

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/SB 1562

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Garcia

**SUBJECT:** Expressway Authorities

**DATE:** April 26, 2017

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/CS/SB 1562 prohibits the Miami-Dade County Expressway Authority (MDX), subject to certain requirements, from increasing its tolls unless justified by an independent traffic and revenue study, except to the extent necessary to adjust for inflation. The MDX must approve toll increases by a two-thirds vote of its board members. The bill limits the amount of toll revenues used by the MDX for administrative expenses to not greater than ten percent above the annual state average of administrative costs. The Florida Transportation Commission (FTC) is directed to determine the annual state average of administrative costs based on the annual administrative expenses, as defined, of all expressway authorities of this state, and is authorized to adopt rules. The bill requires a distance of five miles between main through-lane tolling points on transportation facilities constructed after July 1, 2017. Subject to any bond covenants, the bill requires the MDX to reduce by at least five percent, but not more than ten percent, the toll charged for SunPass users of its facilities at the time the toll is incurred.

The bill requires the MDX to dedicate at least 20 percent, but not greater than 50 percent, of certain surplus revenues to transportation- and transit-related expenses for projects in the MDX's service area. The metropolitan planning organization (MPO) for Miami-Dade County is directed to annually select and list a project or projects within the county to be funded by the MDX's dedicated revenues, with the MDX selecting from the list those transportation- and transit-related expenses that have a rational nexus, as defined, to the MDX's transportation facilities. Miami-

Dade County is required to have periodic financial audits of the revenues and expenditures of the county's transportation plan conducted by an independent third party at least biennially, and to post the audits on the county's website, to be eligible to receive the MDX's dedicated surplus revenues. The MDX is required to have periodic audits conducted by an independent third party, and to post the audit reports on its website.

Additionally, the bill authorizes the FDOT to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of high-occupancy toll (HOT) lanes or express lanes. Effective July 1, 2018, the bill requires the FDOT to charge a customer the minimum express lane toll if the customer's average travel speed falls below 40 miles per hour.

The FTE is authorized to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of express lanes on the turnpike system. Implementation of variable pricing in express lanes on the turnpike system is restricted based on certain level-of-service or highway capacity criteria. Effective July 1, 2018, the bill requires that a customer be charged a general toll lane toll amount plus 25 cents if the customer's average travel speed falls below 40 miles per hour.

The bill also extends the time frame during which the FDOT is required to program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade, Broward, and Palm Beach Counties is at least 90 percent of the share of net toll collections attributable to users of the turnpike system in those counties, as compared to total net toll collections attributable to users of the turnpike system.

The bill may reduce FDOT revenues by an indeterminate, but insignificant amount, related to the reduced toll for certain travelers of express lanes. The fiscal impact of the bill to the MDX is indeterminate, but insignificant, related to administrative expenses. See Section V., "Fiscal Impact Statement," for further details.

The bill takes effect July 1, 2017, except as otherwise provided.

## **II. Present Situation:**

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the effect of proposed changes.

## **III. Effect of Proposed Changes:**

### **Miami-Dade County (Sections 4 and 5)**

#### ***Present Situation:***

Section 125.011(1), F.S. defines a county as: "[A]ny county operating under a home rule charter adopted pursuant to Art. VIII, ss. 10, 11, and 24 of the State Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the State Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred."

The local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the City of Key West and Monroe County,<sup>1</sup> Dade County,<sup>2</sup> and Hillsborough County.<sup>3</sup> Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under this constitutional provision.<sup>4</sup>

### **Miami-Dade County Expressway Authority**

The Florida Expressway Authority Act (Act)<sup>5</sup> authorizes any county or two or more contiguous counties within a single Florida Department of Transportation (FDOT) district, by resolution adopted by the board of county commissioners, to form an expressway authority, which is an agency of the state.<sup>6</sup> The Miami-Dade County Commission adopted ordinance 94-215 in 1994 creating the Miami-Dade County Expressway Authority (MDX).<sup>7</sup> The MDX is the only expressway authority created under the Act.

The MDX's system<sup>8</sup> consists of the following roadways in Miami-Dade County:

- Airport Expressway (SR 112);
- Dolphin Expressway (SR 836);
- Don Shula Expressway (SR 874);
- Snapper Creek Expressway (SR 878); and
- Gratigny Parkway (SR 924).

