

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 311	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Economic Affairs Committee; Transportation & Highway Safety Subcommittee; Nelson	115 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 230	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 311 passed the House on April 30, 2014, as CS/CS/SB 230 as amended. The Senate concurred in the House amendment to the Senate Bill and subsequently passed the bill as amended on May 1, 2014.

The bill renames the Orlando-Orange County Expressway Authority Law as the Central Florida Expressway Authority Law. Specifically, the bill:

- Creates the Central Florida Expressway Authority (CFX) and provides for the transfer of governance and control, legal rights and powers, responsibilities, terms and obligations of the Orlando-Orange County Expressway Authority (OOCEA) to CFX.
- Provides for the composition of the governing body of CFX and the appointment of its officers.
- Provides ethics and accountability requirements of CFX board members and employees.
- Provides that the area served by CFX is within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties.
- 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 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 of the Central Florida Expressway System, title will be retained by the state, and extends the terms of lease-purchase agreements from 40 to 99 years.
- Provides for the transfer of the Osceola County Expressway System to CFX and provides for the repeal of part V of ch. 348, F.S., when the Osceola County Expressway System is transferred to CFX.
- Makes numerous conforming, grammatical, and editorial changes.
- Provides a direction to the Division of Law Revision and Information.

The bill does not have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 20, 2014, ch. 2014-171, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Current Situation**

##### **Orlando Orange County Expressway Authority**

The Orlando Orange County Expressway Authority (OOCEA), created in part III of ch. 348, F.S.,<sup>1</sup> 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.<sup>2</sup>

The OOCEA's 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 Department of Transportation's (DOT) district five secretary serve as *ex-officio* members of the Board.<sup>3</sup>

The OOCEA currently owns and operates 105 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
- 5 miles of the John Land Apopka Expressway (SR 414).

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

The OOCEA was required to pay DOT \$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 DOT. When the debt has been fully repaid, DOT's obligation to pay any cost of operation, maintenance, repair, or rehabilitation of the OOCEA system will terminate, and ownership of the system will remain with OOCEA. DOT advises that OOCEA's current long-term debt is over \$211 million.<sup>5</sup>

##### **Osceola County Expressway Authority**

Created in 2010, as part V of ch. 348, F.S.,<sup>6</sup> the Osceola County Expressway Authority (OCX) currently serves Osceola County and has the purposes and powers identified in the Florida Expressway Authority Act,<sup>7</sup> including the power to acquire, hold, construct, improve, maintain, operate, and own an expressway system.<sup>8</sup>

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<sup>1</sup> Part III of ch. 348, F.S., consists of ss. 348.751 through 348.765, F.S.

<sup>2</sup> S. 348.754(2)(n), F.S.

<sup>3</sup> S. 348.753(2), F.S.

<sup>4</sup> Ch. 2012-128, L.O.F.

<sup>5</sup> Florida Department of Transportation bill analysis of SB 230. On file with Transportation & Highway Safety Subcommittee staff.

<sup>6</sup> Part V of ch. 348, F.S., consists of ss. 348.9950 through 348.9961, F.S.

<sup>7</sup> Part I of ch. 348, F.S.

<sup>8</sup> S. 348.0004, F.S.

The OCX governing board consists of six members. Five members, one of which must be a member of a racial or ethnic minority, must be residents of Osceola County. Three of the five members are appointed by the governing body of the county and the remaining two are appointed by the Governor. DOT's district five secretary serves as an *ex-officio*, non-voting member.<sup>9</sup>

OCX is not currently operating any facility and has no funding or staffing. Staff assistance and other support have been provided by Osceola County. The Florida Transportation Commission indicates that in 2012, DOT provided \$2.5 million in funding to OCX, which will primarily be used for two Project Development & Environment Studies to be conducted by Florida's Turnpike Enterprise. OCX has developed a master plan that includes construction of four proposed tolled expressways: Poinciana Parkway, Southport Connector Expressway, Northeast Connector Expressway, and Osceola Parkway Extension. OCX has an agreement with Osceola County under which the county will advance funds for operation and startup costs until OCX has a revenue-producing project and which requires OCX to repay the county within 15 years of receiving the funds. A 2012 agreement calls for the issuance of bonds by the county to pay for the Poinciana Parkway project costs incurred by OCX. OCX will design and construct the parkway pursuant to a lease-purchase agreement with the county.<sup>10</sup>

### **Seminole County and Lake County**

In 2011, the Legislature abolished the Seminole County Expressway authority,<sup>11</sup> and Seminole County is currently not served by an expressway authority. Lake County is also not currently served by an expressway authority.

### **Effect of Changes**

#### **Short Title (Section 1)**

The bill amends s. 348.751, F.S., changing 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."

#### **Definitions (Section 2)**

The bill amends s. 348.752, F.S., revising various definitions used in part III of ch. 348, F.S.

