

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 141 Toll Operations

SPONSOR(S): Government Accountability Committee; Transportation & Infrastructure Subcommittee; Harrison and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	11 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee	9 Y, 0 N	Davis	Davis
3) Government Accountability Committee	22 Y, 0 N, As CS	Johnson	Williamson

SUMMARY ANALYSIS

Current law requires the payment of tolls for the use of toll facilities and provides certain exceptions, including an exception for law enforcement officers operating marked official vehicles when on official law enforcement business. Under current law, unmarked law enforcement vehicles are required to pay tolls.

The bill provides that law enforcement officers operating marked or unmarked official vehicles on official law enforcement business are exempt from paying tolls on toll facilities. The bill defines “official law enforcement business” for purposes of the exemption.

Alligator Alley is a 78-mile tolled portion of Interstate 75 connecting Naples and Fort Lauderdale. A portion of the fees generated through tolls is used to reimburse Collier County for the costs of operating a fire station located at mile marker 63. Reimbursement occurs through an interlocal agreement effective July 1, 2014, through June 30, 2018.

The bill extends the statutory obligation of the Department of Transportation (DOT) to reimburse a county or another local governmental entity for the direct actual costs of operating the fire station at mile marker 63 on Alligator Alley from June 30, 2018, to June 30, 2021.

The Miami-Dade County Expressway Authority (MDX) is created pursuant to the Florida Expressway Authority Act. In 2017, the Legislature required MDX, subject to bond covenants, to reduce its tolls for qualifying SunPass users.

The bill removes the provision making the toll reduction subject to bond covenants and creates a cause of action against the toll authority for uncredited tolls. The person bringing the cause of action may also collect court costs and reasonable attorney fees.

On November 3, 2017, the Revenue Estimating Conference reviewed the toll exemption provisions of this bill and adopted an indeterminate negative impact on the State Transportation Trust Fund, Turnpike trust funds, and local trust funds.

The fiscal impact regarding the reimbursement by the DOT for the costs of operating the fire station is indeterminate, but any DOT expenditures will be based on an agreed-upon estimated schedule of such operational expenses incorporated into the required extended interlocal agreement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Toll Exemptions for Law Enforcement Vehicles

Current Situation

Toll Exemptions

Section 338.155, F.S., requires the payment of tolls on toll facilities and provides the following exemptions:

- Employees of the agency operating the toll facility on official state business;
- State military personnel while on official military business;
- Certain handicapped persons;
- Persons exempt from toll payment by the authorizing resolution for bonds issued to finance the toll facility;
- Persons exempt on a temporary basis when a toll facility is part of a detour route;
- Any law enforcement officer operating a *marked* official vehicle when on official law enforcement business;
- Any person operating a fire vehicle or a rescue vehicle when on official business;
- Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty; or
- Any person driving an automobile or other vehicle belonging to the Department of Military Affairs used for transporting military personnel, stores, and property.

Additionally, the secretary of the Department of Transportation (DOT) or the secretary's designee may suspend tolls when necessary to assist in emergency evacuation.¹

According to DOT, law enforcement agencies with marked vehicles submit a "SunPass Non-Revenue Account Application." In that application, the agency lists each marked vehicle that will have a non-revenue SunPass transponder along with certain identifying information regarding each vehicle. The agency representative attests that the vehicles listed on the application qualify for the toll exemption for marked law enforcement vehicles.²

In 2012, the Legislature amended the toll exemption statute, but only with respect to DOT managed toll facilities whose revenues are not pledged to repayment of bonds.³ The statute authorizes DOT to, by rule, allow the use of such toll facilities by public transit vehicles or by vehicles participating in a funeral procession for an active-duty military service member without paying tolls.⁴ Because the revenues of the Turnpike System are pledged to repayment of bonds, this provision does not apply to the Turnpike System or Alligator Alley.⁵

Turnpike Bonds

Section 338.227, F.S., authorizes DOT to borrow money as provided in the State Bond Act⁶ to pay all or any part of the cost of any one or more legislatively approved turnpike projects. The principal of, and the interest on, these bonds is paid solely from revenues pledged for their payment.⁷

¹ Sections 338.155(1) and (2), F.S.

² Department of Transportation HB 141 Bill Analysis, p. 2. Copy on file with Transportation & Infrastructure Subcommittee.

³ Chapters 2012-128 and 2012-174, L.O.F.

⁴ Rule 14-100.006, F.A.C., is DOT's rule regarding express lane toll exemptions for various transit vehicles.

⁵ Department of Transportation HB 141 Bill Analysis, p.3.

⁶ Sections 215.57 through 215.83, F.S.

⁷ Section 338.227(1), F.S.