### ***MDX Governing Board***

Section 348.0003(2)(d), F.S., F.S., provides that in any county as defined in s. 125.011(1), the authority's governing body consists of up to nine members, and the following provisions specifically apply. Except for the district secretary of the FDOT, authority members must be residents of the county. Five voting members are appointed by the governing body of the county. At the discretion of the governing body of the county, up to two of these members may be elected officials residing in the county. Three voting members are appointed by the Governor. One member is the FDOT district secretary in the district that contains such county, who is an ex officio voting member of the authority.

### ***Purposes and Powers***

Section 348.0004, F.S., provides the purposes and powers of expressway authority's created in part I of Ch. 348, F.S. Section 348.0004(2)(e), F.S., gives expressway authorities created under the Act the power to fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds

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<sup>1</sup> FLA. CONST. art. VIII, s. 6, n. 2.

<sup>2</sup> FLA. CONST. art. VIII, s. 6, n. 3.

<sup>3</sup> FLA. CONST. art. VIII, s. 6, n. 4.

<sup>4</sup> Florida Association of Counties, Charter County Information, <https://www.fl-counties.com/charter-county-information#>. (Last visited March 19, 2017.)

<sup>5</sup> Part I of Ch. 348, F.S.

<sup>6</sup> Section 348.0003(1), F.S.

<sup>7</sup> A copy of the ordinance is available at [http://miamidade.fl.elaws.us/code/coor/coor\\_ptiii\\_ch2\\_artxviii/](http://miamidade.fl.elaws.us/code/coor/coor_ptiii_ch2_artxviii/). (Last visited March 19, 2017.)

<sup>8</sup> See MDX System Map available at [http://mdxway.com/about/expressway-map\(last](http://mdxway.com/about/expressway-map(last) visited March 19, 2017).

issued pursuant to the Florida Expressway Authority Act.<sup>9</sup> However, such right and power may be assigned or delegated by the authority to the FDOT. As provided in s. 348.004(7), F.S., and after a public hearing and county approval, the MDX may use surplus toll revenues to fund:

- County public transportation facilities;
- Intermodal facilities;
- Multimodal corridors, including bicycle facilities or greenways that improve transportation services in the county; or
- Any programs or projects that improve the expressway system's level of service.

These expenditures must be consistent with the metropolitan planning organization's adopted long-range plan.

### ***MDX Frequent Drivers Rewards Program***

The MDX currently offers frequent users a rewards program, the operation of which the MDX describes as follows:

Each fiscal year (July 1st to June 30th) after the close of its financial books, MDX will declare a toll distribution of dividends to members of the Frequent Driver Rewards Program. This is after the agency meets its financial obligations, including making its annual principal and interest payments, meeting its senior debt coverage ratio, and covering its operation and maintenance costs. MDX will give back those savings generated by operational efficiencies of the agency directly to its customers through the Frequent Driver Rewards Program.<sup>10</sup>

To participate in the program, MDX customers must register each year, be a SunPass customer in good standing, have a two-axle vehicle, and spend at least \$100 annually between July 1st to June 30 in tolls per transponder on any of the MDX's five expressways. Any tolls paid using Toll-By-Plate<sup>11</sup> or Image Toll transactions (IToll) are considered ineligible for the annual calculation. Eligibility of SunPass tolls paid during the fiscal year is determined solely by the MDX. The most recent registration period for tolls paid between July 1, 2016, to June 30, 2017, ended on March 31, 2017. Reward checks to eligible recipients are expected in December of 2017.<sup>12</sup>

### **Procedure for Toll Rate Adjustments for Inflation**

Section 338.165(3), F.S., requires the FDOT and the Florida Turnpike Enterprise (FTE) to index toll rates on their existing toll facilities to the annual Consumer Price Index or similar inflation

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<sup>9</sup> Section 348.0010, F.S., provides a covenant of the state relating to the Florida Expressway Authority Act. In that statute the state pledges that it will not limit or alter the rights vested in an authority and FDOT until all bonds, together with their interest, are fully paid and discharged.

<sup>10</sup> See the MDX website available at: <http://mdxway.com/frequentdriver/faqs>. (Last visited March 19, 2017.)

<sup>11</sup> Toll-By-Plate is an FDOT image-based electronic toll collection system that uses photographic images of the vehicles license plate to identify the customer responsible for payment. This feature is available on the Homestead Extension of Florida's Turnpike from Florida City to Miramar in Miami-Dade County. See the FDOT website available at: <https://www.tollbyplate.com/index>. (Last visited March 20, 2017.)