The bill defines "Central Florida Expressway Authority" to mean the body politic and corporate and agency of the state created by this part.

The bill defines "Central Florida Expressway System" to mean any expressway or appurtenant facilities within the jurisdiction of the authority, including all approaches, roads, bridges, and avenues for the expressway and any rapid transit transportation system, tram, or fixed-guideway system located within the right-of-way of an expressway.

The bill defines "transportation facilities" to mean and include 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; and administrative and other office space for the exercise by the authority of the powers and obligations granted in this part.

The bill deletes the definitions for "city" and "county," and revises various definitions making plain-language changes and conforming terminology to the renaming.

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<sup>9</sup> S. 348.9952, F.S.

<sup>10</sup> Florida Transportation Commission *Transportation Authority Monitoring and Oversight Fiscal Year 2012 Report*, p. 171.

<sup>11</sup> Ch. 2011-64, L.O.F.

The bill removes a provision providing that the singular includes the plural and vice versa, and words importing persons include firms and corporations. This provision is redundant to s. 1.01, F.S., regarding general statutory construction.

### **Central Florida Expressway Authority (Section 3)**

The bill amends s. 348.753, F.S., changing the catchline from Orlando-Orange County Expressway Authority to Central Florida Expressway Authority.

The bill provides that immediately upon the effective date of the bill; the Central Florida Expressway Authority (CFX) assumes the governance and control of the OOCEA system, including its assets, personnel, contracts, obligations, liabilities, facilities, and tangible and intangible property. Any rights in such property and other legal rights of the authority are transferred to CFX. Legislative intent language is included in this section of the bill to clarify the Legislature's intent that the CFX, upon formation, be the successor party to the OOCEA.<sup>12</sup>

The transfer is subject to the terms and covenants provided for the protection of the OOCEA bondholders and in the lease-purchase agreement and the resolutions adopted in connection with the issuance of the bonds. Further, the transfer does not impair the terms of the contract between the OOCEA and the bondholders, does not act to the detriment of the bondholders, and does not diminish the security of the bonds.

After the transfer, CFX shall operate and maintain the expressway system and any other facilities of the OOCEA in accordance with the terms, conditions, and covenants contained in the bond resolutions and lease-purchase agreement securing the bonds of the authority. CFX shall collect toll revenues and apply them to the payment of debt service as provided in the bond resolution securing the bonds and shall expressly assume all obligations relating to the bonds to ensure that the transfer will have no adverse impact on the security for the bonds. The transfer does not make the obligation to pay the principal and interest on the bonds a general liability of CFX or pledge additional expressway system revenues to payment of the bonds.

Revenues that are generated by the expressway system and other facilities of CFX which were pledged by OOCEA to payment of the bonds will remain subject to the pledge for the benefit of the bondholders. The transfer does not modify or eliminate any prior obligation of DOT to pay certain costs of the expressway system from sources other than revenues of the expressway system.

The bill also provides for a nine member governing board for CFX. The chairs of the boards of the county commissions of Seminole, Lake, and Osceola Counties each appoint one member, who may be a commission member or chair. The Mayor of Orange County is required to appoint one member from the Orange County Commission. The Governor is required to appoint three citizen members, each of whom must be a citizen of Orange County, Seminole County, Lake County, or Osceola County. The eighth member must be the Mayor of Orange County. The ninth member must be the Mayor of the City of Orlando. The executive director of the Florida Turnpike Enterprise is required to serve as a nonvoting advisor to the governing board.

Each board member appointed by the Governor serves a four-year term, and county appointed members serve a two-year term. The terms of standing 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 is not eligible for appointment to the authority.

The bill provides that a member<sup>13</sup> or the executive director of the authority may not:

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<sup>12</sup> This succession is pursuant to a land acquisition contract dated November 11, 2013.

<sup>13</sup> Section 348.752(11), F.S., as amended by the bill, defines "member" as "an individual who serves on the governing body of the authority."

- Personally represent another person or entity for compensation before the authority for a period of two years following vacation of his or her position.
- 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.,<sup>14</sup> 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 CFX.

The bill provides that CFX's general counsel serves as its ethics officer.

The bill provides that authority board members, employees, and consultants who hold positions that may influence authority decisions are to refrain from engaging in any relationship that may adversely affect their judgment in carrying out authority business. To prevent such conflicts of interest and preserve the integrity and transparency of CFX to the public, the following disclosures must be made annually 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 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. The bill provides that "relative" has the same meaning as in s. 112.312, F.S.<sup>15</sup>
- Whether a relative of a board member, employee, or consultant is a registered lobbyist,<sup>16</sup> and if so, the names of the lobbyist's clients. Such names shall be provided in writing to the ethics officer.
- Any and all interests in real property that a board member, employee, or consultant has, or that a relative, principal, client, or business associate of such board member, employee, or consultant has, if such real property is located within, or within a one-half mile radius of, any actual or prospective authority roadway project. The executive director is required to 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 or consultants.

