

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1049	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Limited Access and Toll Facilities	117	Y's 0	N's
SPONSOR(S):	Government Accountability Committee; Avila; Nunez and others	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	CS/CS/SB 1562			

SUMMARY ANALYSIS

CS/HB 1049 passed the House on April 20, 2017. The bill was amended in the Senate on May 5, 2017, and returned to the House. The House concurred in the Senate amendment and passed the bill as amended on May 5, 2017. The bill includes CS/CS/HB 961, SB 1282, and CS/HB 1387.

The bill authorizes the Department of Transportation (DOT) and the Florida Turnpike Enterprise (FTE) to require the use of an electronic transponder interoperable with their electronic toll collection systems for use of high-occupancy toll lanes or express lanes and provides that if a customer's average travel speed in an express lane falls below 40 miles per hour the customer will be charged a reduced toll. The bill requires certain requirements to be met prior to the FTE establishing variable pricing and extends to 2027 a requirement that 90 percent of net toll revenues collected in Miami-Dade, Broward, and Palm Beach counties remain in those counties.

The bill prohibits the Miami-Dade County Expressway Authority (MDX) from increasing its tolls, except for an adjustment for inflation, unless adjusted by an independent traffic and revenue study and approved by a two-thirds vote of its board. The bill prohibits MDX from spending toll revenues on administrative expenses greater than 10 percent of the annual state average for expressway authorities and directs the Florida Transportation Commission to determine the average of such expenses. The bill requires MDX to maintain a certain distance between tolling points, requires toll charges to be reduced for SunPass customers, and requires MDX to dedicate a certain percentage of its annual surplus revenues to certain transportation projects.

The bill requires Miami-Dade County to have a financial audit of its transportation plan, requires MDX to have a biennial audit, and requires the audit reports to be posted on their websites along with certain documents.

The bill may reduce DOT and FTE revenues by an indeterminate, but likely insignificant amount. The bill will have an indeterminate, but likely negative fiscal impact on MDX.

The bill was approved by the Governor on June 26, 2017, ch. 2017-182, L.O.F., and will become effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Express Lanes

In 2012, the Legislature created s. 338.151, F.S.,¹ authorizing the Department of Transportation (DOT) to establish tolls on “new” limited access facilities on the State Highway System (SHS), lanes added to existing limited access facilities on the SHS, new major bridges on the SHS over waterways, and replacements for existing major bridges on the SHS over waterways. The tolls are to be used to fully or partially pay for the cost of such projects.² The Legislature also amended s. 338.166, F.S., expanding DOT’s authority to request issuance of bonds secured by toll revenues collected on express lanes from only those lanes located on I-95 in Miami-Dade and Broward counties, to express lanes established on DOT-owned facilities.

Section 338.166, F.S., authorizes DOT, after discharge of any bond indebtedness relating to a given project, to continue to collect tolls on express lanes. The statutes also authorize variable rate tolls on express lanes.³ All collected tolls are first to be used to pay the annual cost of operations, maintenance, and improvement of the express lanes project or the associated transportation system. DOT may use any remaining tolls from express lanes for construction, maintenance, or improvement of any road on the SHS within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Section 338.166, F.S.,⁴ expressly does not apply to the Turnpike system.⁵ However, s. 338.2216(1)(d), F.S., directs the Florida Turnpike Enterprise (FTE) to pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage. Such technologies and processes must include, without limitation, video billing and variable pricing.

The term, “express lane,” is not statutorily defined. However, DOT’s Topic No. 525-030-020-a⁶ provides the following definitions:

- *Managed Lanes* are highway facilities or sets of lanes within a highway facility where operational strategies are proactively implemented and managed in response to changing conditions with a combination of tools. These tools may include accessibility, vehicle eligibility, pricing, or a combination thereof. Types of managed lanes include high occupancy vehicle lanes, high occupancy toll lanes, truck only lanes, truck only toll lanes, bus rapid transit lanes, reversible lanes, and express lanes.
- *Express Lanes* are a type of managed lane where dynamic pricing through electronic tolling is applied to lanes with through traffic, having fewer access points. Express lanes can co-locate within an existing non-tolled facility to manage congestion and provide a more reliable trip time.

A number of express lane projects in Florida are either in operation, under construction, or proposed.⁷ According to DOT, there are currently 119 lane miles of express lanes currently open, 349 lane miles of

¹ Chapter 2012-128, L.O.F.

² Chapter 2012-174, L.O.F.