<sup>12</sup> *Supra* note 22.

indicators. Toll adjustments for inflation may be made no more than once a year, and no less than once every five years, as necessary to accommodate cash toll rate schedules. Toll rates may be increased beyond these limits as directed by bond documents, covenants, or governing body authorization or pursuant to an FDOT rule.

***Effect of Proposed Changes:***

**Section 4** amends s. 348.0004(2)(e), F.S., to provide that the MDX, notwithstanding any law to the contrary, and subject to any contractual requirements contained in documents securing indebtedness outstanding on July 1, 2017:

- May not increase a toll unless the increase is justified to the MDX's satisfaction by a traffic and revenue study conducted by an independent third party, except for an increase to the extent necessary to adjust for inflation under the toll rate adjustment procedures in s. 338.165, F.S.; and

Must approve a toll increase by a two-thirds vote of the MDX governing board.

The amount of toll revenues used by the MDX for administrative expenses may not be more than 10 percent above the annual state average of administrative costs, determined as follows: The FTC is directed to determine the annual state average of administrative costs based on the annual administrative expenses of all the expressway authorities of this state. Administrative expenses include, but are not limited to:

- Employee salaries and benefits;
- Small business outreach;
- Insurance;
- Professional service contracts not directly related to the operation and maintenance of the expressway system; and
- Other overhead costs.

The FTC is authorized to adopt rules necessary to implement these provisions.

The bill requires a distance of at least five miles between main through-lane tolling points on MDX transportation facilities constructed after July 1, 2017, exclusive of entry and exit ramps.

The bill limits the MDX's authority to increase tolls and, therefore, decreases its ability to raise revenues. According to the MDX, this revision impacts the MDX's ability to issue future bonds and eliminates the MDX's ability to set tolls as may be operationally needed.<sup>13</sup> The bill also limits the MDX's use of its toll revenues for administrative expenses to not more than ten percent above the annual state average of administrative costs, as determined by the FTC. No other expressway authority is subject to similar statutory restrictions on administrative expenses.

The bill creates a new subsection (6) of s. 348.0004, F.S. Subject to compliance with bond covenants, the MDX is required, at the time that any toll is incurred, to reduce the toll charged on any of the MDX's toll facilities by at least five percent, but not more than ten percent, for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred.

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<sup>13</sup> The MDX email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.)

The bill prohibits the MDX from imposing additional requirements for receipt of the reduced toll amount.

This revision would reduce the amount of the MDX's toll revenues. The amount of the reduction is dependent on the percentage of the toll reduction granted and on the number of eligible trips on the MDX's facilities.

The bill creates a new subsection (11) of s. 348.0004, F.S. The MDX is directed to determine its surplus revenues as defined in s. 348.0002(12), F.S.<sup>14</sup>. The MDX must then dedicate at least 20 percent, but not greater than 50 percent, of the annual surplus revenues to transportation- and transit-related expenses for projects in the area served by the MDX. The MPO for Miami-Dade County is directed to annually select and list a project or projects within the county to be funded by the MDX's dedicated surplus revenues, with the MDX selecting from the list those transportation- and transit-related expenses that have a rational nexus, as defined, to the MDX's transportation facilities. .

A rational nexus is established by demonstrating that the proposed transportation expenditure makes a substantial impact on the capacity or use of the MDX's transportation facilities, or that the proposed transit expenditure complements the operation of, or expands the access to, the MDX's transportation facilities.

Funded transportation- and transit-related expenses may include, but are not limited to:

- Expenses associated with the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of public transportation facilities, transit facilities, intermodal facilities, or multimodal corridors owned or operated by such municipality or county; and
- Transit-related expenses that impact the capacity or use of the MDX's transportation facilities.

This revision will reduce the amount of surplus revenues available to the MDX for use on the MDX's facilities, to the extent that a portion of the surplus revenues is used to fund transportation- or transit-related expenses for a project or projects selected by the MPO. The MPO will incur administrative expenses in developing the required annual list reflecting the MPO's selected project or projects to be funded by the MDX's dedicated surplus revenues.

