dade County will be able to use HOT or express lanes for a maximum toll of \$1.25 per mile (**section 8**). However, such travelers may experience reduced travel options if the cap on tolls results in increased congestion in HOT or express lanes. Additionally, travelers on the toll roads of the newly created Greater Miami Expressway Agency who are residents of Miami-Dade County and are SunPass account holders may receive a 25 percent rebate on tolls (**section 19**).

C. Government Sector Impact:

Any costs associated with the repeal of the MDX and transfer to the newly created Greater Miami Expressway agency are unknown at this time.

The Division of Bond Finance will incur expenses associated with the required review of all MDX contracts, financial obligations, and contractual relationships and liability and with making a determination as to the assumption of responsibility for those obligations, which expenses are expected to be absorbed within existing resources (**section 31**).

The \$1.25 per mile cap on tolls for use of HOT lanes or express lanes in Miami-Dade County may reduce toll revenues collected by the FDOT or the Florida Turnpike

⁵⁶ *Cassady v. Moore*, 737 So. 2d 1174 (Fla. 1st DCA 1999) citing *United States v. Bennett*, 928 F.2d 1548, 1558 (11th Cir. 1991).

Enterprise, thus, reducing available funds for operations and maintenance of the lanes (**section 8**). In a similar bill the FDOT advised that it expects a significant but indeterminate impact on operations and maintenance costs for HOT or express lanes in Miami-Dade County, which are currently covered by collected toll revenues. The bill would require these costs to be supplemented by “regular” non-toll transportation revenues in the event that costs are greater than the maximum \$1.25 per mile toll allowed by the bill.⁵⁷ Additionally, the effect of such cap on any bonds issued by the Florida Turnpike Enterprise is unknown at this time.

The FDOT will incur annual expenses associated with the required reports to the Miami-Dade County Board of County Commissioners and the Miami-Dade County Transportation Planning Organization, beginning October 1, 2020 (**section 8**). These expenses are expected to be absorbed within existing resources.

The prohibition on the Miami-Dade Transportation Planning Organization to charge fees on members will reduce the funds available to the organization by approximately \$498,000 annually (**section 9**). However, local government and other non-county entities that serve on the board may save these funds.

The DHSMV may incur indeterminate expenses associated with the reenactment of the Rebuilt Motor Vehicle Inspection Program (**section 4**).

The Office of Program Policy Analysis and Government Accountability will incur expenses to conduct the required feasibility analysis for a Florida Turnpike Enterprise SunPass rebate program (**Section 36**). No appropriation is made in the bill for this study.

VI. Technical Deficiencies:

The bill provides at line 613 that the Governor appoints *three* members of the newly created Greater Miami Expressway Agency. However, lines 616 through 620 provide for staggered terms for the *four* persons appointed by the governor. An amendment should be considered to resolve this conflict in the bill’s provisions

In **Section 2** of the bill, requirements for certain entities to comply with financial disclosure requirements are moved to this s. 112.3144, F.S., due to the repeal of statutes in part I of ch. 348, F.S. The bill creates the Greater Miami Expressway Agency, but the entities listed in **section 2** of the bill do not include an “expressway agency.” An amendment should be considered to clarify that the financial disclosure requirements also apply to an expressway agency.

Section 4 of the bill revives and amends the Pilot Rebuilt Motor Vehicle Inspection Program. Lines 270 through 281 define the term “rebuilt inspection services” by listing items that must be examined. The bill adds the phrase “if available” on line 275. Because the list of items is separated by commas, it is unclear whether the “if available” phrase applies to the item listed

⁵⁷ See FDOT, 2019 Agency Legislative Bill Analysis: SB 1044, February 14, 2019, at pp. 7-8 (On file in the Senate Committee on Infrastructure and Security). SB 1044 addresses a similar issue related to HOT lanes.

before it or after it (“a photograph of the junk or salvage vehicle taken before repairs begin” and “a photograph of the interior driver and passenger side of the vehicle if airbags were previously deployed and replaced,” respectively).