The disclosure forms required above must be reviewed by the ethics officer or, if a form is filed by the general counsel, by the executive director.

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<sup>14</sup> Section 112.312(2), F.S., defines "agency" as state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

<sup>15</sup> Section 112.312(21), F.S., defines "relative" as an individual who is related to a public officer or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the public officer or employee or who otherwise holds himself or herself out as or is generally known as the person whom the public officer or employee intends to marry or with whom the public officer or employee intends to form a household, or any other natural person having the same legal residence as the public officer or employee.

<sup>16</sup> Section 112.3215(1)(h), F.S., defines "lobbyist" as "a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. "Lobbyist" does not include a person who is:

1. An attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to chapter 120 or any other formal hearing before an agency, board, commission, or authority of this state.
2. An employee of an agency or of a legislative or judicial branch entity acting in the normal course of his or her duties.
3. A confidential informant who is providing, or wishes to provide, confidential information to be used for law enforcement purposes.
4. A person who lobbies to procure a contract pursuant to chapter 287 which contract is less than the threshold for CATEGORY ONE as provided in s. 287.017."

The bill requires the conflict of interest process to be outlined in CFX's code of ethics.

The bill prohibits employees and consultants from serving on CFX's governing board while employed or under contract with the authority.

The bill requires the code of ethics policy to be reviewed and updated by the ethics officer and presented for board approval at a minimum once every two years.

The bill requires CFX employees to be adequately informed and trained on the code of ethics and continually participate in ethics education.

These requirements are in addition to the requirements that the members and executive director of CFX are required to follow under ch. 112, F.S.<sup>17</sup>

Violations of certain of the above provisions related to what a member may not do, conflicts of interest, and authority employees serving on the governing body of the authority are punishable in accordance with s. 112.317, F.S.<sup>18</sup>

#### **Purposes and Powers (Section 4)**

The bill amends s. 348.754, F.S., relating to the purposes and powers of CFX. The bill provides that except otherwise specifically provided; the area served by the authority is within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties. The bill authorizes CFX to construct the Central Florida Expressway System including rapid transit, trams, fixed guideways, thoroughfares, and boulevards.

To ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by DOT, CFX may not, without prior consent of the secretary of DOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

The bill changes from 40 years to 99 years the length of time CFX is authorized to enter into and make lease-purchase agreements with DOT.

The bill provides that CFX is a party to a lease-purchase agreement between DOT and OOCEA dated December 23, 1985, as supplemented by a first supplement to the lease purchase agreement dated November 25, 1986, and a second supplement to the lease-purchase agreement dated October 28, 1988. CFX may not enter into another lease-purchase agreement with DOT and may not amend the existing agreement in a manner that expands or increases DOT's obligation unless DOT determines that the agreement or amendment is necessary to permit the refunding of bonds issued before July 1, 2013.

The bill provides that toll revenues attributable to an increase in toll rates charged on or after the effective date of the bill for use of a facility or portion of a facility may not be used to construct or expand a different facility unless a two-thirds majority of the members of the authority votes to approve such use. This requirement does not apply if and to the extent that:

- Application of the requirement would violate any covenant established in a resolution or trust indenture under which bonds were issued by OOCEA on or before the effective date of the bill; or
- Application of the requirement would cause the authority to be unable to meet its obligations under there terms of the MOU between the authority and DOT as ratified by the OOCEA board on February 22, 2012.

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<sup>17</sup> Chapter 112, F.S., relates to public officers and employees.

<sup>18</sup> Section 112.317, F.S., relates to penalties related to the violation of the code of ethics for public officers and officials.

Notwithstanding s. 338.165, F.S.,<sup>19</sup> except as otherwise prohibited by part III of ch. 348, F.S., to the extent revenues of the expressway system exceed amounts required to comply with any covenants made with holders of the bonds, revenues may be used, within the right-of-way of the expressway system, for the financing or refinancing the planning design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of an intermodal facility of facilities, a multimodal corridor or corridors, or any programs or projects that will improve the levels of service on the expressway system, provide the expenditures are consistent with the metropolitan planning organization's long-range plan.

The bill provides that CFX shall encourage the inclusion of local businesses, small businesses, and minority-owned and women-owned businesses in its procurement and contracting opportunities.

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 CFX to waive payment and performance bonds on certain construction contracts and related small business provisions.

### **Conforming Changes (Sections 5 through 11)**

The bill amends the following sections conforming terminology, and make grammatical and editorial changes:

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

### **Lease-Purchase Agreements (Section 12)**

The bill amends s. 348.757, F.S., providing that upon the termination of the current lease-purchase agreement between OOCEA and DOT, title in fee simple absolute to the former OOCEA system must be transferred to the state. The bill also makes conforming, grammatical, and editorial changes to that section.