The bill creates a new subsection (12) of s. 348.0004, F.S. The new provision requires Miami-Dade County to have a financial audit<sup>15</sup> of the revenues and expenditures of the county's

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<sup>14</sup> That section defines "surplus revenues" to mean revenues in any county as defined in s. 125.011(1) 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.

<sup>15</sup> The MDX advises it is currently subject to an annual external audit conducted by a certified public accounting firm that is posted on the MDX website and filed with the auditor general, the Securities Exchange Commission, the bondholders trustee, and the Florida Transportation Commission. The MDX email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.) As the MDX is a special district, it appears it is subject to the annual financial audit report requirements of s. 218.39, F.S.

transportation plan conducted by an independent third party not less than biennially, and the audit report must be posted on the county's website.

The section requires the MDX to have a financial audit conducted by an independent third party not less than biennially and to post the audit reports on its website.

## Section 5

### High-Occupancy Toll Lanes and Express Lanes (Sections 1 and 2)

#### *Present Situation:*

A high-occupancy-vehicle (HOV) lane is a lane of a public roadway designated for use by vehicles in which there is more than one occupant.<sup>16</sup> A high-occupancy toll lane is an HOV lane, the use of which requires payment of a toll. Tolloed HOV lanes are referred to as high-occupancy toll lanes, or HOT lanes.<sup>17</sup>

Current law does not define the terms "HOT lane" or "express lane." However, the FDOT's Topic No. 525-030-020-a, *Tolling for New and Existing Facilities on the State Highway System*,<sup>18</sup> provides the following definitions:

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

Section 338.166, F.S., authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on HOT lanes or express lanes established on FDOT-owned facilities. The FDOT is authorized to continue to collect the tolls on HOT lanes or express lanes after any bond debt is discharged. Such tolls must first be used to pay the annual cost of operation, maintenance, and improvement of the HOT lanes or express lanes project or associated transportation system. Section 338.166(4), F.S., authorizes variable rate tolling.

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.

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<sup>16</sup> Section 316.0741(1)(a), F.S.

<sup>17</sup> Except that vehicles in HOT lanes must have three or more occupants. See the FDOT's SB 250 (2012) Agency Bill Analysis at 2. (On file in the Senate Transportation Committee.)

<sup>18</sup> On file in the Senate Transportation Committee. The directive expressly does not apply to Florida Turnpike facilities.

Section 338.166, F.S.,<sup>19</sup> expressly does not apply to the Turnpike System.<sup>20</sup> However, s. 338.2216(1)(d), F.S., directs the FTE to pursue and implement new technologies and processes in its operations and collection of tolls and other amounts associated with road infrastructure usage. Such technologies and processes must include variable pricing.<sup>21</sup>

### Express Lane Management

A number of express lane projects in Florida are either in operation, under construction, or proposed.<sup>22</sup> These projects have or are planned to have express lanes with adjacent general use lanes (with no tolls) and, on the turnpike system, express lanes adjacent to general toll lanes (lanes that generally have fixed tolls). The FDOT describes its management of express lanes as follows:

The express lanes are managed using a combination of eligibility, access, and pricing. Only two axle vehicles are eligible with buses eligible regardless of number of axles. This reduces the number of vehicles that can choose to use the express lanes. The access (entry and exit points on the express lanes) is limited to certain locations, providing a choice for users making longer distance trips to the major origin and destination patterns in the area. Trips that are shorter and more local must use the general use lanes. As the volume in the express lanes increases, the price to use the express lanes increases. The toll amount posted on the sign is dynamically priced based on the congestion in the express lanes with a goal of providing a free flow condition [in the express lanes].

The traffic density, which is a combination of speed and volume, is used to determine the toll amount needed to optimize traffic flow in the express lanes. Volume and speed data is collected from roadside detectors and used to calculate the traffic density by dividing the volume in the express lanes by the speed in the express lanes. The toll amount is not related to the amount of congestion, speed, or performance of the general use lanes. Where there is no congestion in the express lanes, regardless of the performance or amount of congestion in the general use lanes, the minimum toll amount in the express lanes is \$0.50.<sup>23</sup>

The FDOT's general goal is that a driver in an express lane should be able to maintain an average speed of 45 miles per hour or greater while in the lane.<sup>24</sup>

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<sup>19</sup> Section 338.166(6), F.S.

