

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 353 Expressway Authorities

**SPONSOR(S):** Transportation & Highway Safety Subcommittee, Nuñez and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	11 Y, 3 N, As CS	Johnson	Miller
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill revises several provisions of ch. 348, F.S., relating to expressway authorities.

The bill changes the number of members of the Miami-Dade County Expressway Authority (MDX) from 13 to nine. The bill also provides that subject to certain exceptions, MDX's toll cannot be increased without a supermajority vote of the Miami-Dade County Board of County Commissioners.

The bill makes the following changes to provisions governing MDX, Tampa-Hillsborough County Expressway Authority (THEA), Orlando-Orange County Expressway Authority (OOCEA) and Osceola County Expressway Authority (OCX):

- Prohibits members from serving on another transportation related organization.
- Prohibits lobbyists from serving as members of the authority.
- Provides post-employment restrictions for members of the authority or the executive director.
- Provides that the authority's general counsel serves as the authority's ethics officer.
- Requires for certain conflict of interest disclosures and a review of the disclosure forms.
- Requires the authority's Code of Ethics to outline the conflict of interest policy.
- Prohibits authority employees and consultants from serving on the governing board.
- Requires the code of ethics policy to be reviewed and updated and presented to the board at least once every two years.
- Requires employees to be adequately informed and trained in the code of ethics and continually participate in ongoing ethics education.

The bill also updates provisions for some of the authorities related to the removal of members from office and not being eligible for compensation.

The Miami-Dade County Board of County Commissioners may incur minimal expenditures in approving toll rate increases for MDX.

The bill is effective July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### **Miami-Dade County Expressway Authority**

The Florida Expressway Authority Act (Act), codified in part I of Ch. 348, F.S.,<sup>1</sup> authorizes any county or two or more contiguous counties within a single Department of Transportation (DOT) district to by resolution adopted by the board of county commissioners, form an expressway authority which shall be an agency of the state.<sup>2</sup> The Miami-Dade County Expressway Authority (MDX) is the only expressway authority created under the Act.<sup>3</sup>

MDX is an agency of the state created pursuant to the Act. It was created by the Miami-Dade County Commission, in 1994, pursuant to Chapter 2 Article XVIII of the Miami-Dade County Code of Ordinances.<sup>4</sup>

MDX's system consists of the following roadways in Miami-Dade County:

- Airport Expressway (SR 112);
- Dolphin Expressway (SR 836);
- Don Shula Expressway (SR 874);
- Snapper Creek Expressway (SR 878); and
- Gratigny Parkway (SR 924).

MDX's board consists of 13 members, seven of whom are appointed by the Miami-Dade County Commission and five of whom are appointed by the Governor. The 13<sup>th</sup> member is DOT's district six secretary, who is an ex-officio voting member.<sup>5</sup>

##### **Tampa-Hillsborough County Expressway Authority**

The Tampa Hillsborough County Expressway Authority (THEA) is created in part II of ch. 348, F.S.,<sup>6</sup> and has the purposes of and has the power to construct, reconstruct, improve, extend, repair, maintain, and operate an expressway system in Hillsborough County.<sup>7</sup> THEA owns and operates the Lee-Roy Selmon Expressway, a 15-mile, four-lane limited-access road in Hillsborough County.

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

The Orlando Orange County Expressway Authority (OOCEA), created in part III of ch. 348, F.S.,<sup>8</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>9</sup>

The OOCEA currently owns and operates 105 centerline miles of roadway in Orange County, which includes:

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<sup>1</sup> Part I of ch. 348, F.S., consists of ss. 348.0001 through 348.0012, F.S.

<sup>2</sup> S. 348.0003(1), F.S.

<sup>3</sup> While MDX is the only authority created pursuant to the Act, Part V of ch. 348, F.S., creating the Osceola County Expressway Authority contains numerous references to the Act.

<sup>4</sup> A copy of the ordinance is available at <http://mdxway.com/about/history> (Last visited December 2, 2013).

<sup>5</sup> S. 348.0003(2)(d), F.S.

<sup>6</sup> Part II of ch. 348, F.S., consists of ss. 348.50 through 348.70, F.S.

<sup>7</sup> S. 348.53, F.S.

<sup>8</sup> Part III of ch. 348, F.S., consists of ss. 348.751 through 348.765, F.S.

<sup>9</sup> S. 348.754(2)(n), F.S.

- 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).

### **Osceola County Expressway Authority**

Created in 2010, as part V of ch. 348, F.S.,<sup>10</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>11</sup> including the power to acquire, hold, construct, improve, maintain, operate, and own an expressway system.<sup>12</sup> OCX is not currently operating any facility and has no funding or staffing. However, it has recently begun construction of the Poinciana Parkway.

