

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 606

INTRODUCER: Transportation Committee and Senator Gibson and others

SUBJECT: Northeast Florida Regional Transportation Commission

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Anderson	Yeatman	CA	Favorable
3.	McKay	McVaney	GO	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 606 creates the Northeast Florida Regional Transportation Commission (commission) for the purposes of improving mobility and expanding multimodal transportation options for persons and freight throughout Baker, Clay, Duval, Nassau, Putnam, and St. Johns Counties. The primary provisions of the bill:

- create the Northeast Florida Regional Transportation Commission;
- provide for commission membership, powers and duties, and funding;
- provide criteria for transportation projects of regional significance;
- authorize the acquisition of lands and property but do not authorize the use of condemnation or eminent domain;
- exempt the commission from taxation;
- provide for repeal of the commission unless certain conditions are met; and
- provide that the commission is exempt from the Administrative Procedures Act.

This bill creates the following sections of the Florida Statutes: 343.1001, 343.1002, 343.1003, 343.1004, 343.1005, 343.1006, 343.1008, 343.1009, 343.1010, 343.1011, 343.1012, and 343.1013, constituting part V of chapter 343; and amends section 120.52 of the Florida Statutes.

II. Present Situation:

Background

In 2009, the Legislature enacted HB 1213,¹ requiring the Jacksonville Transportation Authority (JTA), at the direction of the Florida Department of Transportation (FDOT), to perform a Regional Transportation Authority study. That study affirmed the need for a regional approach to transportation in Northeast Florida but also recommended further study. Additionally, the 2009 Regional Transportation Authority Study Final Report found that the development of a regional transportation elements plan is needed as the basis for further action on any regional transportation initiative.²

In 2010, the Legislature enacted SB 2470,³ creating the Northeast Florida Regional Transportation Study Commission, consisting of representatives from Baker, Clay, Duval, Flagler, Nassau, Putnam, and St. Johns counties and the JTA.⁴ The bill required the study commission to prepare a report detailing its findings and making recommendations regarding regional transportation. The report was required to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012. The report was required to include a regional transportation elements plan, the defining characteristics of transportation elements of regional significance, and an implementation plan for undertaking a regional transportation element plan. The report was allowed to include recommendations for the establishment of a regional transportation authority, draft legislation, and any other legislation the study commission deemed appropriate.

Recommendations from the Study

In December 2012, the Northeast Florida Regional Transportation Study Commission issued its final report.⁵ The report recommended a two-phased approach to regional transportation governance. Phase I would be a regional transportation commission, and Phase II would be the establishment of a regional transportation entity and proposed funding to implement the multimodal regional transportation commission's regional transportation plan.

In Phase I, the commission will:

- develop a multimodal regional transportation plan;
- identify and secure dedicated funding to implement the plan;
- advance strategic projects and services with an initial focus on coordinating regional transit; and
- propose an organizational framework for implementing the regional transportation plan.

¹ Ch. 2009-111, L.O.F.

² A copy of the 2009 Regional Transportation Study Final Report is available at <http://www.northfloridartsc.com/Pages/LegislationReports.aspx> (last visited March 20, 2013).

³ Ch. 2010-202, L.O.F.

⁴ The Department of Transportation's District 2 Secretary, the chair of the Northeast Florida Regional Council, and the North Florida Transportation Planning Organization served as nonvoting members of the Northeast Florida Regional Transportation Study Commission.

⁵ A copy of the Northeast Florida Regional Transportation Study Commission's final report is available at <http://www.northfloridartsc.com/Pages/default.aspx> (last visited March 20, 2013).

In Phase II, the multimodal regional transportation plan would be implemented with dedicated funding as authorized by future legislation.

The bill implements the recommended first Phase, creating the Northeast Florida Regional Transportation Commission.

III. Effect of Proposed Changes:

Chapter 343, F.S. (Section 1)

The bill creates a new part V of ch. 343, F.S., consisting of ss. 343.1001 through 343.1013, F.S.

Short Title (Section 2)

The bill creates s. 343.0001, F.S., creating the Northeast Florida Regional Transportation Commission Act as part I of ch. 343, F.S.