<sup>20</sup> Section 338.2216(1)(a), F.S., grants to the FTE, in addition to the powers granted to the FDOT, full authority to exercise all powers granted to the FTE under chapter 338, F.S. Section 338.2216(4), F.S., provides the powers conferred upon the FTE under the Florida Turnpike Enterprise Law (ss. 338.22 – 338.241) are in addition and supplemental to the existing powers of the FDOT and the FTE.

<sup>21</sup> The FTE is not currently operating any express lanes. See the FDOT's SB 1570 (2012) Agency Bill Analysis, at 8. (On file in the Senate Transportation Committee.)

<sup>22</sup> See the project map with links to express lane project information available on the FDOT's website at: <http://www.floridaexpresslanes.com/projects/project-map/>. (Last visited March 19, 2017.)

<sup>23</sup> *Supra* note 6 at 2.

<sup>24</sup> The FDOT email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.)

### Toll Collection Interoperability

Interoperable toll collection allows drivers to establish a single toll account that allows for payments on a variety of tolled facilities, regardless of the facility's ownership. An interoperable system recognizes a customer at any given toll collection facility participating in the system, and each toll facility owner or operator receives proper payment for use of the owner's or operator's facility.

The 2012 Moving Ahead for Progress in the 21<sup>st</sup> Century Act, MAP-21,<sup>25</sup> requires all toll facilities on Federal-aid highways to implement technologies or business practices that provide for the interoperability of electronic toll collection programs no later than four years after its enactment. Current Florida law requires all new limited access facilities and existing transportation facilities on which new or replacement electronic toll collection systems are installed to be interoperable with the FDOT's electronic toll-collection system.<sup>26</sup>

### Level of Service

The Transportation Research Board (Board) is a division of the National Research Council, "which serves as an independent adviser to the federal government and others on scientific and technical questions of national importance, and which is jointly administered by the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine." The Board's mission "is to provide leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal."<sup>27</sup>

The Board's 2010 Highway Capacity Manual (Manual), along with multiple other items, addresses level of service criteria for basic highway segments. Generally, level of service is a measure of traffic conditions "using a quantitative stratification of a performance measure or measures."<sup>28</sup> According to the Manual, "A basic freeway segment can be characterized by three performance measures: density in passenger cars per mile per lane, space mean speed in miles per hour, and the ratio of demand flow rate to capacity." The Manual indicates that each measure "is an indication of how well traffic is being accommodated by the basic freeway segment."<sup>29</sup>

A letter grade is assigned to a given highway segment level of service, ranging from best performance at level A to worst performance at level F. The Manual describes the levels as follows:

- Level A: Free-flow operations. Free-flow speed (FFS) prevails on the freeway, and vehicles are almost completely unimpeded in their ability to maneuver within the traffic stream.
- Level B: Reasonably free-flow operations. FFS is maintained. The ability to maneuver is only slightly restricted.

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<sup>25</sup> Section 1512(b), P.L. 112-141.

<sup>26</sup> Section 338.01(7), F.S.

<sup>27</sup> See the National Academy website available at: <http://www.trb.org/GetInvolvedwithTRB/GetInvolvedwithTRB.aspx>. (Last visited April 19, 2017.)

<sup>28</sup> See the Federal Highway Administration's website, at 3.3.3, available at: [https://safety.fhwa.dot.gov/road\\_diets/info\\_guide/ch3.cfm](https://safety.fhwa.dot.gov/road_diets/info_guide/ch3.cfm). (Last visited April 19, 2017.)

<sup>29</sup> *Highway Capacity Manual 2010*, at 11-7. (Copy on file in the Senate Transportation Committee.)

- Level C: FFSs near the FFS of the freeway. Freedom to Maneuver is noticeably restricted.
- Level D: Speeds begin to decline with increasing flows, with density increasing more quickly. Freedom to maneuver is seriously limited.
- Level E: Operation at capacity. Operations on the freeway are highly volatile because there are virtually no usable gaps within the traffic stream, leaving little room to maneuver within the traffic.
- Level F: Breakdown, or unstable flow.<sup>30</sup>

***Effect of Proposed Changes:***

**Section 1** amends s. 338.166(4), F.S., to authorize the FDOT to require use of an electronic transponder that is interoperable with the FDOT's electronic toll collection system for the use of HOT lanes or express lanes. Should the FDOT impose the requirement, all users of the FDOT's HOT lanes or express lanes must have the specified transponder to use the FDOT's HOT lanes or express lanes.<sup>31</sup>

The bill also creates a new subsection (5) of s. 338.166, F.S. Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the minimum express lane toll. The bill defines a customer's express lane average travel speed as the customer's average travel speed from the customer's entry point to the customer's exit point. This revision will reduce the FDOT's toll collection revenues, dependent on the number of trips and the number of times a customer's average travel speed falls below 40 miles per hour.

