

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: **SB 2246**

INTRODUCER: Senator King

SUBJECT: Jacksonville Transportation Authority

DATE: March 31, 2009

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Eichin	Meyer	TR	Favorable
2. Daniell	MacLure	JU	Favorable
3.		GO	
4.		FT	
5.		TA	
6.			

I. Summary:

The bill makes significant changes to the Jacksonville Transportation Authority Law by providing consistency between the Jacksonville Transportation Authority's (Authority) current functions and operations and its statutory powers, duties, and responsibilities. The bill also provides the Authority statutory authority to enter into public-private partnerships to build, operate, own, or finance transportation facilities. Additionally, the bill requires the Florida Transportation Commission to monitor the efficiency, productivity, and management of the Authority.

This bill substantially amends the following sections of the Florida Statutes: 20.23, 349.02, 349.03, 349.04, 349.041, 349.05, 349.07, 349.10, 349.12, 349.13, 349.15, 349.17, and 349.21. This bill creates the following sections of the Florida Statutes: 349.043, 349.061, and 349.22. This bill also repeals the following sections of the Florida Statutes: 349.042 and 349.06.

II. Present Situation:

Jacksonville Transportation Authority

The Jacksonville Transportation Authority (Authority) was originally founded in 1955 as the Jacksonville Expressway Authority under ch. 349, F.S., to build toll bridges and expressways in Duval County.¹ In 1971, the Jacksonville Expressway Authority merged with private bus

¹ Jacksonville Transportation Authority, *History*, <http://www.jtaonthemove.com/AboutJTA/showPage.aspx?Sel=33> (last visited Mar. 26, 2009).

companies to form the Authority.² Today, the Authority provides regional transit services and roadway infrastructure connecting Northeast Florida, similar to the five regional transportation authorities created under ch. 343, F.S.³

The Authority is funded through a half-cent sales tax approved by voters in 1988 in conjunction with the elimination of bridge tolls. In September 2000, Jacksonville voters approved an additional half-cent sales tax to fund “The Better Jacksonville Plan – a \$2.2 billion infrastructure and quality-of-life improvement initiative.”⁴ The Authority’s component of the plan comprises of 32 roadway projects totaling more than \$800 million. The projects include 12 interchange improvements, roadway widening projects, construction of one major bridge, and the design of another. The Authority’s 2008 annual operating budget is approximately \$100 million.⁵

The Authority is governed by ch. 349, F.S., titled the Jacksonville Transportation Authority Law. The governing body of the Authority consists of seven members:

- Three members appointed by the Governor and confirmed by the Senate.
- Three members appointed by the mayor of the City of Jacksonville and confirmed by the council of the City of Jacksonville.
- The district secretary of the Florida Department of Transportation (DOT or department) serving in the district containing the City of Jacksonville.⁶

All members, except for the district secretary, must be residents and qualified electors of the City of Jacksonville.⁷ The members are appointed to serve four-year terms.

Chapter 349, F.S., authorizes the Authority to acquire, hold, construct, improve, maintain, operate, own, and lease all appurtenant facilities, including all approaches, streets, roads, bicycle paths, bridges, and avenues of access to the Jacksonville Expressway System.

Partnerships in Transportation

Traditionally, highway projects are built and financed using a blend of federal, state, and local funds. In 2001, state and local governments, with federal assistance, spent approximately \$125 billion to build and maintain the nation’s highways and bridges, and \$19 billion on the nation’s transit systems.⁸ In recent years, there has been an increased interest in public-private partnerships to help finance transportation improvements. Public-private partnerships (PPPs) are “arrangements of roles and relationships in which public and private entities coordinate or

² *Id.*

³ *Id.* Chapter 343, F.S., creates the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, the Tampa Bay Commuter Transit Authority, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Regional Transportation Authority.

⁴ Jacksonville Transportation Authority, *FAQs*, <http://www.jtaonthemove.com/AboutJTA/showPage.aspx?Sel=31> (last visited Mar. 26, 2009).

⁵ Section 349.03(2), F.S.

⁶ *Id.*

⁸ U.S. General Accounting Office, *Highways and Transit: Private Sector Sponsorship of and Investments in Major Projects Has Been Limited*, Report GAO-04-419, 7 (Mar. 2004), available at <http://www.gao.gov/new.items/d04419.pdf> (last visited Mar. 27, 2009).

combine complementary resources and share risks and rewards in order to improve public services in the most effective and efficient manner.”⁹ These partnerships are designed to:

- Facilitate improved faster delivery of transportation facilities;
- Access additional sources of revenue and finance; and
- Improve the performance of maintenance and operation.¹⁰

Public-private partnerships generally fall into one of the following five categories, depending on the reasons for their consideration:

