

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 Transportation

BILL: SB 1690
 INTRODUCER: Senator Garcia
 SUBJECT: Transportation
 DATE: February 18, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Favorable
2.			ATD	
3.			AP	

I. Summary:

SB 1690 relates to the operations of toll agencies and toll facilities. More specifically, the bill applies specified requirements to transportation and expressway authorities of the state, counties, and municipalities and requires each toll agency to:

- Adopt a policy for removal of directors due to ethical violations or lack of attendance and to post comprehensive information about the policy on its website.
- Post board meeting and board committee meeting video and audio files on its website within 30 days after a meeting is held.
- Provide an accounting of disbursement of a penalty assessed against a toll payer.

In addition, the bill requires the Florida Transportation Commission to conduct a study of the potential for express toll lanes operated by the Florida Department of Transportation or any transportation or expressway authority of the state, counties, or municipalities to display estimated travel times, in addition to toll rates.

Electronic toll collection systems are required to provide enrollees a minimum of 18 months of information in a simple search on its website, including, at a minimum, monthly and annual totals; and electronic toll collection system paper invoices and online statements are required to disclose any applicable processing fees, each expressed as a percentage and as a total dollar amount.

The fiscal impact is indeterminate.

II. Present Situation:

The term “toll agency” is not specifically defined in current law. However, in addition to the Department of Transportation (FDOT), various entities are currently operating tolled facilities

and collecting and reinvesting toll revenues.¹ Aside from the FDOT and Florida's Turnpike Enterprise (which is part of the FDOT), such statutorily created entities are established under ch. 348, F.S., entitled "Expressway and Bridge Authorities."² These entities include the Miami-Dade County Expressway Authority, the Tampa-Hillsborough County Expressway Authority, the Central Florida Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority.³

Other entities operating tolled bridge or causeway facilities include Monroe, Miami-Dade, and Lee Counties; the Town of Bay Harbor Islands; the Gasparilla Island Bridge Authority; and the Mid-Bay Bridge Authority.^{4, 5}

The Florida Transportation Commission (FTC) is created under s. 20.23, F.S., to serve as a citizen's oversight board for the FDOT, provide policy guidance on issues of statewide importance, and maintain oversight and public accountability of the FDOT. The FTC is also charged with monitoring the efficiency, productivity, and management of the entities created under chapters 348 and 349, including any authority formed using part I of chapter 348; the Mid-Bay Bridge Authority re-created pursuant to chapter 2000-411, Laws of Florida; and any authority formed under chapter 343. The commission is required to conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

Removal for Ethics Violations and Lack of Attendance

Current Florida law sets forth a number of ethical standards, violations, and penalties in the Florida Code of Ethics for Public Officers and Employees, ss. 112.311 – 112.3261, F.S. A "public officer," unless the context otherwise requires, includes any person elected or appointed to hold office in any agency, including any person serving on an advisory board.⁶ "Agency" is defined to mean 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; any public school, community college, or state university; or any special district as defined in s. 189.012.⁷

Included in the Code of Ethics are provisions such as standards for solicitation or acceptance of gifts, doing business with one's agency, unauthorized compensation, misuse of public position, conflicting employment or contractual relationships; and full and public disclosure of financial

¹ Operation and maintenance of some of these tolled facilities are performed by non-owner entities pursuant to agreements between the facility owner and the FDOT and/or the Turnpike Enterprise.

² A number of entities established in ch. 343, F.S., are authorized to construct and operate toll facilities, but none currently operate a tolled facility. The Jacksonville Transportation Authority, established under ch. 349, F.S., while authorized to do so, also does not operate any tolled facility.

³ All of these entities are special districts. See the Florida Department of Economic Opportunity website available at: <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/>. Last visited February 14, 2016.

⁴ *Supra* note 3.

⁵ The latter two entities are also special districts. See the website, *supra* note 5.

⁶ Section 112.313(1), F.S.

⁷ Section 112.312(2), F.S.

interests.^{8,9} In addition to the Code of Ethics standards and requirements, many of the authorities established in ch. 348, F.S., are subject to additional ethical provisions as provided for in their respective statutory enacting sections¹⁰ or as provided in their own ethics code.¹¹ Other entities operating tolled bridge or causeway facilities may also be additionally required to meet the requirements of a local ethics policy.¹²

Violations of the standards of conduct and financial disclosure requirements of the Florida Code of Ethics are punishable as provided in s. 112.317, F.S. A range of potential penalties includes public censure and reprimand, suspension or dismissal from employment, a \$10,000 civil penalty, loss of some portion of salary, impeachment or removal from office, and restitution of any benefits received because of a violation. However, the Code does not appear to address lack of attendance in any fashion.

