

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1283 Tampa-Hillsborough County Expressway Authority

**SPONSOR(S):** Tourism, Infrastructure & Energy Subcommittee, Beltran

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1660

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	18 Y, 0 N, As CS	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Ways & Means Committee			
4) Commerce Committee			

### SUMMARY ANALYSIS

Created in 1963, the Tampa-Hillsborough County Expressway Authority (THEA) owns, maintains, and operates four transportation facilities in Hillsborough County, including the Selmon Expressway.

The bill creates the West Florida Expressway Authority (WFEA) to replace THEA, and upon formal action of Citrus, Hernando, Manatee, Pasco, Pinellas, or Polk County, authorizes the authority to expand into any of those counties that take such action. In creating WFEA, the bill:

- Creates, amends, revises, and deletes definitions.
- Provides for membership on the authority's governing body, including increasing the size of the board as its jurisdictional boundaries are expanded.
- Establishes the manner in which the authority's jurisdictional boundaries may be expanded.
- Revises powers of the authority, including limits on the use of certain toll revenues and its authority to enter into certain agreements.
- Modifies provisions regarding lease-purchase agreements, including prohibiting the authority from entering into an agreement with the Department of Transportation.
- Modifies provisions regarding the acquisition of land and property.
- Repeals a required consultation with the Hillsborough City-County Planning Commission and a provision regarding design standards.
- Makes technical and conforming changes.

The bill does not appear to impact state or local government revenues or expenditures.

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Created in 1963,<sup>1</sup> part II of ch. 348, F.S., creates the Tampa-Hillsborough County Expressway Authority (THEA) as an agency of the state in Hillsborough County.

THEA owns, maintains, and operates four facilities within Hillsborough County: the Selmon Expressway, the Brandon Parkway, Meridian Avenue, and the Selmon Greenway. All toll revenues collected on the Selmon Expressway remain in Hillsborough County. In 2014, the Legislature gave THEA the ability to offer services to counties surrounding Hillsborough County, including Hardee, Manatee, Pasco, Pinellas, and Polk Counties.<sup>2,3</sup>

The bill creates with the West Florida Expressway Authority (WFEA) to replace THEA, and upon formal action of Citrus, Hernando, Manatee, Pasco, Pinellas, or Polk County, authorizes WFEA to expand into any of those counties that take such action.

#### Definitions

##### Current Situation

Section 348.51, F.S. defines certain terms for purposes of THEA's governing statute. These definitions include the following terms, among others:

*County* means the County of Hillsborough.

*Expressway System* means, generally, a modern highway system of roads, bridges, causeways, and tunnels in the metropolitan area of the city, or within any area of the county, with access limited or unlimited as the authority may determine, and such buildings and structures and appurtenances and facilities related thereto, including all approaches, streets, roads, bridges, and avenues of access for such system.

*Hillsborough County Gasoline Tax Fund* means all the 80-percent surplus gasoline tax funds or 20-percent surplus gasoline tax funds accruing in each year to the Department of Transportation (DOT) or the county, as the case may be, for use in Hillsborough County under the provisions of s. 9, Art. XII of the State Constitution, after deduction, if and only to the extent necessary, of any amounts of said gasoline tax funds heretofore pledged by DOT or the county for outstanding obligations.

*Revenues* means all tolls, revenues, rates, fees, charges, receipts, rentals, contributions, and other income derived from or in connection with the operation or ownership of the expressway system, including the proceeds of any use and occupancy insurance on any portion of the system but excluding any Hillsborough County gasoline tax funds.

##### Effect of the Bill

The bill amends the definitions of the following terms:

*County* means each county located within the jurisdictional limits of the authority, including Hillsborough County and any expansion county as applicable.

*Expressway System* means a modern highway system of roads, bridges, causeways, and tunnels, with access limited or unlimited as the authority may determine, and such buildings and structures and appurtenances and facilities related thereto, including all approaches, streets, roads, bridges, and

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<sup>1</sup> Ch. 63-447, L.O.F.

<sup>2</sup> Ch. 2014-169, L.O.F.

<sup>3</sup> Tampa-Hillsborough Expressway Authority, <https://www.tampa-xway.com/about-the-authority/#> (last visited March 2, 2021).

avenues of access for such system. Following an expansion event, a transportation facility shall become part of the expressway system upon the governing board of the authority's designation of such transportation facility as part of its expressway system.