Additionally in **Section 4** of the bill, the bill sets out new requirements for applicants to the pilot rebuilt motor vehicle inspection program that are interspersed with requirements for selected participants for the program. An amendment to clearly delineate requirements for applicants and requirements for participants should be considered to clarify these provisions on lines 304 to 357.

In **Section 4**, the bill sets forth the additional, minimum requirements for an applicant to participate in the revived Rebuilt Motor Vehicle Inspection Program. Lines 348 to 351 require that an applicant have completed a criminal background check which “demonstrates that such persons have not pled guilty or nolo contendere or been convicted of a felony, or been incarcerated for a felony in the last 10 years.” The first requirement (that a person has not pled guilty or nolo contendere or been convicted of a felony), effectively includes the second requirement (that a person not have been incarcerated for a felony in the last ten years). In order to have been incarcerated, a person would have pled guilty or nolo contendere or have been found guilty of a felony in the last ten years. An amendment should be considered to possibly remove the phrase “or been incarcerated for a felony in the past 10 years.”

On line 364, in **Section 4** of the bill, the bill sets a requirement for “an applicant” that fails an initial rebuilt inspection. Because the bill also refers to “applicant” for participation in the pilot program, an amendment could clarify that line 364 is referring to a vehicle owner for a vehicle that fails the initial rebuild inspection. An amendment should be considered to resolve this inconsistency.

Section 6 of the bill requires innovative transportation project to be prepared in accordance with certain documents, including documents of the FDOT. The bill list particular FDOT documents on lines 433 and 437, but includes in the list “American Association of State Highway Transportation Officials.” That association produces its own documents, but is not part of the FDOT. An amendment should be considered to clarify which publications of the American Association of State Highway Transportation Officials that should be used to prepare innovative transportation projects.

VII. Related Issues:

Section 4 of the bill authorizes the DHSMV to adopt rules to implement and enforce the pilot rebuilt motor vehicle inspection program and grants the DHSMV nonexclusive power to define any term as long as the definition is consistent with this section of the bill.

Section 30 of the bill creates s. 348.0318(a), F.S., and provides that the powers conferred in new part I of ch. 348, F.S., to the Greater Miami Expressway Agency and the FDOT supersede other laws in the exercise of the powers granted by the part. **Section 18** creates s. 348.0306, F.S., and authorizes the Greater Miami Expressway Agency to exercise “all rights and authority necessary, appurtenant, convenient, or incidental to the carrying out of its purposes,” including pledging revenues pursuant to the terms of any lease-purchase agreement between the agency and the

FDOT, as security for all or any of the obligations of the agency. This could be interpreted as allowing the Greater Miami Expressway Agency to enter into lease-purchase agreements with the FDOT. However, s. 334.044(16), F.S., prohibits the FDOT from entering into lease-purchase agreements with an expressway authority, regional transportation authority, or other entity. This prohibition does not invalidate a lease-purchase agreement authorized under ch. 348, F.S., existing as of July 1, 2013. Any lease-purchase agreement of the MDX currently would be transferred to the Greater Miami Expressway Agency pursuant to **section 31** of the bill. However, the FDOT does not have a lease-purchase agreement with the MDX.⁵⁸ It is unclear if the bill would permit the Greater Miami Expressway Agency to enter into lease-purchase agreements with the FDOT and if a court would interpret the bill, as the most recent enactment by the Legislature, as superseding the prohibition in s. 334.044, F.S.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 20.23, 112.3144, 215.68, 319.141, 334.175, 337.025, 338.165, 338.166, 339.175, and 343.1003.

This bill creates the following sections of the Florida Statutes: 348.0301, 348.0302, 348.0303, 348.0304, 348.0305, 348.0306, 348.0307, 348.0308, 348.0309, 348.0310, 348.0311, 348.0312, 348.0313, 348.0314, 348.0315, 348.0316, 348.0317, 348.0318, 348.635, and 348.7605.

