

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 Appropriations

BILL: CS/CS/SB 230

INTRODUCER: Appropriations Committee; Transportation Committee; and Senator Simmons

SUBJECT: Orlando-Orange County Expressway Authority

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Stearns	Yeatman	CA	Favorable
3.	Carey	Kynoch	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 230 re-names the Orlando-Orange County Expressway Authority (OOCEA) as the Central Florida Expressway Authority (CFX) and expands the area served by the CFX to include the counties of Seminole, Lake, and Osceola Counties in addition to Orange County. The bill provides for the transfer of governance and control, legal rights and powers, responsibilities, terms and obligations of the OOCEA System to the CFX and, in addition:

- Provides for the composition of the governing body of the CFX, the appointment of its officers and the expiration of terms of the standing OOCEA board members, and revises quorum and voting requirements applicable to the CFX;
- Provides ethics and financial disclosure requirements for members and the executive director of the CFX, as well as ethics requirements for the CFX employees and consultants.
- Removes the existing OOCEA requirement that the route of a project be approved by a municipality before the right-of-way can be acquired;
- Requires that the CFX encourage the inclusion of local-, small-, minority-, and women-owned businesses in its procurement and contracting opportunities;
- Removes the existing OOCEA authority to waive payment and performance bonds for certain public works projects awarded pursuant to an economic development program;
- Provides that upon termination of the lease-purchase agreement title in fee simple absolute to the former OOCEA system will be transferred to the state and extends the term of authorized lease-purchase agreements from 40 to 99 years;

- Provides for the transfer of the Osceola County Expressway System to the CFX and provides for the repeal of part V of ch. 348, F.S., on the same date the Osceola County Expressway System is transferred to the CFX; and
- Provides the bill takes effect upon becoming law.

The bill may have an indeterminate but insignificant negative fiscal impact on the State Transportation Trust Fund.

II. Present Situation:

Orlando-Orange County Expressway Authority

The Orlando-Orange County Expressway Authority currently serves Orange County and is authorized to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards in the county, as well as outside the jurisdictional boundaries of Orange County with the consent of the county within whose jurisdiction the activities occur.¹

The OOCEA governing body consists of five members. The Governor appoints three members who are citizens of Orange County and who serve four year terms and may be reappointed. The Orange County mayor and the Florida Department of Transportation's (FDOT) District Five Secretary serve as *ex-officio* members of the Board.²

The OOCEA currently owns and operates 109 centerline miles of roadway in Orange County, which includes:

- 22 miles of the Spessard L. Holland East-West Expressway (SR 408);
- 23 miles of the Martin Andersen Beachline Expressway (SR 528);
- 33 miles of the Central Florida GreeneWay (SR 417);
- 22 miles of the Daniel Webster Western Beltway (SR 429); and
- Nine miles of the John Land Apopka Expressway (SR 414).³

Pursuant to an existing Memorandum of Understanding (MOU) and lease-purchase agreement between the FDOT and the OOCEA, the authority will independently finance, build, own and manage certain portions of the Wekiva Parkway. To ensure that funds are available to the FDOT for the Wekiva Parkway, the 2012 Legislature codified references to the existing MOU and lease-purchase agreements and established a repayment schedule for the OOCEA to reimburse the FDOT for the costs of operation and maintenance of the Orlando-Orange County Expressway System in accordance with the terms of the MOU.⁴

To ensure financing was available to the FDOT for its portion of the Wekiva Parkway, the OOCEA was required to pay the FDOT \$10 million on July 1, 2012, and is required to pay \$20 million every July 1 thereafter to pay off the long-term debt obligation to the FDOT. The OOCEA's long-term debt obligation as of November 30, 2013, is \$211,334,985.29.

¹ Section 348.754(2)(n), F.S.

² Section 348.753, F.S.

³ FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 40.

⁴ Chapter 2012-128, L.O.F.