**Section 2** amends s. 338.2216(1)(d), F.S., to authorize the FTE to require use of an electronic transponder that is interoperable with the FDOT's electronic toll collection system for the use of express lanes on the turnpike system. Should the FTE impose the requirement, all users of express lanes on the turnpike system must have the specified transponder to use the express lanes.<sup>32</sup>

The bill prohibits variable pricing in express lanes on the turnpike system when the level of service in the express lane, determined in accordance with the Transportation Research Board Highway Capacity Manual (5<sup>th</sup> Edition, HCM 2010), as amended, is equal to level of service A. When the level of service in the express lane is level of service B, variable pricing in the express lane may only be implemented by charging the general toll lane toll amount, plus an amount set by FDOT rule. Pricing in express lanes when the level of service is other than level of service A or service B may vary in the manner established by the FTE to manage congestion in the express lanes, with an exception: Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the general toll lane toll amount, plus an amount set by FDOT rule. A customer's express lane average travel speed is

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<sup>30</sup> *Id.*

<sup>31</sup> SunPass registrants may already use HOT lanes and express lanes. The FDOT announced in 2014 that Florida's SunPass, Georgia's Peach Pass, and North Carolina's Quick Pass are interoperable and valid in all three states. *See* the FDOT's November 2014 News Release available at: <https://www.sunpass.com/pdf/FLGANCVValid.pdf>. (Last visited April 19, 2017.) Should the requirement be imposed, holders of the associated transponders would appear to be able to use HOT lanes or express lanes. If a user wishing to use HOT lanes or express lanes holds no pass from an interoperable state, it appears that user would have to register and create a SunPass account in order to receive a transponder.

<sup>32</sup> *Id.*

also defined as the customer's average travel speed from the customer's entry point to the customer's exit point.

This revision will reduce the FTE's, and therefore the FDOT's, toll collection revenues, dependent on the number of trips, the frequency of the existence of level of Service A or B in the express lanes on the turnpike system, and the number of times a customer's average travel speed falls below 40 miles per hour.

### **Turnpike Toll Revenues/Miami-Dade, Broward, and Palm Beach Counties (Section 3)**

#### ***Present Situation:***

Section 338.231, F.S., directs the FDOT at all times to fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system; and to create reserves for these purposes.

In 1997, the Legislature enacted legislation<sup>33</sup> currently located in s. 338.231(3)(a), F.S. For the period July 1, 1998, through June 30, 2017, the FDOT is required, to the maximum extent feasible, to program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach County, compared to total turnpike toll and bond financed commitments, is at least 90 percent of the share of net toll collections attributable to users of the turnpike system in those counties, as compared to total net toll collections attributable to users of the turnpike system.<sup>34</sup>

#### ***Effect of Proposed Changes:***

**Section 3** amends s. 338.231(3)(a), F.S., currently set to expire on June 30 of this year, by extending the expiration date to June 30, 2027. The FDOT advises this revision requires no change in its current programming practice.

**Section 6** provides the bill take effect on July 1, 2017.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

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<sup>33</sup> Chapter 97-280, L.O.F.

<sup>34</sup> This provision expressly does not apply when its application would violate any bond covenant relating to the issuance of turnpike bonds.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Users of the MDX's facilities may see a reduction in the frequency and amount of toll increases. Eligible SunPass users of the MDX's toll facilities would benefit from a reduction in toll charges of at least 5 percent, but not more than 10 percent. The amount of this reduction is dependent on the number of eligible trips on MDX toll facilities, and is therefore unknown.

Users of facilities in Miami-Dade County may benefit from municipal or county transportation- or transit-related expenses funded by a portion of the MDX's surplus revenues. The MDX system may benefit from the same funded expenses. The amount, however, is indeterminate, as the funds available for such expenses are indeterminate.