*Revenues* means all tolls, revenues, rates, fees, charges, receipts, rentals, contributions, including, but not limited to contributions of revenues from a county, municipality, or other local governmental entity, and other income derived from or in connection with the operation or ownership of the expressway system, including the proceeds of any use and occupancy insurance on any portion of the system.

The bill defines the following terms:

*County Gasoline Tax Fund* means all the 80-percent surplus gasoline tax funds or 20-percent surplus gasoline tax funds accruing in each year to a county for use in a county under s. 9, Art. XII of the State Constitution, after deduction, if and only to the extent necessary, of any amounts of such gasoline tax funds pledged by a county for outstanding obligations.

*Expansion County* means a county with the consent of which and in which the authority constructs or acquires a transportation facility, which may include Citrus, Hernando, Manatee, Pasco, Pinellas, and Polk Counties.

*Expansion Event* means with the approval of the owner of the transportation facility, the adoption of a resolution by the governing body of the authority for the authority to construct, complete, or acquire a transportation facility located in an expansion county and to include the expansion county within its jurisdictional limits.

*Transportation Facility* means the mobile and fixed assets, and the associated real or personal property or rights, used in the transportation of persons or property by any means of conveyance and all appurtenances, including, but not limited to, highways; limited or controlled access lanes, avenues of access, and facilities; and administrative and other office space, for exercise by the authority of the powers and obligations granted in part II of ch. 348, F.S.

The bill removes the definition of the term "Hillsborough County Gasoline Tax Fund" and makes technical changes to other definitions.

## **West Florida Expressway Authority-Creation, Purpose, Powers, Governance, and Expansion**

### Current Situation

Section 348.52, F.S. creates and establishes a body politic and corporate, an agency of the state, to be known as the "Tampa-Hillsborough County Expressway Authority."<sup>4</sup>

THEA is created for the purposes and has power to construct, reconstruct, improve, extend, repair, maintain, and operate the expressway system with such purposes in all respects for the benefit of the people of the State of Florida, the City of Tampa, and the County of Hillsborough.<sup>5</sup>

THEA is granted various powers and duties, including the authority to:

- Sue and be sued;
- Acquire and hold property;
- Make and enter into lease purchase agreements;
- Fix, alter, charge, establish and collect tolls;
- Borrow money;
- Secure the payment of bonds by a pledge of all or any portion of the revenues or such other moneys legally available, including Hillsborough County gasoline tax funds;
- Make contracts and enter into contracts;
- Accept gifts and grants;

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<sup>4</sup> S. 348.52(1), F.S.

<sup>5</sup> S. 348.53, F.S.

- Exercise the power of eminent domain;
- Construct and maintain various utility equipment; and
- With the consent of the county within whose jurisdiction the activities occur, to construct, operate, and maintain various transportation facilities in other counties.<sup>6</sup>

THEA's governing body consists of a board of seven members.

- Four members are appointed by the Governor subject to Senate confirmation.
  - Each such member's term of office is for four years or until his or her successor is appointed and qualified.
  - Vacancies occurring for any such member prior to the expiration of the affected term is filled for the unexpired term.
  - The Governor may remove from office any such member for cause.
  - Each such member, before entering upon his or her official duties, must take and subscribe to an oath that he or she will honestly, faithfully, and impartially perform the duties devolving upon him or her in office as a member of the authority and that he or she will not neglect any duties imposed upon him or her.
- One member is the mayor, or the mayor's designate, who must be the chair of the city council of the city in Hillsborough County having the largest population (Tampa), according to the latest decennial census, who serves as an ex officio member.
- One member is a member of the Board of County Commissioners of Hillsborough County, selected by such board, who serves as an ex officio member.
- One member is the district secretary of the Department of Transportation (DOT) serving in the district that contains Hillsborough County, who serves as an ex officio member.<sup>7</sup>

THEA designates one of its members as chair. Authority members are not entitled to compensation but are entitled to receive reimbursement of their travel and other necessary expenses.<sup>8</sup> A majority of the members of the authority constitutes a quorum, and resolutions enacted or adopted by a vote of a majority of the members present and voting at any meeting becomes effective without publication or posting or any further action of the authority.<sup>9</sup>

#### Effect of the Bill

The bill creates the West Florida Expressway Authority (WFEA) to replace THEA.

The bill provides that immediately on July 1, 2021, WFEA assumes the governance and control of the expressway system operated by THEA, including its assets, personnel, contracts, obligations, liabilities, facilities, and tangible and intangible property. Any rights in such property and other legal rights of THEA are transferred to WFEA. WFEA must immediately succeed to and assume the powers, responsibilities, and obligations THEA.