Section 338.229, F.S., provides that, in connection with the issuance of Turnpike bonds, the state will not limit or restrict the rights vested in DOT to establish and collect tolls for the use of the Turnpike System and to fulfill the terms of any agreements made with bondholders. The state also agreed not to take any action impairing the bondholder's rights or remedies until the bonds, together with interest on the bonds, are fully paid.⁸ Statutes creating the state's expressway and bridge authorities contain similar provisions.⁹

The Turnpike's master bond resolution, originally adopted in 1988, and amended and restated in 2005, under which the outstanding Turnpike bonds were issued, contains DOT's commitments regarding the funding and operation of the Turnpike System. Section 5.03 of the bond covenants provides that the resolution is a contract with the bondholders and is enforceable in court by the bondholders. The resolution may not be amended in any way that affects "the unconditional promises of the Department to fix, maintain and collect tolls for the use of the Turnpike System" without consent of all the holders of outstanding Turnpike bonds.¹⁰

In section 5.08 of the bond covenants, DOT agrees that it will not allow or permit any free use of the Toll roads of the Florida Turnpike, except to DOT officials or employees whose official duties in connection with the Florida Turnpike require them to travel over the Florida Turnpike, or "except as may be provided by laws in effect on the date of the adoption of the Resolution."¹¹

DOT has also issued bonds to fund capital improvements to Alligator Alley.¹² The resolution under which the Alligator Alley bonds were sold contains a similar covenant regarding use of Alligator Alley.¹³

Effect of Proposed Changes

The bill amends s. 338.155(1), F.S., exempting law enforcement officers operating a marked or unmarked official vehicle while on official law enforcement business from paying tolls. The term "official law enforcement business" includes, but is not limited to, patrol operations, investigative activities, crime prevention activities, or traffic operations.

The bill also changes references to "handicapped persons" in s. 338.155, F.S., to "disabled persons" and makes other editorial changes.

Alligator Alley Toll Road

Current Situation

Use of Alligator Alley Toll Funds to Fund Fire Station

Section 338.26, F.S., establishes Alligator Alley as a toll road, because the construction of the road "contributed to the alteration of water flows in the Everglades and affected ecological patterns of the historical southern Everglades." It is a 78-mile toll road connecting Naples and Fort Lauderdale. Collier County provides fire, rescue, and emergency management services along Alligator Alley through a fire station located at mile marker 63 (MM63) on Alligator Alley.

⁸ Department of Transportation HB 141 Bill Analysis, p.2.

⁹ See ss. 348.0010, 348.64, 348.761, and 348.974, F.S.

¹⁰ Department of Transportation HB 141 Bill Analysis, p.2.

¹¹ *Id.*

¹² Alligator Alley Bonds were issued pursuant to s. 338.26, F.S.

¹³ Department of Transportation HB 141 Bill Analysis, p.2.

Current law sets forth required uses of the fees generated from tolls for the use of Alligator Alley, which are deposited into the State Transportation Trust Fund. Fees must be used to reimburse outstanding contractual obligations and to operate and maintain the highway and toll facilities, including reconstruction and restoration. With regard to the fire station on Alligator Alley, the fees must be used:

- To design and construct the fire station at MM63, which may be used by a county or other local governmental entity to provide services to the public on Alligator Alley; and
- To reimburse a county or other local governmental entity for the direct actual costs of operating the fire station. Reimbursement occurs through an interlocal agreement effective July 1, 2014, through no later than June 30, 2018.¹⁴

Funds generated annually in excess of those required to pay the above-described expenses may be transferred to the Everglades Trust Fund and used for certain environmental projects.¹⁵ Upon termination of the interlocal agreement for the fire station, DOT would be authorized to use the excess fees for such environmental projects.

Toll Revenues and Expenses

According to DOT's 2016 Annual Report for its Enterprise Toll Operations,¹⁶ for Fiscal Year (FY) 2016-2017 through FY 2020-2021, Alligator Alley will average \$34.5 million in gross toll revenue each year with annual operating and maintenance expenses averaging \$8.9 million and annual debt service payments averaging \$3.45 million. The maintenance expenses include funding for rest area improvements, fire station operations, and interchange lighting projects.