- Partnerships designed to accelerate implementation of high priority projects by packaging and procuring services in new ways;
- Partnerships that turn to the private sector to provide specialized management capacity for large and complex programs;
- Partnerships focused on arrangements to facilitate the delivery of new technology developed by private entities;
- Partnerships drawing on private sector expertise in accessing and organizing the widest range of financial resources; and
- Partnerships to allow and encourage private entrepreneurial development, ownership, and operation of highways and/or related assets.¹¹

In a 2004 study, the U.S. General Accounting Office identified six major projects accomplished through PPPs.¹² To accomplish these projects, states enacted enabling legislation. For example:

Nevada passed legislation specifically authorizing a private consortium to construct the Las Vegas Monorail. Virginia passed the Virginia Highway Corporation Act of 1988 and the Public Private Transportation Act of 1995, which allowed the submission of proposals involving private sector participation and investment. The Dulles Greenway was built under the 1988 law, and the consortium that built the Pocahontas Parkway did so under the 1995 law. In 1989, California passed enabling legislation, Assembly Bill (AB) 680, which authorized four demonstration projects to be developed, constructed, and operated at private sector expense. . . . In 1976, South Carolina passed enabling legislation, which later allowed the private development of the Southern Connector.¹³

In 1991, the Florida Department of Transportation (DOT or department) was authorized to contract for the building or construction of privately owned and operated roads; however, DOT has not entered into any agreements under the law.¹⁴ Section 334.30, F.S., was amended in 2004

⁹ U.S. Dep’t of Transp. and Fed. Highway Admin. Public-Private Partnership Project, *Partnerships in Transportation Workshop, Final Report*, Project KPMG 03-010 (Mar. 17, 2004), available at http://www.ncppp.org/councilinstitutes/dot_finalreport03.pdf (last visited Mar. 27, 2009).

¹⁰ *Id.*

¹¹ *Id.*

¹² U.S. General Accounting Office, *supra* note 8, at 3.

¹³ *Id.* at 11.

¹⁴ Comm. on Transp., Fla. Senate, *White Paper: Public Private Partnerships (P3s) in Transportation* (on file with the Senate Committee on Judiciary).

to clarify DOT's authority for building and financing of transportation facilities by private entities. Section 334.30, F.S., provides that DOT may receive or solicit proposals and, with Legislative approval, enter into agreements with private entities for the building, operation, ownership, or financing of transportation facilities.¹⁵ Section 348.0004, F.S., which governs Florida's expressway authorities, was also amended in 2004, providing that "it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities."¹⁶

III. Effect of Proposed Changes:

This bill substantially amends, creates, and repeals provisions of ch. 349, F.S., the Jacksonville Transportation Authority Law.

Section 1

The bill amends s. 349.02, F.S., to specify that the Jacksonville Transportation Authority (Authority) is an "agency of the state." The bill adds the definition of "transportation facilities," which means "all mobile and fixed assets (real or personal property or rights therein) used in the transportation of persons or property by any means of conveyance whatsoever, and all appurtenances thereto, such as, but not limited to, highways; limited or controlled access lanes and facilities; docks, vessels, vehicles, fixed guideway facilities, and any means of conveyance of persons or property of all types; park-and-ride facilities; transit-related improvements adjacent to transit facilities or stations; bus, train, vessel, or other vehicle storage, cleaning, fueling, control, and maintenance facilities; and administrative and other office space for the exercise by the authority of the powers and obligations herein granted." The bill also makes technical changes to the definitions in s. 349.02, F.S.

Section 2

The bill amends s. 349.03, F.S., to provide that members of the governing body of the Authority must be residents and qualified electors of Duval County, rather than the City of Jacksonville.

Section 3

The bill amends s. 349.04, F.S., to clarify that the Authority's statutory authority extends throughout Duval County, and amends and creates new powers of the Authority. Specifically, the bill authorizes the Authority to:

- Finance additions and other improvements to the Jacksonville Expressway System;
- Plan, develop, finance, construct, own, lease, purchase, operate, maintain, relocate, equip, repair, and manage public transportation projects, such as: express bus services; bus rapid transit services; light rail, commuter rail, heavy rail, or other transit services; ferry services; transit stations; park-and-ride lots; transit-oriented development notes; or feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities. If a project is

¹⁵ *Id.*

¹⁶ Section 348.0004(9), F.S.

part of the State Highway System,¹⁷ it may include necessary approaches, roads, bridges, and avenues of access with the concurrence of the Florida Department of Transportation (DOT or department);

- Construct and lease property, including transit-oriented developments associated with the Authority's transportation facilities;
- Have the power of eminent domain, including the procedural powers granted under chs. 73 and 74, F.S.
- Use local option taxes or county gasoline tax funds received by the Authority to secure the payment of bonds;
- Establish and fund reserve accounts;
- Adopt and approve an annual budget, and to utilize purchasing schedules and master purchasing contracts;
- Retain legal counsel and other consultants;
- Construct, own, operate, and maintain transportation facilities outside the jurisdictional boundaries of Duval County, with the consent of the affected county;
- Form public benefit corporations to carry out the powers and obligations of the Authority or the powers and obligations of other agencies or local governments;
- Require or elect not to require bid bonds and protest bonds, prequalify bidders or proposers, and suspend or exclude consultants and contractors;
- Create and operate an employees' benefit fund;
- Expand its service area and enter into a partnership with a contiguous county;
- Recover the costs of relocating utility facilities interfering with transportation projects; and
- Enter lands, waters, and premises of another in the performance of its duties.