The bill provides that the purpose of WFEA is for the benefit of the people of the West Florida region. In addition to the purposes identified in current law for THEA, the bill adds that in the construction of the expressway system, WFEA may construct any extensions, additions, or improvements to the system or appurtenant facilities, including all necessary approaches, roads, bridges, avenues of access, and boulevards, with any changes, modifications, or revisions of any project which are deemed desirable and fair.

The bill amends the authority's powers to establish tolls by providing that toll revenues attributable to a toll rate increase for the use of a portion of the expressway system that becomes effective on or after the date that the jurisdiction of the WFEA is first expanded to include one or more expansion counties may not be used to construct or expand a different portion of the system unless a two-thirds majority of the members of the governing board, determined at the time of such vote, votes to approve such use. However, this provision does not apply to the extent that application of the requirement would:

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<sup>6</sup> S. 348.54, F.S.

<sup>7</sup> S. 348.52(2), F.S.

<sup>8</sup> S. 112.061, F.S.

<sup>9</sup> S. 348.52(3), F.S.

- Violate any covenant established in a resolution or trust indenture under which bonds were issued by the authority on or before the first date that the authority's jurisdiction is expanded to include one or more expansion counties; or
- Cause the authority to be unable to meet its obligations under the terms of an existing agreement between THEA and DOT.

The bill authorizes WFEA to enter into partnerships, contracts, and agreements including, but not limited to, interlocal agreements with any federal, state, or local governmental entity with respect to its purposes.

The bill removes a provision allowing the authority to construct, operate, and maintain certain transportation outside of Hillsborough County with consent of the host county.

The bill provides that while WFEA's governing body will initially consist of seven members, it is subject to increase to no more than 13 members through the addition of a new member for each expansion county upon the expansion of the WFEA's jurisdiction to include the expansion county.

Four members of the governing body continue to be appointed by the Governor, subject to Senate confirmation. One of these members must be a resident of Hillsborough County or any expansion county. A board member currently serving an unexpired term continues to serve the remainder of his or her unexpired term. Each member, including each member from an expansion county, is subject to existing provisions regarding terms in office, vacancies, and removal from office. However, the respective initial term of one or more members representing an expansion county may be for two years at the sole discretion of the governing board. This is in order to achieve staggered terms of office.

The bill provides that after an expansion event in a particular county, the governing body must be increased by one additional ex officio voting member for that county, which member must be a member of the Board of County Commissioners of the county, selected by the Board of County Commissioners. An increase in board membership is effective on the date that such expansion county member takes the required oath.

WFEA's jurisdictional boundaries are automatically expanded to include any one or more expansion counties upon the occurrence of an expansion. However, an expansion event must occur on or before:

- The date that WFEA makes a final written determination to undertake a transportation facility located within the jurisdictional limits of an expansion county by adding elements of the study, design, engineering, acquisition, construction, or equipping of such transportation facility to its work plan; or
- The effective date that WFEA becomes the owner of a transportation facility located in the jurisdictional limits of an expansion county.

A delay in the designation of an expansion county board member does not affect the expansion of WFEA's jurisdiction.

This transfer to WFEA is subject to the terms and covenants for the protection of the holders of the former THEA bonds and the resolutions adopted in connection with the issuance of the bonds and any and all bonds issued pursuant to a resolution or trust indenture. Further, the transfer does not impair the terms of the contract between WFEA and the bondholders, does not act to the detriment to bondholders, and does not diminish the security for the bonds.

After the transfer, WFEA must operate and maintain the expressway system and any other facilities in accordance with the terms, conditions, and covenants contained in the bond resolutions securing authority bonds. WFEA must collect toll revenues and apply them to the payment of debt service as provided in the bond resolution securing all bonds and must expressly assume all obligations relating to all bonds to ensure that the transfer has no adverse impact for the security of all bonds. The transfer does not make the obligation to pay the principal and interest on the bonds a general liability of WFEA or pledge additional expressway system revenues to payment of the bonds. Expressway system revenues that are generated by the expressway system and other facilities of WFEA which were

pledged by THEA to payment of the bonds will remain subject to the pledge for the benefit of the bondholders.

The transfer does not modify or eliminate any prior obligation to DOT to pay certain costs of the expressway system from sources other than revenues of the expressway system, nor does the transfer modify or eliminate the terms and conditions of the memorandum of agreement dated October 26, 2010, as amended on March 28, 2012, and October 8, 2012, between THEA and DOT and assumed by WFEA.