Osceola County Expressway Authority

Created in 2010, the Osceola County Expressway Authority (OCX) currently serves Osceola County and has the purposes and powers identified in the Florida Expressway Authority Act, including the power to acquire, hold, construct, improve, maintain, operate, and own an expressway system.⁵

OCX Governing Board

The OCX governing body consists of six members. Five members must be residents of Osceola County, one of which must be a member of a racial or ethnic minority. Three of the five are appointed by the governing body of the county and the remaining two are appointed by the Governor. The FDOT's District Five Secretary serves as an *ex-officio*, non-voting member.⁶

OCX Facilities

The OCX is not currently operating any facility and has no funding or staff. Staff assistance and other support have been provided by Osceola County. The FDOT provided a \$2.5 million grant to the OCX in May of 2012, and the funds will be used for two project development and environment studies that will be conducted by the Florida Turnpike Enterprise. The OCX adopted a 2040 Master Plan that includes construction of four proposed tolled expressways: the Poinciana Parkway, the Southport Connector Expressway, the Northeast Connector Expressway, and the Osceola Parkway Extension. The OCX has an agreement with Osceola County under which the county will advance funds for operation and startup costs until the OCX has a revenue-producing project. The agreement requires the OCX to repay the county within 15 years of receiving toll revenues. A 2012 agreement calls for issuance of bonds by the county to pay for the Poinciana Parkway project costs incurred by the OCX. The OCX will design and construct the parkway pursuant to a lease-purchase agreement with the county.⁷

Seminole County and Lake County

The Seminole County Expressway Authority was abolished by the Legislature in 2011;⁸ neither Seminole County nor Lake County is currently served by an expressway authority. The Florida Turnpike Enterprise currently owns and operates Florida's Turnpike, parts of which are located within Seminole and Lake Counties.

III. Effect of Proposed Changes:

Generally, the bill re-names the OOCEA as the CFX; expands the area served by the CFX beyond Orange County to include Seminole, Lake, and Osceola Counties; and transfers governance and control of the OOCEA system to the CFX.

⁵ Section 348.0004, F.S.

⁶ Section 348.9952, F.S.

⁷ FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 171.

⁸ Ch. 2011-64, L.O.F.

Section 1 amends s. 348.751, F.S., to change the short title of part III of ch. 348, F.S., from the “Orlando-Orange County Expressway Authority Law” to the “Central Florida Expressway Authority Law.”

Section 2 amends s. 348.752, F.S., to define:

- “Central Florida Expressway Authority” to mean the “body politic and corporate and agency of the state created by this chapter”;
- “Central Florida Expressway System,” to mean “any expressway and appurtenant facilities including all approaches, roads, bridges, and avenues for the expressway and any rapid transit, trams, or fixed guideways located within the right-of-way of an expressway”; and
- “Transportation facilities” to mean “the mobile and fixed assets, and the associated real or personal property or rights, used in the transportation of persons or property by any means of conveyance, and all appurtenances, such as, but not limited to, highways; limited or controlled access lanes, avenues of access, and facilities; vehicles; fixed guideway facilities, including maintenance facilities.” Administrative and other office space used by the authority is also included in the term.

This section of the bill also deletes the definitions of “city” and “county,” revises various definitions to conform terminology to the renaming, and makes technical changes.

Section 3 amends s. 348.753, F.S., in which the OOCEA is created, to replace and rename the OOCEA as the Central Florida Expressway Authority and requires that the CFX assume the governance and control of the OOCEA System immediately upon the effective date of the bill.

The bill also provides for nine members of the CFX governing board as follows:

- The chairs of the boards of county commission of Seminole, Lake, and Osceola Counties shall each appoint one member, who may be a commission member or chair;
- The Mayor of Orange County shall appoint a member from the Orange County Commission;
- Three citizen members appointed by the Governor, two of which must be citizens of Orange County; and one member must be a citizen of either Seminole, Lake, or Osceola County;
- The mayor of Orange County; and
- The mayor of the City of Orlando.

The executive director of Florida’s Turnpike Enterprise serves as a nonvoting advisor to the CFX governing body. The Governor’s appointees are to serve four-year terms; county-appointed members are to serve two-year terms; and the terms of current OOCEA board members expire on the effective date of the bill. Except as provided, a person who is an officer or employee of a municipality or county may not be appointed as a CFX board member. Five members of the authority constitute a quorum.

In addition to meeting the requirements of ch. 112, F.S., the bill provides a member or the executive director of the CFX may not:

- Personally represent another person or entity for compensation before the CFX for a period of two years after vacating his or her position.
- Within two years after retirement or termination, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, F.S., that

was doing business with the CFX at any time during the person's membership on or employment by the authority.

- After retirement or termination, have an employment or contractual relationship with a business entity other than an agency, as defined in s. 112.312, F.S., in connection with a contract in which the member or executive director personally and substantially participated in through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member or employee of the authority.