Additionally, the bill expands the Authority's powers to include all transportation facilities throughout s. 349.04, F.S.

The Authority is not bound by any oral modifications of a contract, nor shall any oral modifications form the basis of a claim against the Authority. The bill provides that only the chair of the governing body or the executive director of the Authority may bind the Authority. The Authority may provide liquidated damages or other contractually agreed-upon damages.

The powers and obligations of the Authority are not subject to supervision, approval, or consent of any municipality or county unless so agreed upon in an interlocal agreement, except as otherwise provided by ch. 349, F.S.

Section 4

The bill amends s. 349.041, F.S., to require any funds provided to the Authority by the City of Jacksonville to be audited by the Council Auditor of the City of Jacksonville. Additionally, the bill allows, rather than requires, the Authority to use the central services of the City of Jacksonville.

¹⁷ The State Highway System includes the interstate system, rural arterial routes, urban principal arterial routes, and urban minor arterial mileage. See s. 334.03(25), F.S.

Section 5

The bill repeals s. 349.042, F.S., which requires a review of the Authority's transit functions and expressway construction and operations by the Jacksonville Area Planning Board.

Section 6

The bill creates s. 349.043, F.S., to require a public hearing prior to the designation or relocation of transportation facilities or any substantive changes to these facilities. Notice of the public hearing must be published in a newspaper of general circulation in each affected county at least 14 days prior to the hearing. Any interested party has the opportunity to be heard at the hearing. Additionally, the Authority must comply with applicable federal and state requirements related to new or altered transportation facilities or services.

Section 7

Section 349.05, F.S., is amended to provide that bonds may be issued on behalf of the Authority pursuant to the State Bond Act¹⁸ or the Authority may issue bonds pursuant to s. 349.05(1), F.S. The bill revises provisions for the issuance and sale of bonds by the Authority, including allowing the Authority to sell bonds at a private sale if the Authority thinks it is in its best interest. The bill also allows the Authority to issue bonds to refund any bonds previously issued and revises provisions relating to resolutions authorizing bonds and fiscal agents.

Finally, the bill amends s. 349.05, F.S., to provide that revenue bonds issued by the Authority are not debts of the state. Rather, the bonds are payable exclusively from revenues pledged for their payment.

Section 8

The bill repeals s. 349.06, F.S., relating to remedies of bondholders. But see Section 14 of the Effect of Proposed Changes section of this analysis.

Section 9

Section 349.061, F.S., is created to provide the Authority with bond financing authority pursuant to article VII, section 11(f) of the Florida Constitution.

Section 10

The bill amends s. 349.07, F.S., to clarify that DOT may contribute funds and use its resources for the Jacksonville Expressway System without having to enter into a lease-purchase agreement with the Authority. The bill also removes the \$375,000 statutory cap that DOT is allowed to contribute.

¹⁸ See ss. 215.57-215.83, F.S.

Section 11

The bill amends s. 349.10, F.S., relating to the Authority's power to acquire lands and land rights for transportation-related purposes. Specifically, the Authority may acquire any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of transportation facilities, and replacement rights-of-way for relocated rail and utility facilities, and areas necessary for existing, proposed, or anticipated transportation facilities or in a transportation corridor. The Authority may condemn any material and property necessary for transportation-related purposes, except for county or municipality property.

The bill provides that any property acquired by the Authority for a transportation facility or in a transportation corridor is not subject to liability imposed by chs. 376 and 403, F.S., for preexisting soil or groundwater contamination. The Authority and the Department of Environmental Protection may enter into agreements for the performance, funding, and reimbursement for any investigative and remedial acts necessary for property acquired by the Authority.

Section 12

The bill amends s. 349.12, F.S., to include "other transportation facilities of the authority" in the covenant of the state. Currently, in the covenant of the state, the state pledges that it will not limit or alter the rights vested in the Authority and the department until all bonds issued are fully paid and discharged. Additionally, the state pledges that if a federal agency contributes funds for the completion, extension, or improvement of the Jacksonville Expressway System, the state will not alter or limit the rights and powers of the Authority and the department in any way that would be inconsistent with the continued maintenance and operation of the Jacksonville Expressway System. The bill includes "other transportation facilities of the authority," in addition to the Jacksonville Expressway System included in current law, in the covenant of the state.