Definitions: (Section 3)

The bill creates s. 343.1002, F.S., defining various terms. Notably the bill contains very broad definitions of the following terms:

Transportation facilities means all mobile and fixed assets, including real or personal property or rights therein, used in the transportation of persons or property by any means of conveyance, and all related appurtenances. This includes:

- highways; bridges; limited or controlled access roadways, lanes and related facilities;
- docks, wharves, vessels, jetties, piers, and marine terminals;
- vehicles, fixed guideway facilities, including freight rail, intermodal facilities, and any means of conveyance of persons or property of all types;
- passenger and other terminals;
- park and ride facilities;
- bicycle ways and related facilities;
- pedestrian ways and pedestrian-related facilities appurtenant to other transportation facilities;
- transit-related improvements or developments adjacent to transit facilities or stations; and
- bus, train, vessel, or other vehicle storage, cleaning, fueling, control, and maintenance facilities.

Unlike other statutory entities with transportation-related functions, this definition also includes administrative or other office space for the commission.

Transportation Services means the conveyance of persons or property including mass transit services such as fixed-route bus, fixed-guideway vehicle service, paratransit service, flex route or demand responsive service; and the planning and funding of transportation facilities.

Northeast Florida Regional Transportation Commission (Section 4)

The bill creates s. 343.1003, F.S., establishing the Northeast Florida Regional Transportation Commission. The commission covers a six-county area comprised of Baker, Clay, Duval, Nassau, Putnam, and St. Johns Counties.⁶ The commission's governing board consists of nine members who are selected as follows:

- The county commissions of Baker, Clay, Nassau, Putnam, and St. Johns Counties each appoint one person, who may be an elected official of the county.
- The City of Jacksonville will be represented by four members, who may be elected officials of the city. Of the four members the Mayor of the City of Jacksonville appoints two members, and the Jacksonville City Council appoints two members.

To ensure continuity on the initial governing board, the initial appointees will draw lots at the governing board's first meeting to provide for two-, three- and four-year terms. An appointed member may not select or have a designee selected to serve in the absence of the member, whether the member is an elected official or otherwise. However, if an appointed member is designated by the appointing entity by title, such as a chair of a county commission or a chair of a transportation planning agency, the successor or vice-chair of the position may serve for the appointee in his or her absence. After the initial board's terms, members will be appointed for four-year terms. A member may not serve more than two consecutive terms.

The DOT secretary appoints a nonvoting advisor to the board. In addition, the board may create an advisory panel, whose membership will be determined by the board, and may establish committees by direction of the chair or upon vote of the board.

Members of the board and persons appointed to a committee or advisory panel serve without compensation, but are entitled to receive reimbursement for travel expenses and per diem actually incurred in connection with commission business.⁷ Members of the board are required to file with the Commission on Ethics as their mandatory financial disclosure the Form 1 statement of financial interest.⁸

At its inaugural meeting, and annually thereafter, the board is required to elect a chair, vice chair, secretary, and treasurer from among its members, to serve a one-year term. No person may hold the office of chair for more than two consecutive terms. The commission's first meeting must be held no later than 60 days after its creation.

The commission may employ an executive director and an administrative assistant to the board and executive director. The commission may employ permanent or temporary staff, including consultants, as it determines necessary or convenient. Alternatively, with the approval of their respective boards or administrative chiefs, the commission may use the staff of the:

⁶ Flagler County declined to join the commission.

⁷ The provisions for per diem and travel expenses are in s. 112.061, F.S.

⁸ The Form 1 statement of financial interest is provided for in s. 112.3145, F.S. Section 348.0003(4)(c), F.S., requires members of transportation authorities created pursuant to ch. 343, F.S., to file Form 6 with the Commission on Ethics, which is a more detailed financial disclosure.

- JTA, its legal counsel, technical experts, engineers, and other administrative employees;
- North Florida Transportation Planning Organization, for planning matters;
- Northeast Florida Regional Council, for planning and coordination matters;
- FDOT;
- Jacksonville Port Authority; and
- the counties represented on the commission board, on an as-needed basis.