### **Conforming Changes (Sections 13 through 18)**

The bill amends the following sections conforming terminology, and make grammatical and editorial changes:

- Section 348.758, F.S., relating to appointment of DOT as agent of authority for construction.
- Section 348.759, F.S., relating to acquisition of land and property.
- Section 348.760, F.S., relating to cooperation with other units, boards, agencies, and individuals.<sup>20</sup>
- Section 348.761, F.S., relating to covenant of the state.
- Section 348.765, F.S., relating to this part complete and additional authority.
- Section 369.317, F.S., relating to the Wekiva Parkway.

### **Wekiva River Basin Commission (Section 19)**

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<sup>19</sup> Section 338.165, F.S., relates to the continuation of tolls.

<sup>20</sup> This section also removes a reference to the previously repealed Seminole County Expressway Authority.

The bill amends s. 369.324(1), F.S., removing and replacing references to the OOCEA and previously repealed Seminole County Expressway Authority, and revises the composition of the Wekiva River Basin Commission due to the previous repeal of the Seminole County Expressway Authority.

### **Transfer of the Osceola County Expressway System (Section 20)**

The bill limits the exercise of the Osceola County Expressway Authorities powers. Under the bill, the Osceola County Expressway Authority may only exercise its powers for the purpose of studying, planning, designing, financing, constructing, operating, and maintaining projects that were identified in its May 8, 2012, Master Plan. However, the bill does allow for the Osceola County Expressway Authority to exercise these same powers on an additional, specified extension of the Osceola Parkway Extension.

On December 31, 2018, all powers, governance, and control of the Osceola County Expressway System<sup>21</sup> are transferred to CFX, as are all assets, liabilities, facilities, tangible and intangible property and any rights in the property, and any other legal rights of OCX. At that time, each OCX facility will be considered a “non-system project.”<sup>22</sup> The effective date of the transfer shall be extended until the date on which the current and forecasted total debt service coverage ratios are certified to be equal to or greater than 1.5 for each and every year during which the obligations are outstanding. However, if the effective date is extended under this section of the bill, then OCX will only be authorized to exercise its powers through a contract with another governmental entity (or entities).<sup>23</sup>

The bill requires CFX to reimburse certain Osceola County Expressway Authority obligations pursuant to specified criteria.

The bill also outlines how Osceola County Expressway Authority revenues are to be used, and also defines the extent to which CFX is required, if at all, to financially support any elements of the OCX.

The bill recognizes the importance of enhanced mobility in the region served by the Osceola County Expressway Authority, and as such, requires DOT – in conjunction with OCX, CFX, and Osceola County – to identify solutions to potential barriers to implementing OCX projects that are listed in OCX’s May 8, 2012, Master Plan. DOT will include elements of OCX’s May 8, 2012, Master Plan, together with an additional extension of the Osceola Parkway Extension two miles to the east of its intersection with the Northeast Connector Expressway in its work program<sup>24</sup> as tolled facilities.

Part V of Ch. 348, F.S., is repealed on the same date that the OCX is transferred to CFX. Following the repeal and transfer, uncompleted elements of OCX’s May 8, 2012, Master Plan will be included in the CFX’s master or long-range plan.<sup>25</sup> An additional, specified extension of the Osceola Parkway Extension will also be included. In all cases, these uncompleted elements will each be considered “non-system projects” of the CFX.

### **Direction to the Division of Law Revision and Information (Section 21)**

The bill directs the Division of Law Revision and Information to replace “the effective date of this act” wherever it occurs in the bill with the date the act becomes a law.

### **Effective Date (Section 22)**

The bill is effective upon becoming law.

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<sup>21</sup> The Osceola County Expressway System is created pursuant to part V of Ch. 348, F.S.

<sup>22</sup> The term “non-system project” will be defined in the then-current master senior lien bond resolution of the Central Florida Expressway Authority.

<sup>23</sup> The powers exercised pursuant to contract may only be for the purpose of operating and maintaining those projects which were completed before such date, in accordance with the requirements of any agreement, resolution, or indenture under which bonds or other debt obligations were issued to finance such projects, and completing construction of those projects for which financing of the full estimated costs of acquisition, design, and construction was obtained and construction began before December 31, 2018.

<sup>24</sup> The Department of Transportation’s work program is developed in accordance with s. 339.135, F.S.

<sup>25</sup> The Central Florida Expressway Authority’s master or long-range plan will define the term “master plan” or “long range plan.”



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill provides that the existing lease-purchase agreement may not be amended to expand or increase DOT's obligations unless the department determines that such amendment is necessary to permit the refunding of bonds issued before July 1, 2013. OOCEA's current long-term debt is over \$211 million.