Other Provisions for Removal of Public Officers

In addition to the provisions of the Code, if a state, county, or municipal officer is made subject to suspension or removal by the terms of any statute or municipal charter, the Governor has the concurrent power of suspension.¹³ A governing body of a municipality may suspend or remove any “municipal board member”¹⁴ for:

- Malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform his or her official duties.
- An arrest for a felony or for a misdemeanor related to the duties of office or who is indicted or informed against for the commission of any federal felony or misdemeanor or state felony or misdemeanor.
- A conviction of a federal felony or misdemeanor or state felony or misdemeanor.¹⁵

Additionally, the Governor may suspend from office any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.¹⁶ Whenever any elected or appointed municipal official is arrested for a felony or for a misdemeanor related to the duties of office or is indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor, the Governor has the power to suspend such municipal official from office. And if

⁸ Sections 112.313 and 112.3144, F.S.

⁹ See also s. 348.0003(4)(c), F.S., which requires members of each expressway authority, transportation authority, bridge authority, or toll authority, created pursuant to chapter 348, chapter 343, or any other general law, to comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution.

¹⁰ See, for example, the additional requirements applied to the Miami-Dade County Expressway Authority board members in s. 348.0003(5), F.S., and those applied to board members of the Central Florida Expressway Authority in s. 348.753, F.S.

¹¹ See, for example, the Miami-Dade County Expressway Authority Code of Ethics available at: <http://mdxway.com/pdf/CodeOfEthics.pdf>. Last visited February 13, 2016.

¹² See, for example, the Lee County Ethics Policy available at: <https://www.leegov.com/hr/Policy%20Manual/206.pdf>. Last visited February 13, 2016.

¹³ Section 112.50, F.S.

¹⁴ Defined to mean any person who is appointed or confirmed by the governing body of a municipality to be a member of a board, commission, authority, or council which is created or authorized by general law, special act, or municipal charter. Section 112.501, F.S.

¹⁵ Section 112.501, F.S.

¹⁶ Section 112.51, F.S.

the municipal official is convicted, the Governor must remove the municipal official from office.¹⁷ Members of special district governing bodies are subject to the same provisions.¹⁸

Lastly, when a method for removal from office is not otherwise provided by the State Constitution or by law, the Governor may suspend from office an elected or appointed public official, by whatever title known, who is indicted or informed against for commission of any felony, or for any misdemeanor arising directly out of his or her official conduct or duties, and may fill the office by appointment for the period of suspension, not to extend beyond the term. If convicted, the public official may be removed from office by executive order of the Governor.¹⁹

Public Meetings

Section 286.011, F.S., generally declares to be public meetings all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken. No resolution, rule, or formal action is binding except as taken or made at such a public meeting. The board or commission must provide reasonable notice of all such meetings. The minutes of any such meeting must be promptly recorded, and such records are open to public inspection.

That section also contains an exemption from the above requirements. Any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency under specified conditions.²⁰ Additional general exemptions²¹ include:

- The portion of a meeting that would reveal a security system plan or portion thereof that is confidential or exempt.
- Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation,²² at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of an exempt competitive solicitation.
- Any portion of a team meeting at which negotiation strategies are discussed.²³

A complete recording must be made of any portion of an exempt meeting, and no portion of an exempt meeting may be held off the record. The recording of, and any records presented at, an exempt meeting are exempt until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.²⁴

¹⁷ *Id.*

¹⁸ See s. 112.511, F.S.

¹⁹ Section 112.52, F.S.

²⁰ Section 286.011(8), F.S.

²¹ See s. 286.0113, F.S.

²² "Competitive solicitation" is defined in s. 286.0113, F.S., as the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

²³ "Team" is defined in s. 286.0113, F.S., as a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

²⁴ *Supra* note 21.