Members of the board may be removed by their appointing entity for cause, including, but not limited to, failure to attend two or more commission meetings in a 9-month period.

No liability exists on the part of, and no cause of action of any nature shall arise against, any commission member for any action taken in the performance of their duties.

Commission Powers and Duties (Section 5)

The bill creates s. 343.1004, F.S., providing the commission's powers and duties. The commission's express purposes are to improve mobility and expand multimodal transportation options for passengers and freight throughout the six-county Northeast Florida region. The commission shall, at a minimum:

- develop a multimodal, prioritized plan for transportation projects of regional significance; and
- research and develop an implementation plan that identifies available but not yet imposed, and potentially developable, sources of funding to execute the regional transportation plan.

In developing the regional transportation plan, the commission is to review and coordinate with the future land use, capital improvements, and traffic circulation elements of the constituent counties' local governments' comprehensive plans, the Northeast Florida Regional Council's Strategic Regional Policy Plan,⁹ and the schedules of other units of government having transit or transportation authority within whose jurisdiction the projects or improvements will be located. This process is intended to define and resolve potential inconsistencies between these plans and the commission's regional transportation plan.

The commission is to present the regional transportation plan and updates to the governing bodies of the constituent counties within 90 days after adoption. The commission is to update the regional transportation plan and the implementation plan not less frequently than every other year. The commission may plan, develop, construct, coordinate, and promote transportation projects of regional significance that are identified in the commission's regional transportation plan.

Subject to available funding and with the approval of the affected counties and transportation authorities, the commission may provide transportation services of regional significance identified in the regional transportation plan.

⁹ A copy of the Northeast Florida Regional Council's Strategic Regional Policy Plan is available at <http://www.nefrc.org/SRPP.htm> (last visited February 11, 2013).

The commission may facilitate efforts to secure funding commitments from federal and state sources, or from the applicable counties, for the planning, development, construction, purchase, operation and maintenance of transportation projects of regional significance or that support intercounty mobility for persons or freight.

The commission may request funding and technical assistance from DOT and from federal and local agencies. In order to operate for its first five years, the commission is also to request annual funding from each constituent county of up to 30 cents per capita per year based on the latest census. However, the contribution of Duval County may not exceed 45 percent of the commission's budget for any fiscal year.

The commission may exercise all powers necessary, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers to:

- Sue and be sued in all courts.
- Apply for and to accept grants from federal, state, local, or private sources.
- Partner with private sector business community entities and engage the public in support of regional multimodal transportation improvements.
- Adopt rules for the regulation of the affairs and the conducting of business, including termination of membership in the commission for the nonpayment of county contributions.
- Advertise, market, and promote regional transit services and facilities, freight mobility plans and projects, and the activities of the commission.
- Cooperate with other governmental entities and contract with other governmental agencies.
- Purchase directly from local, national, or international insurance companies liability insurance that the commission is contractually and legally obligated to provide, notwithstanding the requirements of s. 287.022(1), F.S.¹⁰
- Make contracts and execute necessary instruments.
- Form public benefit corporations with other agencies of the state or local governments.
- Do all acts and things necessary or convenient for the conduct of its business and the general welfare of the commission in order to carry out its powers.

The commission does not have the power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency of the state. The commission's obligations may not be deemed to be obligations of the state or of any political subdivision.

Transportation Projects of Regional Significance (Section 6)

The bill creates s. 343.1005, F.S., providing that transportation projects of regional significance are those transportation facilities and transportation services within a regional transportation corridor identified in the Northeast Florida Regional Transportation Study Commission's December 2012 report, or subsequently identified by the commission, which:

- exhibit a significant level of travel between counties or regions;
- provide a primary connection between activity centers or municipalities;

¹⁰ Section 287.022(1), F.S., pertains to the purchase of insurance for all agencies by the Department of Management Services.

- exhibit a significant percentage of freight conveyance;
- provide a primary connection to marine, aviation or intermodal facilities;
- provide a regional emergency evacuation route;
- support or enhance the functionality of another identified transportation project of regional significance in the corridor by providing for regional movement or removing non-regional trips from some other transportation project of regional significance; or
- have such other characteristics as the commission determines to be of regional significance.