A violation of this subsection is generally punishable by a number of measures, depending upon whether the violator is a public officer, an employee or person designated as a public officer who otherwise would be deemed to be an employee, or a former public officer or employee. The possible penalties range, for example, from impeachment or removal from office, suspension or dismissal from employment, and loss of some portion of salary, to public censure and reprimand, a \$10,000 civil penalty, and restitution of any benefits received because of a violation.⁹

The bill also requires the following annual disclosures on a disclosure form:

- Any relationship a board member, employee, or consultant has which affords a current or future financial benefit to such board member, employee, or consultant, or to a relative or business associate of such board member, employee, or consultant, and which a reasonable person would conclude has the potential to create a prohibited conflict of interest.
- Whether a relative of such board member, employee, or consultant is a registered lobbyist, and if so, the names of such lobbyist's clients. Such names shall be provided in writing to the ethics officer.
- Any and all interests in real property that such board member, employee, or consultant has, or that a relative, principal, client, or business associate of such board member, employee, or consultant has whenever such real property is located within, or within a one-half mile radius of, any actual or prospective authority roadway project. The executive director shall provide a corridor map and a property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment map with a list of associated owners, to all board members, employees, and consultants.

Furthermore, the CFX board members, employees, and consultants who hold positions that may influence CFX decisions are required to refrain from engaging in any relationship that may adversely affect their judgment.

In addition, the bill requires the CFX general counsel to serve as the CFX ethics officer and:

- The required disclosure forms must be reviewed by the ethics officer or, if a form is filed by the general counsel, by the executive director.
- The conflict of interest process shall be outlined in the CFX's Code of Ethics.
- Authority employees and consultants are prohibited from serving on the governing body of the authority while employed by or under contract with the authority.
- Employees shall be adequately informed and trained on the code of ethics and shall continually participate in ongoing ethics education.

Section 4 amends s. 348.754, F.S., relating to the purposes and powers of the authority, to:

⁹ Section 112.317, F.S.

- Specify the area served by the authority to be within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties, except as otherwise specifically provided by law;
- Authorize the CFX to construct the Central Florida Expressway System, including rapid transit, trams, fixed guideways, thoroughfares, and boulevards;
- Authorize the CFX to construct, operate, and maintain roads, bridges, and transportation facilities, and electronic toll payment systems on the roads, bridges, and transportation facilities outside the boundaries of Orange, Seminole, Lake, and Osceola Counties with the consent of the county within whose jurisdiction the activities occur; and
- Prohibit the CFX from constructing any extensions, additions, or improvements to the expressway system in Lake County without the prior consent of the FDOT Secretary to ensure the continued financial feasibility of the construction of the Wekiva Parkway by the FDOT.

The term of authorized existing lease-purchase agreements is extended from 40 to 99 years. However, the bill precludes the CFX from entering into any other lease-purchase agreements with the FDOT, and from amending the existing agreement between the OOCEA and the FDOT to expand or increase the FDOT's obligations unless it is determined by the FDOT that an amendment is necessary to permit the refunding of bonds issued prior to July 1, 2013.

Toll revenues attributable to an increase in toll rates charged on or after the effective date of the bill for the use of a portion of the system may not be used to construct or expand a different portion of the system, unless a two-thirds majority of the members of the authority approves the use of revenues, with certain exceptions. Notwithstanding s. 338.165, F.S., and except as otherwise prohibited, the bill provides that the authority may, within the right-of-way of the expressway system, use excess revenues to finance or refinance the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of an intermodal facility or facilities, a multimodal corridor or corridors, or any programs or projects that will improve the levels of service on the expressway system.

The requirement for approval of the municipal governing board of a project route prior to the acquisition of right-of-way for a project within the boundaries of Orange County is removed, as are provisions authorizing the CFX to waive payment and performance bonds on certain construction contracts and related small business provisions.

Sections 5 through 11 conform terminology and make grammatical and editorial changes by amending:

- Section 348.7543, F.S., relating to bond financing authority for improvements by the CFX;
- Section 348.7544, F.S., relating to construction and financing of the Northwest Beltway Part A;
- Section 348.7545, F.S., relating to construction and financing of the Western Beltway Part C;
- Section 348.7546, F.S., relating to construction and financing of the Wekiva Parkway;
- Section 348.7547, F.S., relating to construction and financing of the Maitland Boulevard Extension and the Northwest Beltway Part A realignment;
- Section 348.755, F.S., relating to bonds of the authority; and
- Section 348.756, F.S., relating to remedies of the bondholders.

Section 12 amends s. 348.757, F.S., to provide that upon the termination of the current lease-purchase agreement between the OOCEA and the FDOT, title in fee simple absolute to the former OOCEA system must be transferred to the state.