This bill repeals the following sections of the Florida Statutes: 348.0001, 348.0002, 348.0003, 348.0004, 348.0005, 348.0007, 348.0008, 348.0009, 348.0010, 348.0011, 348.00115, 348.0012, 348.9950, 348.9951, 348.9952, 348.9953, 348.9954, 348.9956, 348.9957, 348.9958, 348.9959, 348.9960, and 348.9961.

This bill creates undesignated sections of Florida Law.

IX. Additional Information:

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

CS/CS by Appropriations on April 18, 2019:

The committee substitute:

- Removes from the bill the transfer of MDX to FDOT; instead the bill repeals the Miami Dade Expressway Authority and creates and transfers all assets, powers, duties, and liabilities to the Greater Miami Expressway Agency.
- The bill creates multiple new statutes to apply to only the Greater Miami Expressway Agency. The new statutes, for the most part reflect the same definitions, purposes, powers and ethics requirements as in the FEAA, amended to only apply to the Greater Miami Expressway Agency. The bill does revise the membership of the agency and adds new ethics, procurement, contracting, and bonding requirements.

⁵⁸ Email from the FDOT to staff of the Infrastructure and Security Committee, August 21, 2018 (on file with the Senate Infrastructure and Security Committee).

- Creates the Florida Sunshine Rebate Program within the Greater Miami Expressway Agency providing that at the time that any toll is incurred to provide a 25 percent rebate to all SunPass holders registered in Miami-Dade County.
- Corrects the date of the 5-year work program that the MDX may continue to implement, from December 5, 2018, to December 5, 2017.
- Requires the Greater Miami Expressway Agency, to prioritize S.R. 836/Dolphin Expressway Southwest Extension (Kendall Parkway) project.
- Prohibits the FDOT or the Florida Turnpike Enterprise from charging a toll that is more than \$1.25 per mile on any HOT lane or express lane in a county as defined in s. 125.011(1), F.S.; *i.e.*, Miami-Dade County.
- Requires the FDOT and the Florida Turnpike Enterprise to make certain annual report to the board of county commissioners of Miami-Dade County and the county's MPO.
- Reduces the membership of the Miami-Dade Transportation Planning Organization and prohibits the organization from charging fees to members.
- Removes the provision in the bill revising uses of the charter county and regional transportation system surtax proceeds in Miami-Dade County.
- Removes the provision in the bill that required the FDOT to program sufficient funds in its tentative work program such that all, rather than 90 percent, of the net toll collections attributable to users of turnpike facilities in Miami-Dade, Broward, and Palm Beach Counties be committed to projects and bond finance commitments in those counties.
- Maintains the rebuilt motor vehicle inspection program as a pilot program instead of a permanent program, provides additional requirements for program participants and their facilities, and requires the program to expire on July 1, 2021.
- Requires all innovative transportation projects to be designed and constructed using the English system of units; have a proposed design speed of 70 miles per hour; and be prepared using certain FDOT documents.
- Requires the Office of Program Policy Analysis and Government Accountability to conduct a feasibility analysis of the Florida Turnpike Enterprise conducting a rebate program for SunPass users.

CS by Infrastructure and Security on March 12, 2019:

The CS:

- Revises a number of provisions relating to the terms and conditions of the transfer of the MDX and its asset and liabilities to the FDOT.
- Limits revisions to uses of the proceeds of the Charter County and Regional Transportation System to Miami-Dade County and provides additional provisions relating to distribution of such proceeds to municipalities in that county.
- Reenacts and makes permanent the rebuilt motor vehicle inspection program in Miami-Dade County.
- Removes the prohibition against the FDOT using toll revenue from HOT or express lanes to offset funding the facility would receive if the facility were not a HOT lane or express lane.
- Removes the provisions that revised the membership of the Miami-Dade County metropolitan planning organization.
- Removes provisions relating to the preservation principle of the FDOT's goals.

- Removes provisions that would provide an additional exception from the prohibition against the FDOT selling property at a price less than the FDOT's current estimate of value after determining property of a specified value is not needed for a transportation facility.

B. Amendments:

None.

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