If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. The recording and records are exempt for no longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

Payment of Tolls and Penalties for Toll Violations

With certain exceptions,²⁵ a person may not use any toll facility without payment of tolls.²⁶ Failure to pay a prescribed toll is a noncriminal moving violation, punishable by a \$60 civil penalty.²⁷ In addition to law enforcement officers authorized to enforce the traffic laws of this state, any governmental entity²⁸ that owns or operates a toll facility may, by rule or ordinance, authorize a toll enforcement officer to issue a uniform traffic citation for a toll violation.²⁹

A person not wishing to challenge a toll violation citation and appear in court must, within 30 days after the date of issuance of the citation, pay the \$60 civil penalty and delinquent fee, if applicable, either by mail or in person; or enter into a payment plan with the clerk of the court to pay the civil penalty and delinquent fee, if applicable.³⁰

Alternatively, a person may elect to pay a fine of \$25, or such other amount as imposed by the governmental entity owning the applicable toll facility, plus the amount of the unpaid toll, directly to the governmental entity that issued the citation, or on whose behalf the citation was issued, within 30 days after the date of issuance of the citation. Any person who does not make the election is granted an additional 45 days after the date of the issuance of the citation in which to request a court hearing or to pay the civil penalty and delinquent fee, if applicable.³¹

If a person requests a hearing and is found guilty at that hearing, a mandatory \$100 penalty is statutorily mandated for each toll violation. The court may order points to be assessed against the person's driver license. The clerk of the court is required to forward \$25 of the \$100 received for each violation, plus the amount of the original unpaid toll, to the governmental entity that issued the citation for citations issued by toll enforcement officers, or to the entity administering the tolls at the facility where the violation occurred for citations issued by law enforcement officers.³²

²⁵ Section 338.155, F.S.

²⁶ Section 316.1001, F.S.

²⁷ Section 318.18(3)(a), F.S.

²⁸ Defined in s. 334.03(11), F.S., to mean a unit of government, or any officially designated public agency or authority of a unit of government, that has the responsibility for planning, construction, operation, or maintenance or jurisdiction over transportation facilities; the term includes the Federal Government, the state government, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

²⁹ Section 316.1001, F.S.

³⁰ Section 318.18(4), F.S.

³¹ Section 318.14(12), F.S.

³² Section 318.18(7), F.S.

Again, however, even after this request for hearing, alternative remedies are available as follows:

- A person may elect to pay \$30 to the clerk of the court, plus the amount of the unpaid toll, in which case adjudication is withheld, and no points may be assessed against the person's driver license.
- On receipt of the \$30 and unpaid toll amount, the clerk of the court retains \$5 for administrative purposes and forwards the remaining \$25, plus the amount of the unpaid toll, to the governmental entity that issued or to the entity administering the tolls at the facility where the violation occurred.³³

And if a plea arrangement is reached prior to the date set for a scheduled hearing and, as a result of the plea, adjudication is withheld, a mandatory fine is imposed of not less than \$50 and not more than \$100, plus the amount of the unpaid toll for each citation issued. The clerk of the court forwards \$25 of the fine imposed plus the amount of the unpaid toll to the governmental entity that issued the citation or to the entity administering the tolls at the facility where the violation occurred. Any funds received by a governmental entity for these violations may be used for any lawful purpose related to the operation or maintenance of a toll facility.³⁴

Express Lanes

According to the FDOT:

[E]xpress lanes are a type of managed lane where congestion is managed with pricing, access, eligibility and dynamic tolling. Express lanes are implemented to address existing congestion, enhance transit services, accommodate future regional growth and development, enhance hurricane and other emergency evacuation and improve system connectivity between key limited access facilities.

When express lanes begin to reach their capacity, the toll is increased to discourage drivers from entering the lanes. This allows the express lanes to maintain a certain level of trip reliability.