Interlocal Agreement

On May 9, 2014, DOT and the Board of Commissioners of Collier County entered into an interlocal agreement providing the terms and conditions under which DOT would "provide funding to the County for the County's expenses in purchasing equipment, compensating County employees, and otherwise providing fire, rescue and emergency services utilizing the Fire Station."¹⁷

DOT included the fire station in its construction project when it rebuilt the rest area at MM63 and the fire station opened in early 2015.¹⁸ The fire station was built for the exclusive use of the County for the duration of the interlocal agreement.¹⁹ DOT owns the fire station and leases it to Collier County;²⁰ however, under the agreement, all equipment, personal property, vehicles, apparatus and supplies acquired by County with funding provided by DOT remain the property of the County.²¹

For the term of the agreement, DOT agreed to provide a maximum of \$1,761,235 for direct actual capital costs and a maximum of \$1,498,100 for the county's direct actual costs of operating the fire station.²² The county agreed to bear all expenses in excess of DOT's specified participation.²³ The agreed-upon funding includes various annual operating items such as hired paramedics and firefighters, expenses for administrative and building maintenance, and expenses for bulk fuel and

¹⁴ Section 338.26(3)(a), F.S.

¹⁵ Section 338.26(3)(b), F.S.

¹⁶ The 2016 report is the latest posted to DOT's Turnpike Enterprise webpage and is available at http://www.floridasturnpike.com/documents/reports/Toll%20Operations%20Annual%20Report/2016/2016%20OTO_Department%20Owned.pdf (last visited February 15, 2018).

¹⁷ Department-Collier County Interlocal Agreement, CSFA No. 55.036, May 9, 2014, at pp. 2-3.

¹⁸ Department-Collier County Interlocal Agreement at p. 2 and 3. Marco Eagle, *New fire/EMS station opens on Alligator Alley*, April 5, 2015, available at <http://www.marconews.com/story/news/2015/04/03/new-fully-staffed-fireems-station-opens-alligator-alley/25238329/> (last visited February 15, 2018).

¹⁹ Department-Collier County Interlocal Agreement at p. 3. The agreement provides that state or local law enforcement may station officers, agents, or response teams at the fire station, based on space and availability.

²⁰ Department-Collier County Interlocal Agreement at p. 12.

²¹ Department-Collier County Interlocal Agreement at p. 13.

²² The Agreement also authorizes the County to request a Consumer Price Index adjustment of the total operating amount 30 days prior to July 1 for each year after the first covered by the Agreement. Department-Collier County Interlocal Agreement at p. 10.

²³ Department-Collier County Interlocal Agreement at p. 11.

various types of search and rescue equipment. Capital costs include items such as vehicles, radios, and breathing air compressors.²⁴

Information regarding DOT's Adopted Five-Year Work Program for 2014-2018 reflects the following funding for the MM63 fire station:²⁵

Fiscal Year	Amount
2014	\$1,761,235
2015	\$1,498,100
2016	\$1,522,070
2017	\$1,522,070
2018	\$1,498,100

Effect of Proposed Changes

The bill amends s. 338.26(3)(a), F.S., extending the date through which DOT is statutorily obligated to reimburse Collier County for the direct actual costs of operating the MM63 fire station from June 30, 2018, to no later than June 30, 2021.

Miami-Dade Expressway Authority

Current Situation

Miami-Dade County

Section 125.011(1), F.S., defines a county as:

[A]ny county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

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,²⁶ Dade County,²⁷ and Hillsborough County.²⁸ Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957.²⁹ Therefore, Miami-Dade County is the only government entity meeting the definition of county in s. 125.011(1), F.S.

Miami-Dade County Expressway Authority

The Florida Expressway Authority Act (Act), codified in part I of Ch. 348, F.S.,³⁰ authorizes any county or two or more contiguous counties within a single DOT district to, by resolution adopted by the board

²⁴ Department-Collier County Interlocal Agreement at Exhibit B.

²⁵ DOT, Web Application, Office of Work Program and Budget, *Five Year Work Program – Project Summary for Transportation System: Intrastate Interstate, Description: Alligator Alley Fire Station @ MM63*, updated January 10, 2018, available at <http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=HIS&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM> and <http://www2.dot.state.fl.us/fmsupportapps/workprogram/Support/WPItemRept.ASPX?RF=WP&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM> (last visited February 15, 2018.)

²⁶ FLA. CONST. art. VIII, s. 6, n. 2.

²⁷ FLA. CONST. art. VIII, s. 6, n. 3.

²⁸ FLA. CONST. art. VIII, s. 6, n. 4.

²⁹ Florida Association of Counties, *Charter County Information*, <http://www.fl-counties.com/about-floridas-counties/charter-county-information> (last visited February 20, 2018).

³⁰ Part I of Ch. 348, F.S. is comprised of ss. 348.0001 through 348.0012, F.S.

of county commissioners, form an expressway authority, which must be an agency of the state.³¹ The Miami-Dade County Expressway Authority (MDX) was created in 1994, when the Miami-Dade County Commission adopted ordinance 94-215.³² MDX is the only expressway authority created under the Act.³³ MDX's system 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).