³ Section 338.166(4), F.S.

⁴ Section 338.166(6), F.S.

⁵ Section 338.2216(1)(a), F.S., grants to the FTE, in addition to the powers granted to DOT, full authority to exercise all powers granted to the FTE under Ch. 338, F.S. Section 338.2216(4), F.S., provides the powers conferred upon the FTE under the Florida Turnpike Enterprise Law (ss. 338.22 through 338.241, F.S.) is in addition and supplemental to the existing powers of DOT and the FTE.

⁶ On file in the Transportation & Infrastructure Subcommittee. The directive, however, expressly does not apply to Florida Turnpike facilities.

express lanes under construction, and 575 lane miles of express lanes in the planning phase. These facilities are located (or planned) in major urbanized areas throughout the state. These projects have or are planned to have express lanes with adjacent general use lanes (with no tolls) and, on the turnpike system, express lanes adjacent to general toll lanes (lanes that generally have fixed tolls).

The DOT's general goal is that a driver in an express lane should be able to maintain an average speed of 45 miles per hour or greater while in the lane.

Toll Collection Interoperability

Interoperable toll collection allows drivers to establish a single toll account that allows for payments on a variety of tolled facilities, regardless of the facility's ownership. An interoperable system recognizes a customer at any given toll collection facility participating in the system, and each toll facility owner or operator receives proper payment for use of the owner's or operator's facility.

The 2012 Moving Ahead for Progress in the 21st Century Act, MAP-21,⁸ requires all toll facilities on Federal-aid highways to implement technologies or business practices that provide for the interoperability of electronic toll collection programs no later than four years after its enactment. Current Florida law requires all new limited access facilities and existing transportation facilities on which new or replacement electronic toll collection systems are installed to be interoperable with DOT's electronic toll-collection system.⁹

Level of Service

The Transportation Research Board's¹⁰ 2010 Highway Capacity Manual (Manual), along with multiple other items, addresses level of service criteria for basic highway segments. Generally, level of service is a measure of traffic conditions "using a quantitative stratification of a performance measure or measures."¹¹ According to the Manual, "A basic freeway segment can be characterized by three performance measures: density in passenger cars per mile per lane, space mean speed in miles per hour, and the ratio of demand flow rate to capacity." The Manual indicates that each measure "is an indication of how well traffic is being accommodated by the basic freeway segment."¹²

A letter grade is assigned to a given highway segment level of service, ranging from best performance at level A to worst performance at level F. The Manual describes the levels as follows:

- Level A: Free-flow operations. Free-flow speed prevails on the freeway, and vehicles are almost completely unimpeded in their ability to maneuver within the traffic stream.
- Level B: Reasonably free-flow operations. Free-flow speed is maintained. The ability to maneuver is only slightly restricted.
- Level C: Free-flow speed is slightly reduced. Freedom to maneuver is noticeably restricted.
- Level D: Speeds begin to decline with increasing flows, with density increasing more quickly. Freedom to maneuver is seriously limited.
- Level E: Operation at capacity. Operations on the freeway are highly volatile because there are virtually no usable gaps within the traffic stream, leaving little room to maneuver within the traffic.

⁷ See the project map with links to express lane project information available on DOT's website at:

<http://www.floridaexpresslanes.com/projects/project-map/> (Last visited March 19, 2017). The FTE is not currently operating any express lanes. See DOT HB 1387 (2017) Agency Bill Analysis, at 8. (On file in the Transportation & Infrastructure Subcommittee).

⁸ Section 1512(b), P.L. 112-141.

⁹ Section 338.01(7), F.S.

¹⁰ The Transportation Research Board (TRB) provides innovative, research-based solutions to improve transportation. Part of the National Academies of Sciences, Engineering, and Medicine, TRB is a non-profit organization that provides independent, objective, and interdisciplinary solutions. TRB manages transportation research by producing publications and online resources. <http://www.trb.org/AboutTRB/MissionandServices.aspx> (Last visited May 5, 2017).

¹¹ See the Federal Highway Administration's website, at 3.3.3, available at: https://safety.fhwa.dot.gov/road_diets/info_guide/ch3.cfm. (Last visited May 5, 2017).

¹² *Highway Capacity Manual 2010*, at 11-7. Available at <http://hcm.trb.org/?qr=1> (Last visited May 5, 2017).