### **Proposed Changes**

#### **Miami-Dade County Expressway Authority (Sections 1 and 2)**

The bill amends s. 348.0003(d), F.S., revising the membership of MDX. The number of board members is reduced from 13 to nine. Four members are appointed by the governing body of the county. Four members are appointed by the Governor. The ninth member is DOT's district six secretary.

The bill amends s. 348.0004(2)(e), F.S., providing that notwithstanding any other provision of law, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2014, that is payable from tolls, in Miami-Dade County, any authority toll increase must first be approved by resolution adopted by a supermajority vote, consisting of one vote greater than the majority, of the governing board of the county.

#### **Expressway Authorities (Sections 1, 3, 4, and 5)**

The bill amends the following sections to make changes related to membership and to ethics and accountability requirements for expressway authorities:

- s. 348.0003, F.S., relating to expressway authority; formation; membership;
- s. 348.52, F.S., relating to THEA;
- s. 348.753, F.S., relating to OOCEA; and
- s. 348.9952, F.S. relating to OCX.

#### **Membership**

The bill provides that members of the authorities appointed by the governing board of the county or appointed by the Governor may not serve as a member of any other transportation-related board, commission, or organization while serving as a member of an authority.

The bill provides that a lobbyist<sup>13</sup> may not be appointed or serve as a member of the authority.

<sup>10</sup> Part V of ch. 348, F.S., consists of ss. 348.9950 through 348.9961, F.S.

<sup>11</sup> Part I of ch. 348, F.S.

<sup>12</sup> S. 348.0004, F.S.

<sup>13</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 also updates provisions in these sections of statute regarding removal of members from office and that members of the authority do not receive compensation, but are entitled to the reimbursement of necessary expenses.<sup>14</sup>

### Ethics and Accountability

The bill prohibits a member or executive director of an authority from doing the following:

- Personally representing another person or entity for compensation for two years following vacation of his or her position.
- Within two years of vacation of his or her position, having an employment or contractual relationship with a business entity other than an agency<sup>15</sup> that was doing business with the authority at any time during the person's membership or employment by the authority.
- After vacating his or her position, have an employment or contractual relationship with a business entity other than an agency in connection with a contract in which the member or executive director personally and substantially participated through decision, approval, disapproval, recommendation, rendering of advice, or investigation while he or she was a member of the authority.
- A violation of the subsection is punishable in accordance with s. 112.317, F.S.<sup>16</sup>

Each authority's general council serves as its ethics officer.

Each authority's board members, employees, and consultants who hold positions that may influence authority decisions are required to refrain from engaging in any relationship that may adversely affect their judgment in carrying out authority business. The bill requires the following disclosures to be made annually on a disclosure form to prevent conflicts of interest and to preserve the integrity and transparency of the authority to the public:

- 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 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, and consultants.

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 bill requires each authority's code of ethics to outline the conflict of interest policy.

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<sup>14</sup> The reimbursement of expenses is provided in s. 112.061, F.S.

<sup>15</sup> Section 112.312(2), F.S., defines "agency" as "any 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>16</sup> Section 112.317, F.S., contains penalties for violations of part III of ch. 112, F.S., relating to the code of ethics for public officers and employees. The possible penalties range 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.

The bill prohibits authority employees and consultants from serving on the governing body of the authority while employed by 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 that employees be adequately informed and trained on the code of ethics and continually participate in ongoing ethics education.

**Effective Date (Section 6)**

The bill is effective July 1, 2014.

**B. SECTION DIRECTORY:**

Section 1 Amends s. 348.0003, F.S., relating to expressway authority; formation; membership.

Section 2 Amends s. 348.0004, F.S., relating to purposes and powers.

Section 3 Amends s. 348.52, F.S., relating to the Tampa-Hillsborough County Expressway Authority.

Section 4 Amends s. 348.753, F.S., relating to the Orlando-Orange County Expressway Authority.

Section 5 Amends s. 348.9952, F.S., relating to the Osceola County Expressway Authority.

Section 6 Provides an effective date.

**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:

Miami-Dade County may incur some expenditures in passing resolutions authorizing MDX toll increases. These costs should be minimal because of the limited number of times that there are proposals to increase MDX tolls. The approval process could be included as part of the normal commission meeting process of the county.

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

None.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires Miami-Dade County to approve toll increases for MDX by a supermajority vote of the Board of County Commissioners. However, an exemption may apply because an insignificant fiscal impact is expected for the cost of the approval process.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**