The FDOT reports that it has several express lane systems either in operation, under construction and proposed.³⁵

Electronic Toll Collection Systems

Electronic toll collection systems use electronic devices mounted in vehicles to accomplish payment of tolls. In the case of the Turnpike Enterprise's SunPass system:

A small, pocket sized device called a "SunPass Portable transponder" or a "SunPass Mini Sticker transponder" is attached to the inside of your car windshield, just below the rearview mirror. The transponder communicates via

³³ *Id.*

³⁴ *Id.*

³⁵ For information on specific express lane projects in operation, under construction, or proposed, see the FDOT website available at: <http://www.dot.state.fl.us/publicinformationoffice/expresslanes.shtm>. Last visited February 14, 2016. An interactive map of projects in operation, under construction, and in planning is available at: <http://floridaexpresslanes.com/projects/project-map/>. Last visited February 15, 2016.

radio frequency with toll plaza readers/equipment. As the car passes through SunPass equipped lanes, the toll charges are electronically deducted from your prepaid toll account.³⁶

The Turnpike Enterprise describes all-electronic, no-cash tolling as:

[A] set of technologies that allow for the payment of tolls electronically, using special equipment located over the traffic lanes. Simply put, it refers to a toll road without cash toll booths, where traffic flows unimpeded at ramp or highway speeds. Tolls are collected through a SunPass transponder or through TOLL-BY-Plate—a system that captures images of license plates and bills customers. All-electronic toll collection provides added convenience for drivers who no longer have to slow down or stop to pay a toll.³⁷

Transponder customers have pre-paid accounts from which toll charges are deducted when a vehicle passing through a tolling point is detected through the transponder, which accounts may be set up and replenished with cash or credit. SunPass can be used to pay tolls, according to the Turnpike Enterprise, at nearly all toll roads and bridges throughout Florida.³⁸ The Turnpike is not the only entity using electronic toll collection. For example, the Central Florida Expressway Authority has a similar system of pre-paid accounts, called E-Pass, which the authority advises may be used on almost all tolled facilities in the state.³⁹ Lee County uses the “Leeway Transponder” for electronic toll collection on its tolled facilities in the same fashion.

TOLL-BY-PLATE invoices, generated from images of license plates taken as a vehicle passes through a tolling point, are mailed to non-SunPass customers and may also be paid with cash at various locations throughout the state, or otherwise by mail or contacting a service center.⁴⁰ A \$2.50 “administrative charge” is added to each TOLL-BY-PLATE invoice.⁴¹

III. Effect of Proposed Changes:

Section 1 creates s. 338.162(1), F.S., requiring each “toll agency” to adopt a policy for removal of “directors” due to ethical violations or lack of attendance and to post comprehensive information about the policy on its website. To the extent that any entity operating a tolled facility has not adopted such a policy, the bill appears to require that entity to adopt the policy and post comprehensive information about the policy on the entity’s website.

Additionally, the bill creates s. 338.162(2), F.S., requiring each “toll agency” to post “board meeting and board committee meeting” video and audio files on its website within 30 days after

³⁶ See the SunPass website, “Information about the SunPass program” heading, available at: <https://www.sunpass.com/faq>. Last visited February 15, 2016.

³⁷ See the Turnpike Enterprise website available at: <http://www.floridasturnpike.com/all-electronic tolling/FAQs.cfm>. Last visited February 14, 2016.

³⁸ *Id.*

³⁹ See the authority’s website available at: <https://www.cfxway.com/TravelersExpressways/FAQs.aspx>. Last visited February 14, 2016.

⁴⁰ *Supra* note 37.

⁴¹ *Id.*

the meeting is held, in a format that can be viewed or listened to within the user's Internet browser.

Subsection (3) of s. 338.162, F.S., is created to require a toll agency to provide an accounting of disbursement of a penalty assessed against a toll payer.

Lastly, this section of the bill creates s. 338.162(4), F.S., to apply the new section to transportation and expressway authorities of the state, counties, and municipalities.

Section 2 creates s. 338.168(1), F.S., requiring the FTC to conduct a study of the potential for express toll lanes operated by the FDOT or any "transportation or expressway authority" of the state, counties, or municipalities to display estimated travel times in addition to toll rates.

The FTC is authorized to retain reasonably necessary experts to complete the study, and the FDOT is required to pay the expenses of such experts. The FTC must complete the study and provide a written report of its findings and conclusions to the Governor, the Senate President, and the House Speaker, as well as the chairs of each of the appropriations committees of the Legislature by October 31, 2016.

The bill also creates s. 338.168(2), F.S., requiring an electronic toll collection system to provide enrollees a minimum of 18 months of information in a simple search on its website, including, at a minimum, monthly and annual totals.

Lastly, the bill creates subsection (3) of s. 338.168, F.S., requiring electronic toll collection system paper invoices and online statements to disclose any applicable processing fees, each expressed as a percentage and as a total dollar amount.