- Level F: Breakdown, or unstable flow.¹³

Turnpike Tolls

Current law requires DOT at all times to fix, adjust, charge and collect tolls and amounts for the use of the turnpike system as are required to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating the turnpike system.¹⁴ Additionally, between July 1, 1998, and June 30, 2017, DOT must program sufficient funds in the tentative work program¹⁵ such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach counties as compared to total turnpike toll and bond financed commitments must be at least 90 percent of the share of net toll collections attributable to users of the turnpike system in Miami-Dade County, Broward County, and Palm Beach County as compared to total net toll collections attributable to users of the turnpike system.¹⁶

Miami-Dade County

Section 125.011(1), F.S., defines a county as:

[A]ny county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county.

The local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the City of Key West and Monroe County,¹⁷ Dade County,¹⁸ and Hillsborough County.¹⁹ Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under this constitutional provision.²⁰ Therefore, Miami-Dade County is the only county that meets the definition in s. 125.011(1), F.S.

Miami-Dade County Expressway Authority

The Florida Expressway Authority Act (Act), codified in part I of Ch. 348, F.S.,²¹ authorizes any county or two or more contiguous counties within a single DOT district to, by resolution adopted by the board of county commissioners, form an expressway authority, which must be an agency of the state.²² The Miami-Dade County Expressway Authority (MDX) was created in 1994, when the Miami-Dade County Commission adopted ordinance 94-215.²³ MDX is the only expressway authority created under the Act.²⁴ 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).

¹³ *Id.*

¹⁴ Section 338.231, F.S.

¹⁵ DOT’s work program is provided for in s. 339.135, F.S.

¹⁶ Section 338.231(3)(a), F.S.

¹⁷ FLA. CONST. art. VIII, s. 6, n. 2.

¹⁸ FLA. CONST. art. VIII, s. 6, n. 3.

¹⁹ FLA. CONST. art. VIII, s. 6, n. 4.

²⁰ Florida Association of Counties, *Charter County Information*, <http://www.fl-counties.com/about-floridas-counties/charter-county-information> (last visited May 2, 2014).

²¹ Part I of Ch. 348, F.S. is comprised of ss. 348.0001 through 348.0012, F.S.

²² Section 348.0003(1), F.S.

²³ A copy of the ordinance is available at http://miamidade.fl.elaws.us/code/coor/coor_ptiii_ch2_artxviii/ (last visited Nov. 9, 2015).

²⁴ 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.

Section 348.0004, F.S., provides the purposes and powers of expressway authority's created in part I of Ch. 348, F.S. Section 348.0004(2)(e), F.S., gives expressway authorities created under the Act the power to fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act. However, such right and power may be assigned or delegated by the authority to DOT.

Notwithstanding s. 338.165, F.S.,²⁵ or any other provision of law to the contrary, MDX to the extent surplus revenues exist, they may be used for purposes enumerated in s. 348.0004(7), F.S., provided the expenditures are consistent with the metropolitan planning organization's (MPOs) adopted long-range plan. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any outstanding indebtedness payable from tolls, in Miami-Dade County, the board of county commissioners may, by ordinance adopted on or before September 30, 1999, alter or abolish existing tolls and currently approved increases thereto if the board provides a local source of funding to the county expressway system for transportation in an amount sufficient to replace revenues necessary to meet bond obligations secured by such tolls and increases.²⁶

Section 348.0004(7), F.S., provides that in Miami-Dade County, an expressway authority may finance or refinance the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of a public transportation facility or transportation facilities owned or operated by such county, an intermodal facility or facilities, multimodal corridor or corridors, including, but not limited to, bicycle facilities or greenways that will improve transportation services within the county, or any programs or projects that will improve the levels of service on an expressway system, subject to approval of the governing body of such county after public hearing.

MDX Frequent Driver Rewards Program

MDX currently has a Frequent Driver Rewards Program allowing drivers spending at least \$100 a year on MDX tolls to receive cash back. The program is designed to give back savings that MDX identifies from the operations of the agency directly to the daily commuters, frequent users and businesses, after meeting its annual financial obligations.²⁷

Expressway and Bridge Authorities – Covenant of the State

Section 348.0010, F.S., provides covenant of the state relating to the Florida Expressway Authority Act. It provides that the state pledges that it will not limit or alter the rights vested in an authority and DOT until all bonds, together with their interest, are fully paid and discharged,

Proposed Changes

High-Occupancy Toll Lanes (HOT Lanes) or Express Lanes

The bill authorizes DOT to require the use of an electronic transponder interoperable with its electronic toll collection system for the use of HOT lanes or express lanes. Should DOT impose the requirement, all users of DOT HOT lanes or express lanes must have the specified transponder to use such lanes.

Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer is charged the minimum express lane toll. A customer's average travel speed is his or her average travel speed from the customer's entry point to the customer's exit point.

²⁵ Section 338.165, F.S., relates to the continuation of tolls.

²⁶ Section 348.0004(2)(e), F.S.

²⁷ MDX Website <http://mdxway.com/frequentdriver/landing> (Last visited March 6, 2017).

Florida Turnpike Enterprise

The bill amends s. 338.2216(1)(d), F.S., authorizing FTE to require the use of an electronic transponder interoperable with DOT's electronic toll collection system for the use of express lanes on the turnpike system. Variable pricing may not be implemented in express lanes when the level of service in the express lane, determined in accordance with the criteria established by the Transportation Research Board Highway Capacity Manual (5th Edition, HCM 2010), is equal to level of service A. Variable pricing in express lanes when the level of service in the express lane is level of service B may only be implemented by charging the general toll lane toll amount plus an amount set by DOT rule. Except as otherwise provided, pricing in express lanes when the level of service is other than level of service A or level of service B may vary in the manner established by the FTE to manage congestion in the express lanes.

Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the general toll lane toll amount plus an amount set by DOT rule. A customer's express lane average travel speed is his or her average travel speed from the customer's entry point to the customer's exit point.

Turnpike Tolls

The bill extends from June 30, 2017, to June 30, 2027, the requirement that DOT, to the maximum extent feasible, program sufficient funds in its tentative work program such that 90 percent of the toll revenues collected in Miami-Dade, Broward, and Palm Beach counties are spent in those counties.

MDX Purpose and Powers

The bill provides that, notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2017, MDX:

- May not increase a toll unless the increase is justified to the satisfaction of MDX by a traffic and revenue study conducted by an independent third party, except for an increase to the extent necessary to adjust for inflation pursuant to the procedure for toll rate adjustments provided in s. 338.165, F.S.
- Must approve a toll increase by a two-thirds vote of its board.

The amount of toll revenues MDX uses for administrative expenses may not be greater than 10 percent above the annual state average of administrative costs determined as provided in below. The bill directs the Florida Transportation Commission (FTC)²⁸ to determine the annual state average of administrative costs based on the annual administrative expenses of all the state's expressway authorities. Administrative expenses include, but are not limited to, employee salaries and benefits, small business outreach, insurance, professional service contracts not directly related to the operation and maintenance of the expressway system, and other overhead costs. The FTC may adopt rules necessary to implement this provision.

On MDX transportation facilities constructed after July 1, 2017, there must be a distance of at least 5 miles between main through-lane tolling points. This distance requirement does not apply to entry and exit ramps.

Subject to compliance with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act, MDX must, at the time that any toll is incurred, reduce the toll charged on any of its toll facilities by at least 5 percent, but not more than 10 percent, for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred. The authority may not impose additional requirements to receive of the reduced toll amount.

²⁸ Created in s. 20.23, F.S., the Florida Transportation Commission is a citizen oversight board for DOT.

Notwithstanding any other provision of the Florida Expressway Authority Act, MDX must determine its surplus revenues.²⁹ The authority must then dedicate at least 20 percent, but not more than 50 percent, of its annual surplus revenues to transportation- and transit-related expenses for projects in the area served by the authority. The metropolitan planning organization for Miami-Dade County must annually select a project or projects within Miami-Dade County to be funded by MDX's dedicated surplus revenues and provide MDX a list reflecting the selected project or projects. MDX must select from the list for funding from projects that have a rational nexus to the transportation facilities of the authority and may include, but are not limited to, expenses associated with the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of public transportation facilities, transit facilities, intermodal facilities, or multimodal corridors owned or operated by such municipality or county; and transit-related expenses that impact the capacity or use of the transportation facilities of the authority. A rational nexus must demonstrate that the proposed transportation expenditure makes a substantial impact on the capacity or use of the transportation facilities of the authority, or that the proposed transit expenditure complements the operation of, or expands the access to, MDX's transportation facilities.

Miami-Dade County must have a financial audit of the revenues and expenditures of the county's transportation plan conducted by an independent third party not less than biennially and must post the audits on the county's website to be eligible to receive the dedicated surplus revenues as provided above.

MDX must have a financial audit conducted by an independent third party not less than biennially, and the audit report must be made publicly available on the authority's website.