Coordination with Other Agencies (Section 7)

The bill creates s. 343.1006, F.S., requiring the regional transportation plan and implementation plan to be forwarded to the North Florida Transportation Planning Organization for inclusion in its long-range transportation plans and other planning documents. To the extent feasible, the commission's planning activities, including the development and adoption of the regional transportation plan and the implementation plan, shall be coordinated with the work of the North Florida Transportation Planning Organization, the Northeast Florida Regional Council, and DOT.

Authority to Contract (Section 8)

The bill creates s. 343.1008, F.S., authorizing any county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual to contract with the commission. The commission may make and enter into contracts, leases, conveyances, partnerships, interlocal and other agreements with any political subdivision, agency, or instrumentality of the state and any federal agencies, corporations, and individuals for the purpose of carrying out its statutory authority and serving the purposes of the commission.

Exemption from taxation and assessment (Section 9)

The bill creates s. 343.1009, F.S., providing that effectuation of the commission's authorized purposes is for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and because the commission performs essential governmental functions, the commission is not required to pay taxes or assessments of any kind upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges received by it.

Powers of Commission are Supplemental (Section 10)

The bill creates s. 343.1010, F.S., providing that the powers conferred by this part are supplemental to the existing authority of the North Florida Transportation Planning Organization, the JTA, the Northeast Florida Regional Council, the counties and the municipalities located therein, and the DOT. This does not repeal any other law, general, special, or local, but supplements other laws in the exercise of the powers provided and provides a complete method for the exercise of powers granted to the commission. The projects of the commission must comply with all applicable federal, state, and local laws and may be accomplished in compliance with the provisions of the bill without regard to or necessity for compliance with the provisions, limitation, or restrictions contained in any other general, special,

or local law except as specifically set forth in the bill. The bill does not repeal, rescind, or modify any other law relating to the North Florida Transportation Planning Organization, the JTA, or DOT.

Public Meetings and Hearings (Section 11)

The bill creates s. 343.1011, F.S., requiring the commission to meet at the times and locations as the chair determines, provided that to the extent feasible there be regular quarterly meetings.

The bill also provides that before the adoption of the regional transportation plan or the implementation plan, the commission must conduct a properly noticed public hearing in each of the affected counties, at least one of which must be before the commission's board. At the hearings, any interested party has the opportunity to be heard and to introduce testimony. Additionally, the commission shall comply with all applicable federal and state requirements related to new or altered transportation facilities or services.

Discretionary Sales Surtax (Section 12)

The bill creates s. 343.1012, F.S., providing that the commission is not an "authority" for the purposes of the Charter County and Regional Transportation System Surtax.¹¹

Repeal (Section 13)

The bill creates s. 343.1013, F.S., repealing this act on November 30, 2018, unless:

- the commission has adopted a regional transportation plan and the implementation plan, and at least Clay, Duval, Nassau, and St. Johns counties have adopted resolutions endorsing the plans; and
- adequate funding sources to carry out the initial phases of such plans have been secured.

Florida Administrative Code (Section 14)

Currently, s. 120.52(1), F.S., defines "agency" for the purpose of the Administrative Procedures Act (APA).¹² The statute excludes expressway authorities created pursuant to ch. 348, F.S., and transportation authorities created pursuant to ch. 343 or 349, F.S., from the definition of "agency" for the purposes of the APA. The bill amends the definition of "agency" contained in s. 120.52(1), F.S., to exclude a "commission" created pursuant under ch. 343 or 349, F.S.; thus, the Northeast Florida Regional Transportation Commission will not be subject to the APA.

Effective Date (Section 15)

The bill has an effective date of July 1, 2013.

¹¹ S. 212.055(1), F.S.

¹² Ch. 120, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Section 18(a) of Article VII of the State Constitution provides that unless certain requirements are met, neither counties nor municipalities are bound by a state law that requires the county or municipality to spend money or to take action that requires the expenditure of money. However, pursuant to Section 18(d), laws having an insignificant fiscal impact, which has been established by the Legislature as \$1.9 million, are exempt from the mandate requirements.