The bill takes effect July 1, 2016.

There are a number of issues that may require clarification as noted in the Related Issues section of the analysis.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18, Florida Constitution, excuses local government from complying with state mandates which impose negative fiscal consequences. Subsection (a) provides "[n]o county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, subsection (a) of Art. VII, Section 18, Florida Constitution, contains an exemption for law having an insignificant fiscal impact. While the fiscal impact to municipalities and counties is indeterminate, costs to adopt and post the required policy, to post video and audio files, to provide the required accounting, to provide the required searchable information, and to provide the required information on paper invoices and online statements may be insignificant.

B. Public Records/Open Meetings Issues:

The bill requires each “toll agency” to post “board meeting and board committee meeting” video and audio files, as specified. The term “committee” is not defined. In some cases, meetings of committees of boards or commissions or of staff of boards or commissions may not be subject to the provisions of s. 286.011, F.S., relating to public meetings.⁴² The FDOT further notes this language could be construed to require recording of meetings, and publication of those recordings, even at a time when public disclosure of the discussion held in those meetings would not be required under an exemption. Possible interpretation of the language might mean that negotiating strategy discussions of procurement committees could be required to be made public and available to the vendors who are still competing for the public contract, while the competitive procurement is still ongoing, arguably impairing an authority’s ability to conduct fair, competitive procurements. Similarly, the FDOT advises the bill could require early public disclosure of confidential attorney-client discussions regarding the potential settlement of litigation involving an authority, which could impair an authority’s ability to resolve litigation.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill authorizes the hiring of experts for the required FTC study and may result in a positive fiscal impact to any such experts.

C. Government Sector Impact:

For reasons specified in “Related Issues,” the government sector fiscal impact is indeterminate. The cost of experts authorized for the FTC study is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill expressly requires a “toll agency,” undefined in current law or in the bill, to adopt a policy for removal of “directors” due to ethical violations or lack of attendance. It is unclear how such a policy would be arbitrated and by whom. Moreover, implementation of such a policy

⁴² See *Occidental Chemical Company v. Mayo*, 351 So.2d 336 (1977).

could result in removal of an individual appointed by the Governor or county commission by a unilateral action of the “toll agency,” not the appointing entity.

If the term “toll agency” is interpreted to mean any entity operating tolled facilities, then the FDOT and Florida’s Turnpike would be included. However, neither has “directors” nor a governing body or board members in the sense that appears to be contemplated in the bill. Further, should the term “directors” be interpreted to mean a member of any of the various bodies governing toll facilities, it is unclear how the bill’s provisions related to removal would affect members who serve ex officio as in the example of counties operating tolled facilities employing the board of county commissioners to serve as the toll facility’s governing body. Consideration of revised use and/or definition of terms may be in order.

The bill requires a “toll agency” to provide an accounting of disbursement of a penalty assessed against a toll payer but does not specify, for example, at what time or interval, or in what format. Further, some toll violation penalties are assessed by third parties, e.g., law enforcement agencies, and portions thereof are retained by the clerks of court. Other such penalties, or portions thereof, are paid directly to the entities operating a given tolled facility. Whether currently existing procedures would make the bill’s required accounting possible, even with defined requirements for the accounting, is unknown.

The bill applies the policy adoption requirement to “transportation and expressway authorities of the state, counties, and municipalities.” The term “transportation authorities” is defined in s. 343.1002(6), F.S., to mean the FDOT and any entity created under chapters 343, 348, or 349, F.S. As noted, none of the entities created under chapters 343 or 349, F.S., currently operate any tolled facilities. The identified county entities operating tolled bridge or causeway facilities are not transportation authorities, as defined in current law. Nor do they appear to be “expressway authorities,” although current law does not define the term. Again, consideration of revised use and/or definition of terms may be in order.

The bill requires electronic toll collection system paper invoices and online statements to disclose any applicable “processing fees,” each expressed as a percentage and as a total dollar amount. The term “processing fees” is undefined. It is unclear whether the term could refer to “administrative charges” such as those added to TOLL-BY-PLATE invoices, perhaps to “delinquent fees,” or to some other charge. Thus, whether any such “processing fees” can be expressed as a percentage (of what) and as a total dollar amount is unclear

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 338.162 and 338.168.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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