MDX Public Accountability

The bill creates s. 348.00115, F.S., providing that MDX must post the following information on its website:

- Audited financial statements and any interim financial reports;
- Board and committee meeting agendas, meeting packets, and minutes;
- Bond covenants for any outstanding bond issues;
- Authority budgets;
- Authority contracts (the term "contract" means a written agreement or purchase order issued for the purchase of goods or services or a written agreement for the receipt of state or federal financial assistance);
- Authority expenditure data, which must include the name of the payee, the date of the expenditure, and the amount of the expenditure. Such data must be searchable by name of the payee, name of the paying agency, and fiscal year and must be downloadable in a format that allows offline analysis; and
- Information relating to current, recently completed, and future projects on authority facilities.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may reduce DOT revenues since it will be required to charge the minimum express lane toll, and not any variably priced toll, if the customer's average travel speed for a trip in an express lane falls below 40 miles per hour. Effective July 1, 2018, the bill may reduce the FTE's and, therefore,

²⁹ Section 348.0002(12), F.S., defines "surplus revenues" as revenues in any county as defined in s. 125.011(1), F.S., derived from rates, fees, rentals, tolls, and other charges for the services and facilities of an expressway system as may exist at the end of a fiscal year after payment of all annually required operating and maintenance expenses for the fiscal year and all debt service payable in the fiscal year on bonds issued or other debts incurred for any purpose in connection with an expressway system, including debt incurred to finance the construction, extension, repair, or maintenance of an expressway system.

the DOT's revenues, when the level of service in an express lane on the turnpike system is at level of service A or B. In the former case, variable pricing may not be implemented in express lanes on the turnpike system. When the level of service is level B, variable pricing may only be implemented by charging the general toll lane toll amount, plus an amount set by DOT rule for use of an express lane on the turnpike system.

2. Expenditures:

The FTC will incur administrative expenses associated with determining the annual state average of administrative costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will potentially make it more difficult for MDX to increase its tolls; therefore, making it more difficult to increase its revenues. According to MDX, the bill limits its ability to set toll rates, which may make its bonds less favorable in the financial markets.³⁰ If MDX chooses to grant a reduction in toll charges for eligible SunPass users of MDX's toll facilities, the MDX may experience reduced toll collections in an indeterminate amount.

The bill will reduce the amount of surplus revenues available to MDX for use on MDX's facilities, to the extent that a portion of the surplus revenues is used to fund transportation- or transit-related expenses in proposals submitted by municipalities and counties. The amount, however, is indeterminate, as it is dependent on the percentage of the surplus revenues dedicated to the specified expenses.

2. Expenditures:

The bill also limits MDX's administrative expenses to ten percent above the annual state average of administrative costs, as determined by the FTC. The impact of this revision to MDX is unknown. Also unknown is whether MDX will be required to undertake infrastructure design revisions or to incur other related costs to comply with the requirements that there be a distance of five miles between main through-lane tolling points constructed after July 1, 2017.

The MDX may incur expenses associated with the required traffic and revenue studies, with the required periodic audits, and with placing the audits on its website. Miami-Dade County may incur expenses associated with the required periodic audits and placing the audits on its website.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Users of MDX's facilities may see a reduction in the frequency and amount of toll increases. Eligible SunPass users of MDX's toll facilities would benefit from a reduction in toll charges of at least 5 percent, but not more than 10 percent. The amount of this reduction is dependent on the number of eligible trips on MDX toll facilities, and is therefore unknown.

Users of transportation facilities in Miami-Dade County may benefit from municipal or county transportation- or transit-related expenses funded by a portion of MDX's surplus revenues. MDX may benefit from the same funded expenses. The amount, however, is indeterminate, as the funds available for such expenses are indeterminate.

³⁰ See the MDX email to House Transportation & Infrastructure Committee Staff, March 10, 2017. (On file with the House Transportation & Infrastructure Subcommittee).

Users of DOT's and FTE's express lanes may experience reduced tolls. The amount of this reduction with respect to the DOT's express lanes is dependent on the number of trips and the number of times a customer's average travel speed falls below 40 miles per hour, and is therefore unknown. The amount of this reduction with respect to express lanes on the turnpike system is dependent on the number of trips, the frequency of the existence of level of service A or B in the express lanes, and the number of times a customer's average travel speed falls below 40 miles per hour; and is therefore unknown.

D. FISCAL COMMENTS:

None.