The bill requires the commission to request that each constituent county contribute cash for the operation of the commission. Nothing in the bill imposes a duty on the counties to fund the commission, but even if there were such a duty, the amount of money to be contributed by the counties, in total, is roughly \$215,000, which is a small enough amount to be deemed an insignificant fiscal impact. Therefore, the constitutional requirements relating to local government mandates do not appear to apply to this bill.

B. Public Records/Open Meetings Issues:

Section 11 of the bill provides for regular public meetings of the Board, which is the governing body of the commission. Since the bill is silent as to whether the provisions of section 11 are intended to supplement or supplant the public meeting requirements of s. 286.011, F.S., which apply to any “agency,” and the bill declares the commission to be an agency of the state, the provisions in section 11 of the bill appear to be supplemental to the requirements contained in s. 286.011, F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article II, Section 5 of the Constitution of the State of Florida provides that “[n]o person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that...any officer may be a member of a ...statutory body having only advisory powers.” The constitutional dual office-holding prohibition does not apply to the bill as written, since it permits, but does not require, the member counties and the City of Jacksonville to appoint its elected officials to the nine-member governing board of the commission. If elected officials are in fact appointed to the governing board, they may wish to seek appropriate legal counsel as to whether the dual office holding prohibition would apply.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

For the first five years, the commission is expected to be funded from monies appropriated from each of the constituent counties up to 30 cents per capita per year. However, Duval County’s contribution cannot exceed 45 percent of the commission’s budget. The Northeast Florida Regional Transportation Study Commission estimated that the Northeast Florida Regional Transportation Commission’s annual budget will be roughly \$215,000. This results in an estimated cost of 21.1 cents per capita. The estimated county contributions are as follows:

County	Estimated Contribution
Baker	\$5,682
Clay	\$40,331
Duval	\$96,445 ¹³
Nassau	\$15,547
Putnam	\$15,625
St. Johns	\$40,692
Total	\$214,322

VI. Technical Deficiencies:

None.

VII. Related Issues:

Requirements for Agencies

Line 85 of the bill declares the commission to be an “agency of the state.”

Section 14 of the bill excludes transportation commissions created in ch. 343, F.S., from the definition of “agency” for purposes of the APA (effectively exempting the commission from rulemaking). Line 247 of the bill permits the commission to “adopt rules.” The bill thus creates a general provision that the commission is a state agency, and a specific provision exempting the commission from the requirements of the APA which would otherwise apply to an agency. Where general and specific statutes conflict, courts will recognize the specific statute, unless it can be demonstrated that the Legislature clearly intended the contrary.¹⁴ Therefore, in order to avoid the conflict the bill creates as to whether the commission is an agency, as applied to rulemaking, the specific exclusion created by section 14 of the bill would probably apply.

Other requirements that apply to agencies of the executive branch probably do not apply to the commission, such as chapters 110, 216, and 287, F.S., since the commission is not created as an

¹³ Duval County’s contribution is based on a maximum of 45 percent of the costs.

¹⁴ *Palm Beach Cty. Canvassing Bd. v. Harris*, 772 So.2d 1273 (Fla. 2000).

adjunct to the executive branch. However, the executive director, administrative assistant, and other permanent employees that the commission may employ are probably compulsory participants in the Florida Retirement System, which is compulsory for all employees employed by an “employer,” (defined in s. 121.021, F.S., as “any agency...of the state”).

Contracting

In section 8, the bill gives authority to the commission to contract with corporations and individuals but does not provide competitive solicitation requirements for those contracting activities. The commission does not appear to be an agency of the executive branch for which the competitive solicitation requirements of ch. 287, F.S., would apply. If the Legislature wishes to require the commission to adhere to competitive solicitation requirements, it should state those requirements in the bill.

VIII. Additional Information:

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

CS by Transportation on March 21, 2013:

The committee substitute incorporates five amendments which, collectively, removed provisions which would have granted the commission the authority to acquire, own, operate, maintain, or manage transportation facilities. Rather, the commission is limited to essentially providing transit services of regional significance.

- B. **Amendments:**

None.