Section 348.0004, F.S., provides the purposes and powers of expressway authority's created under the Act. Section 348.0004(2)(e), F.S., provides expressway authorities with 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 issued pursuant to the Act. However, such right and power may be assigned or delegated by the authority to DOT.

House Bill 1049 (2017)

In 2017, the Legislature passed House Bill 1049,³⁴ which provided that subject to compliance with any of its bond covenants, MDX must, at the time that any toll is incurred, reduce the toll charged on any of its toll facilities by at least 5 percent, but not more than 10 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. MDX may not impose additional requirements to receive of the reduced toll amount.

Effect of Proposed Changes

The bill amends s. 348.0004(6), F.S., removing the provision, which provides that toll reductions for SunPass users are subject to MDX's bond covenants. The bill also creates a cause of action against MDX for the imposition of excess toll charges. Anyone eligible for a toll reduction may bring a civil action in a court of competent jurisdiction against a toll authority for the value of the toll credits that a person was to have been credited. The court may award court costs and reasonable attorney fees to any person bringing an action.

B. SECTION DIRECTORY:

Section 1 amends s. 338.155, F.S., relating to the payment of tolls on toll facilities.

Section 2 amends s. 338.26, F.S., relating to Alligator Alley toll road.

Section 3 amends s. 348.0004, F.S., relating to the powers and duties of MDX.

Section 4 provides an effective date of July 1, 2018.

³¹ Section 348.0003(1), F.S.

³² A copy of the ordinance is available at http://miamidade.fl.elaws.us/code/coor/coor_ptiii_ch2_artxviii/ (last visited Nov. 9, 2015).

³³ While MDX is the only authority created pursuant to the Act, part V of Ch. 348, F.S., creating the Osceola County Expressway Authority, contains numerous references to the Act.

³⁴ Chapter 2017-182, L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On November 3, 2017, the Revenue Estimating Conference reviewed the toll exemption portion of this bill and adopted an indeterminate negative impact to the State Transportation Trust Fund and Turnpike trust funds.

The bill requires DOT to continue funding the County's direct actual costs of operating the MM63 fire station from the fees generated from tolls collected on Alligator Alley through June 30, 2021. Under current law, DOT may use the fees for other authorized uses described in law. The impact on toll bonds or other agreements is unknown at this time.

2. Expenditures:

To the extent that state law enforcement agencies utilize unmarked vehicles on toll facilities, the state will no longer incur toll expenses associated with those vehicles.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On November 3, 2017, the Revenue Estimating Conference reviewed the toll exemption portion of this bill and adopted an indeterminate negative impact on local trust funds.

Collier County will receive funding for an additional three years for actual operating and capital costs related to the fire station and thus, will only have to expend county funds for expenses above the costs agreed to in the interlocal agreement. The exact amount of such funding is unknown but will likely be based on an agreed-upon estimated schedule of expenses incorporated into a new interlocal agreement or extension of the current interlocal agreement.

2. Expenditures:

To the extent that local governments utilize unmarked law enforcement vehicles on toll facilities, local governments will no longer incur toll expenses associated with such vehicles.

MDX may incur costs associated with litigation and attorney fees due to the newly created cause of action if MDX does not reduce toll charges for eligible SunPass users.

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

2. Other:

Impairment of Contracts

The bill expands the statutory toll exemption for marked official law enforcement vehicles used on official law enforcement business to include unmarked official law enforcement vehicles. Expanding the toll exemption beyond what was in effect when the outstanding bonds were sold may constitute an impairment of the rights of the bondholders.³⁵

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Highway Safety and Motor Vehicles, law enforcement officers, while on official law enforcement business, routinely use rental vehicles. It is not clear if these vehicles would be “official vehicles” for purposes of the toll exemption.³⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment exempted marked and unmarked law enforcement vehicles on official law enforcement business from paying tolls. The amendment also defined “official law enforcement business.”

On February 22, 2018, the Government Accountability Committee adopted a proposed committee substitute and reported the bill favorably as committee substitute. The proposed committee substitute:

- Extended the statutory obligation for DOT to reimburse a county or another local governmental entity for the direct actual costs of operating a fire station at MM 63 on Alligator Alley from June 30, 2018, to June 30, 2021.
- Removed a provision making a statutorily required toll reduction by MDX subject to bond covenants.
- Created a cause of action against MDX for uncredited tolls and provided that the person bringing the cause of action may also collect court costs and reasonable attorney fees.

This analysis is drafted to the committee substitute as reported favorably by the Government Accountability Committee.

³⁵ Department of Transportation HB 141 Bill Analysis, p.6.

³⁶ Department of Highway Safety and Motor Vehicles HB 141 Bill Analysis. p. 4. Copy on file with Transportation & Infrastructure Subcommittee.