## **Revenue Bonds for Specified Projects**

### Present Situation

Existing facilities that constitute the Tampa-Hillsborough County Expressway System are approved to be refinanced by revenue bonds issued by the Division of Bond Finance<sup>10</sup> pursuant to s. 11(f), Art. VII of the State Constitution<sup>11</sup> and the State Bond Act<sup>12</sup> or by revenue bonds issued by the authority pursuant to s. 348.56(1)(b), F.S. In addition, the following projects of the THEA are approved to be financed or refinanced by the issuance of revenue bonds in accordance with part II of ch. 348, F.S., and s. 11(f), Art. VII of the State Constitution:

- Brandon area feeder roads.
- Capital improvements to the expressway system, including safety and operational improvements and toll collection equipment.
- Lee Roy Selmon Crosstown Expressway System widening, and any extensions thereof.
- The connector highway linking the Lee Roy Selmon Crosstown Expressway to Interstate 4.
- Capital projects that THEA is authorized to acquire, construct, reconstruct, equip, operate, and maintain provided that any financing of such projects does not pledge the full faith and credit of the state.<sup>13</sup>

### Effect of the Bill

The bill amends s. 348.565, F.S., to remove references to the current Tampa-Hillsborough County expressway system and removes the specific approved projects listed above. The bill provides that the capital projects that WFEA is authorized to acquire, construct, reconstruct, equip, and maintain are approved to be financed in accordance with s. 11(f), Art. VII of the State Constitution.

## **Lease Purchase Agreements**

### Current Situation

Current law provides that the authority may enter into lease-purchase agreements with the City of Tampa, Hillsborough County, the state or any agency thereof, including DOT,<sup>14</sup> and any federal agency relating to and covering the expressway system or any portion thereof.<sup>15</sup> The law provides specific requirements for the lease purchase agreement.<sup>16</sup>

Of note, the statute provides that no pledge of either the 80-percent surplus gasoline tax funds or the 20-percent surplus gasoline tax funds under any such lease-purchase agreement may be made without the consent of Hillsborough County evidenced by a resolution duly adopted by its board of county commissioners, nor unless the revenues pledged under the lease-purchase agreement are estimated by the authority to aggregate during the term of the lease-purchase agreement not less than the principal amount of the bonds secured thereunder plus interest thereon.<sup>17</sup>

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<sup>10</sup> The Division of Bond Finance is part of the State Board of Administration.

<sup>11</sup> Section 11(f), Art. VII of the State Constitution provides that each project, building, or facility to be financed or refinanced with revenue bonds shall first be approved by the Legislature by an act relating to appropriations or by general law.

<sup>12</sup> Ss. 215.57-215.83, F.S.

<sup>13</sup> S. 348.565, F.S.

<sup>14</sup> Pursuant to s. 334.034(16)(b), F.S., DOT is no longer authorized to enter into these agreements.

<sup>15</sup> S. 348.60(1), F.S.

<sup>16</sup> S. 348.60, F.S.

<sup>17</sup> S. 348.60(4), F.S.

### Effect of the Bill

The bill provides that a pledge of surplus gasoline tax funds under any lease-purchase agreement may not be made without the consent of the county as evidenced by a resolution duly adopted by its Board of County Commissioners, which resolution may authorize the execution and delivery of an interlocal agreement between WFEA and the county setting forth the terms and provisions for use by the authority of any such gasoline tax funds. The bill also clarifies that WFEA may not enter into a lease-purchase agreement with DOT.

## **Acquisition of Land and Property**

### Current Situation

THEA may acquire private or public property and property rights including rights of access, air, view and light by gift, devise, purchase or condemnation by eminent domain proceedings, as it may deem necessary for any authorized purposes. This right of eminent domain must be exercised by the authority in the manner provided by law, in particular ch. 74, F.S.<sup>18</sup>

### Effect of the Bill

The bill authorizes WFEA to acquire private or public property and property rights as it deems necessary, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, and replacement access for landowners whose access is impaired due to the construction of a transportation facility.

## **Consultation with Hillsborough County City-County Planning Commission**

### Current Situation

In determining the route, the design, and the type of construction in connection with constructing the expressway system, THEA must consult with the Hillsborough County City-County Planning Commission for consistency with local government comprehensive plans.<sup>19</sup>

### Effect of the Bill

The bill repeals the requirement that the authority consult with the Hillsborough County City-County Planning Commission as it relates to the expressway system.