Section 13

Section 349.13, F.S., is amended to specify that property leased from the Authority is exempt from ad valorem taxes if the use qualifies the property for exemption under s. 196.199, F.S.¹⁹

Section 14

Section 349.15, F.S., is amended to include remedies for bondholders. The bill authorizes bondholders to bring a civil action, mandamus, or other appropriate action, suit, or proceeding in law or equity against the Authority or the department.

¹⁹ Section 196.199, F.S., governs government property exemptions from taxation.

Section 15

The bill amends s. 349.17, F.S., to provide that the refunding of any bonds of the Florida State Improvement Commission issued to finance the Jacksonville Expressway System, as well as the issuance of bonds to finance the cost thereof, does not need to comply with s. 215.821, F.S.²⁰

Section 16

The bill amends s. 349.21, F.S., removing the requirement that revenues be used to pay principal or interest on bonds, and instead the bill makes it optional. Additionally, the bill prohibits local transportation surtax moneys collected by Duval County to be used on transportation facilities outside the county.

Section 17

The bill creates s. 349.22, F.S., relating to public-private transportation facilities. Specifically, the bill:

- Authorizes the Authority to receive and solicit proposals and enter into agreements with private entities for the building, operation, ownership, or financing of highways, bridges, multimodal transportation systems, transit-oriented development nodes, transit stations, or related transportation facilities, provided the Authority determines the project: (a) is in the public's best interest; (b) would not require state funds to be used unless the project is on or provides increased mobility on the State Highway System; and (c) would have adequate safeguards to ensure that additional costs or unreasonable service disruptions would not be borne by the public upon default or cancellation of the agreement.
- Requires reasonable costs to the state related to transportation facilities that are not part of the State Highway System be borne by the private entity. Also, requires reasonable costs to the state and affected local governments related to the transportation facility be borne by the private entity. The department may use state resources to fund and finance projects on the State Highway System.
- Requires the Authority to publish a notice in the Florida Administrative Weekly and a newspaper of general circulation if it receives unsolicited proposals or makes a determination to issue a request for proposals. The notice must be published once a week for two weeks requesting proposals, or if an unsolicited proposal was received, stating that it has received a proposal and will accept other proposals for the same project for 60 days after the initial publication date. A copy of the notice must be sent to each local government in the affected areas.
- Requires the Authority to rank the proposals in order of preference, taking into consideration professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the proposal.

²⁰ Section 215.821, F.S., governs the issuance of bonds by state agencies and requires compliance with ss. 215.57-215.83, F.S., the State Bond Act, in the case of bonds issued after July 1, 1969, or in the absence of authorization by the Florida Constitution.

- Authorizes the Authority to terminate negotiations with a proposer and, at its sole discretion, to go to the lower-ranked firms. If only one proposal is received, the Authority may negotiate in good faith and, if it is not satisfied, terminate negotiations with the proposer.
- Authorizes the Authority to reject all proposals at any time in the process up to completion of a contract with a proposer.
- Requires a person submitting an unsolicited proposal to submit \$25,000 to the Authority with the proposal to be applied to the costs of review and analysis of the proposal.
- Provides that agreements entered into may authorize the Authority to impose tolls for the use of the transportation facilities.
- Requires public-private transportation facilities to comply with laws, comprehensive plans, and the Authority's rules, policies, procedures, standards, and conditions.
- Authorizes the Authority to exercise its eminent domain powers to facilitate public-private projects.
- Provides that the section is not intended to amend existing law by granting additional powers to or imposing further restrictions on governmental entities with regard to regulating and entering into cooperative agreements with the private sector.

Section 18

The bill amends s. 20.23, F.S., to require the Florida Transportation Commission to monitor the efficiency, productivity, and management of the Authority.

Section 19

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Florida Department of Transportation (DOT or department), the fiscal impact of this bill is indeterminate at this time because no projects (or project details) have been identified and no lease-purchase agreement provisions have been formulated. The department expects requests to be made for loans from the Toll Facilities Revolving Trust Fund to fund early studies, but the exact cost to the department is unknown. Additionally, if a project moves forward, loans may be requested from the state-funded Infrastructure Bank to pay part or all of the cost of construction, and from the State Transportation Trust Fund to pay for ongoing operation and maintenance of the system to be repaid from excess toll revenues in the future.²¹

VI. Technical Deficiencies:

On lines 711-12 and 732, the bill uses the term “transportation corridor”; however, the term is never defined in the bill.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

²¹ Florida Dep't of Transp., *HB 1213 by A. Gibson – Jacksonville Transportation Authority*, 3-4 (Mar. 2, 2009) (on file with the Senate Committee on Judiciary).