Sections 13 through 17 and section 19 conform terminology and make grammatical and editorial changes by amending:

- Section 348.758, F.S., relating to appointment of the FDOT as construction agent for the authority;
- Section 348.759, F.S., relating to acquisition of lands and property;
- Section 348.760, F.S., relating to cooperation with other units, boards, agencies, and individuals;
- Section 348.761, F.S., relating to covenants of the state;
- Section 348.765, F.S., relating to complete and additional authority; and
- Section 369.317, F.S., relating to the Wekiva Parkway.

Section 18 amends s. 348.9953, F.S., relating to the purposes and powers of the OCX, to provide that the purposes and powers of the OCX may only be exercised with respect to the Poinciana Parkway, and the OCX may exist only until the earlier of December 31, 2016, or the completion of construction of the Poinciana Parkway. OCX's expressway system is also limited to the Poinciana Parkway as described in the OCX Master Plan. The OCX may construct additions and improvements to the Parkway that modify or revise the project but are within limits described in the Master Plan.

Section 20 amends s. 369.324, F.S., to remove and replace references to the OOCEA and to the previously repealed Seminole County Expressway Authority and revise the composition of the Wekiva River Basin Commission as a result of the repeal of the Seminole County Expressway Authority.

Section 21 provides that although, the CFX governing body will have one or more members from Osceola County upon the effective date of the bill and may employ the specified purposes and powers regarding Osceola County, the OCX shall continue solely for the purpose of planning and construction of the Poinciana Parkway. The bill restates in this section that upon the earlier of December 31, 2016, or completion of construction of the Poinciana Parkway, all powers, governance, and control of the Osceola County Expressway System and the assets, liabilities, facilities, tangible and intangible property and any rights in the property, as well as any other legal rights, are transferred to the CFX. The bill also repeals part V of ch. 348, F.S., which creates the OCX, on the same date as the transfer.

The CFX is directed to comply with all obligations of any other governmental entities incurred on behalf of the OCX system, including any obligations of Osceola County relating to operations and maintenance of the OCX system and any loan repayment obligations, including State Infrastructure Bank loans.

Except with respect to bonds or other debt obligations originally issued by Osceola County or the OCX for financing the Poinciana Parkway, which remains solely subject to the covenants and agreements of Osceola County to make payments for any debt service shortfalls, payment obligations transferred to the CFX are to be made from revenues available after payment of

specified amounts. This effectively makes Osceola County responsible for the payment of any debt service not covered by the toll revenue of the Poinciana Parkway.

Section 21 provides that the act shall take effect on becoming law.

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 FDOT, there is a possible indeterminate negative impact as CS/CS/SB 230 extends the maximum term of the lease-purchase agreement from the longer of 40 years and bonds outstanding to the longer of 99 years and bonds outstanding.

Authority is provided to amend the existing lease-purchase agreement between the OOCEA and the FDOT, if the FDOT determines that the amendment is necessary to permit the refunding of bonds issues prior to July 1, 2013. This could increase the FDOT's existing obligations.

The OOCEA's current long term debt obligation to the FDOT is over \$211 million.¹⁰

VI. Technical Deficiencies:

None.

¹⁰ 2014 FDOT Legislative Bill Analysis, SB 230. On file in the Senate Transportation Committee.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 348.751, 348.752, 348.753, 348.754, 348.7543, 348.7544, 348.7545, 348.7546, 348.7547, 348.755, 348.756, 348.757, 348.758, 348.759, 348.760, 348.761, 348.765, 348.9953, 369.317, and 369.324.

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

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

CS/CS by Appropriations on March 13, 2014:

The CS:

- Revises the date of the assumption of control of the OOECA by the CFX immediately upon the effective date of the bill;
- Revises the date of the assumption of control of the OCX by the CFX to the earlier of December 31, 2016, or the completion of construction by the OCX of the Poinciana Parkway.
- Limits the purpose of the OCX solely to the planning and construction of the Poinciana Parkway.
- Provides that bonds or other debt obligations originally issued by Osceola County or the OCX to finance the Poinciana Parkway remain solely subject to the covenants and agreements of Osceola County to make payments for any debt service shortfalls.
- Revises the composition of the governing body of the CFX.
- Provides ethics and financial disclosure requirements for a member or the executive director of the CFX, as well as ethics requirements for the CFX employees and consultants.

CS by Transportation on January 9, 2014:

The CS incorporates a technical amendment to change the word “chapter” to the word “part” (lines 72 and 88 of the original bill) to reference the appropriate part of ch. 348, F.S., applicable to the re-named Central Florida Expressway Authority and to correct a title error.

B. Amendments:

None.