## **Design Standards**

### Current Situation

Geometric design standards used in connection with constructing the expressway system or any extension thereof must as nearly as is practicable follow or be superior to design standards adopted for the National System of Interstate and Defense Highways.<sup>20</sup>

### Effect of the Bill

The bill repeals these design standards.

## **Technical and Conforming Changes**

The bill makes technical and conforming changes to the following provisions:

- Section 343.975, F.S., relating to complete and additional authority of the Tampa Bay Area Regional Transit Authority.
- Section 348.545, F.S., relating to facility improvement; bond financing authority.
- Section 348.56, F.S., relating to bonds of the authority.
- Section 348.57, F.S., relating to refunding bonds.
- Section 348.58, F.S., relating to remedies.

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<sup>18</sup> S. 348.62(1), F.S. Chapter 74, F.S., relates to proceedings supplemental to eminent domain.

<sup>19</sup> S. 348.68, F.S.

<sup>20</sup> S. 348.681, F.S.

- Section 348.59, F.S., relating to traffic control.
- Section 348.61, F.S., relating to DOT may be appointed agent of authority for construction.
- Section 348.63, F.S., relating to cooperation with other units, boards, agencies, and individuals.
- Section 348.64, F.S., providing a covenant of the state,
- Section 348.65, F.S., relating to exemption from taxation.
- Section 348.67, F.S., pledges enforceable for bondholders.
- Section 348.682, F.S., relating to this part complete and additional authority.

The bill provides a direction to the Division of Law Revision and Information to replace the phrase “the effective date of this act” with the date the bill becomes a law.

The bill has an effective date upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1** Amends s. 348.50, F.S., providing a title of law.

**Section 2** Amends s. 348.51, F.S., providing definitions.

**Section 3** Amends s. 348.52, F.S., creating the West Florida Expressway Authority.

**Section 4** Amends s. 348.53, F.S., providing purposes of the authority.

**Section 5** Amends s. 348.54, F.S., providing powers of the authority.

**Section 6** Amends s. 348.565, F.S., relating to revenue bonds for specified projects.

**Section 7** Amends s. 348.60, F.S., relating to lease-purchase agreements.

**Section 8** Amends s. 348.61, F.S., relating to department may be appointed agent of authority for construction.

**Section 9** Amends s. 348.62, F.S., relating to the acquisition of land and property.

**Section 10** Repeals s. 348.68, F.S., relating to consultation with the Hillsborough County Planning Commission and s. 348.681, F.S., relating to design standards.

**Section 11** Renumbers s. 348.70, F.S., as s. 348.682, F.S., providing that part II of ch. 343, F.S., is complete and additional authority.

**Section 12** Amends s. 343.975, F.S., relating to complete and additional statutory authority, to conform.

**Section 13** Amends s. 348.545, F.S., relating to facility improvement; bonds of the authority.

**Section 14** Amends s. 348.56, F.S., relating to bonds of the authority.

**Section 15** Amends s. 348.57, F.S., relating to refunding bonds.

**Section 16** Amends s. 348.58, F.S., providing remedies.

**Section 17** Amends s. 348.59, F.S., relating to traffic control.

**Section 18** Amends s. 348.63, F.S., relating to cooperation with other units, boards, agencies, and individuals.

**Section 19** Amends. S. 348.64, F.S., providing a covenant of the state.



**Section 20** Amends s. 348.65, F.S., providing an exemption from taxation.

**Section 21** Amends s. 348.67, F.S., providing that pledges are enforceable for bondholders.

**Section 22** Provides a direction to the Division of Law Revision and Information.

**Section 23** Provides that the bill is effective upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## 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 municipalities and counties have to raise revenues in the aggregate; or reduce the percentage of state tax shared with municipalities and counties.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking, nor does it require rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

On April 1, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that a county must consent prior to WFEA expanding into the county.
- Clarifies that an expansion event requires the approval of the owner of the transportation facility.
- Provides that a transportation facility becomes part of the expressway system following an expansion event.
- Provides that the transfer from THEA to WFEA, does not modify prior obligations that THEA had with DOT.
- Provides that the authority to construct an expressway system does not extend to appurtenant facilities unless WFEA receives written consent from the owner of the underlying right-of-way.
- Provides that a transportation facility becomes part of the expressway system when WFEA's board designates the facility as part of the expressway system.
- Removes the authority for WFEA's board to meet via communications media technology.
- Removes the authority for WFEA to enter into a lease-purchase agreement with DOT.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.