Users of the FDOT's express lanes, and users of the FTE's express lanes, may experience reduced tolls. The amount of this reduction with respect to the FDOT's express lanes is dependent on the number of trips and the number of times a customer's average travel speed falls below 40 miles per hour, and is therefore unknown. The amount of this reduction with respect to express lanes on the turnpike system is dependent on the number of trips, the frequency of the existence of level of service A or B in the express lanes, and the number of times a customer's average travel speed falls below 40 miles per hour; and is therefore unknown.

C. Government Sector Impact:

The MDX is an independent agency of the state. The bill will potentially make it more difficult for the MDX to increase its tolls, making it more difficult to increase its revenues. According to the MDX, the bill limits its ability to set toll rates, which may make its bonds less favorable in the financial markets.<sup>35</sup> If the MDX chooses to grant up to a 10 percent reduction in toll charges for eligible SunPass users of the MDX's toll facilities, the MDX may experience reduced toll collections in an indeterminate amount.

The bill also limits the MDX's administrative expenses to ten percent above the annual state average of administrative costs, as determined by the FTC. The impact of this revision to the MDX is unknown. Also unknown is whether the MDX will be required to undertake infrastructure design revisions or to incur other related costs to comply with

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<sup>35</sup> See the MDX email to House Transportation & Infrastructure Committee Staff, March 10, 2017. (On file in the Senate Transportation Committee.)

the requirements that there be a distance of five miles between main through-lane tolling points constructed after July 1, 2017.

The FTC will incur administrative expenses associated with determining the annual state average of administrative costs and with any rulemaking.

The bill will reduce the amount of surplus revenues available to the MDX for use on the MDX's facilities, to the extent that a portion of the surplus revenues is used to fund transportation- or transit-related expenses in proposals submitted by municipalities and counties. The amount, however, is indeterminate, as it is dependent on the percentage of the surplus revenues dedicated to the specified expenses.

The MDX may incur expenses associated with the required traffic and revenue studies, with the required periodic audits, and with placing the audits on its website. Miami-Dade County may incur expenses associated with the required periodic audits and placing the audits on its website.

The bill may reduce FDOT revenues. The FDOT will be required to charge the minimum express lane toll, and not any variably priced toll, if the customer's average travel speed for a trip in an express lane falls below 40 miles per hour. Effective July 1, 2018, the bill may reduce the FTE's and, therefore, the FDOT's revenues, when the level of service in an express lane on the turnpike system is at level A or B. In the former case, variable pricing may not be implemented in express lanes on the turnpike system. When the level of service is level B, variable pricing may only be implemented by charging the general toll lane toll amount, plus an amount set by rule by the FDOT, for use of an express lane on the turnpike system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 338.166, 338.2216, 338.231, and 348.0004.

**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 25, 2017:**

The committee substitute makes the following revisions:

- Authorizes the FDOT and the FTE to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of its HOT lanes or express lanes.
- Provides that effective July 1, 2018, if a customer's average travel speed for a trip in an express lane on the turnpike system falls below 40 miles per hour, the toll to be charged is the general toll lane toll amount plus *an amount set by FDOT rule*, rather than plus 25 cents.
- Requires MDX transportation facilities constructed after July 1, 2017, maintain a distance of at least five miles between main through-lane tolling points is required, excluding entry and exit ramps.
- Authorizes the MDX to reduce toll charges for certain SunPass registrants, the required reduction is at least five percent, but not more than ten percent.
- Requires the MDX to determine its surplus revenues, calculated as specified, and dedicate at least twenty percent, but not more than fifty percent, of the remaining surplus revenues to transportation- and transit-related expenses for projects in municipalities and counties in which the MDX operates under specified conditions.
- Directs the Miami-Dade County MPO to annually select a project or projects within the county to be funded by the dedicated surplus revenues and to submit a list reflecting the project or projects, with the MDX selecting from the list for funding transportation- and transit-related expenses that have a rational nexus to the MDX's transportation facilities.
- Requires Miami-Dade County to have a financial audit of the revenues and expenditures of the county's transportation plan conducted by an independent third party not less than biennially and to post the audit reports on its website in order to be eligible to receive the MDX's dedicated surplus revenues.

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

The CS makes the following changes to the bill:

- Clarifies that the distance of five miles is required between main through-lane tolling points, excluding entry and exit ramps;
- Requires the MDX to reduce the toll charged on any of its toll facilities by 25 percent for SunPass registrants in good standing; and
- Prohibits the MDX from imposing additional requirements for receipt of the reduced toll amount.

**B. Amendments:**

None.