

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 898

INTRODUCER: Infrastructure and Security Committee and Senator Diaz

SUBJECT: Transportation

DATE: April 17, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	<b>Fav/CS</b>
2.	McAuliffe	Hrdlicka	ATD	<b>Recommend: Fav/CS</b>
3.	McAuliffe	Kynoch	AP	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 898 contains various provisions relating to transportation. More specifically, the bill:

- Repeals the Florida Expressway Authority Act, thereby repealing the Miami-Dade County Expressway Authority (MDX).
- Transfers the operational and financial control of Miami-Dade County expressway system to the Florida Department of Transportation (FDOT) and requires the FDOT to acquire the assets and assume the liabilities of the MDX.
- Prohibits the FDOT from increasing toll rates on the expressway system except as required by bond covenants and provides authorized uses of the fees generated from toll revenues collected until outstanding bond obligations as of July 1, 2018, are discharged.
- Requires the FDOT to consider refinancing outstanding MDX bonds if doing so would result in a net cost savings and to use any resulting cost savings to reduce toll rates.
- Requires the FDOT to use unencumbered cash balances resulting from the transfer of the MDX to DOT to prepay or defease outstanding MDX bonds or debt to the extent allowed by the bond covenants.
- Requires the FDOT to display signs showing the date or year in which the MDX bonds will be paid.
- Requires the FDOT to submit certain toll-related reports to the Miami-Dade County Board of County Commissioners and the Miami-Dade County Transportation Planning Organization by October 1 each year, beginning in 2020.

- Prohibits the FDOT from collecting tolls on a former MDX facility after the discharge of any outstanding bond obligations related to such facility and from charging a toll exceeding \$5 on a high occupancy toll (HOT) lane or express lane in Miami-Dade County.
- Revises the authorized uses of the charter county and regional transportation system surtax proceeds in Miami-Dade County and limits the distribution of such proceeds to municipalities in that county to 25 percent in total.
- Relocates public-private partnership authorization and related provisions from the repealed Florida Expressway Authority Act to provisions relating specifically to the Tampa-Hillsborough County Expressway Authority and the Central Florida Expressway Authority.
- Requires the FDOT to program sufficient funds in its tentative work program such that all, rather than 90 percent, of the net toll collections attributable to users of turnpike facilities in Miami-Dade, Broward, and Palm Beach Counties are committed to projects and bond finance commitments in those counties.
- Reenacts and makes permanent the rebuilt motor vehicle inspection program overseen by the Department of Highway Safety and Motor Vehicles in Miami-Dade County that was repealed on July 1, 2018.
- Requires the FDOT to approve design plans for projects impacting its rights-of-way if the plans meet FDOT standards.
- Revises the FDOT's authorization for innovative highway projects to innovative transportation projects demonstrating innovative techniques of bridge design.
- Repeals the Osceola County Expressway Authority, which has transferred its projects to the Central Florida Expressway Authority.

The bill will increase state revenues and expenditures and reduce, in the same amount, revenues and expenditures of the MDX, due to the transfer of the assets and liabilities of the MDX to the FDOT. The bill requires all, rather than 90 percent of all, net toll collections attributable to users of the Florida Turnpike in Miami-Dade, Broward, and Palm Beach Counties be committed to transportation facilities in those counties. As a result, other counties could see a reduction in funding for state transportation projects. Other provisions may create a fiscal impact to both state and local government. See Section V.

Except as otherwise provided, the bill takes effect July 1, 2019.

## **II. Present Situation:**

This bill addresses a wide variety of transportation issues related to the FDOT, expressway authorities, toll lanes and revenues, transportation surtaxes, and motor vehicles. For ease of organization and readability, the Present Situation for the provisions in each section of the bill is discussed in conjunction with the Effect of Proposed Changes.

### III. Effect of Proposed Changes:

#### Florida Expressway Authority Act

##### *Present Situation*

The Florida Expressway Authority Act (FEAA), codified in part I of ch. 348, F.S.,<sup>1</sup> authorizes any county or two or more contiguous counties within a single Florida Department of Transportation (FDOT) district,<sup>2</sup> to form an expressway authority as an agency of the state, by resolution adopted by the board (or boards) of county commissioners.<sup>3</sup>

Section 348.0003, F.S., provides for the formation and membership of an expressway authority established under the FEAA, including an authority's voting membership, election of officers, appointment of employees, and application of ethics requirements only to the MDX.<sup>4</sup>

Section 348.0004, F.S., provides the purposes and powers of an expressway authority created pursuant to the FEAA. These authorities may acquire, hold, construct, improve, maintain, operate, and own an expressway system.<sup>5</sup> Section 348.0004, F.S., also authorizes each authority to exercise various powers required to carry out its purpose. Finally, s. 348.0004, F.S., contains provisions applicable to the MDX relating to tolling, the maximum percentage of revenues that may be used for administrative expenses, the dedication of some of its surplus revenues<sup>6</sup> for transportation projects in Miami-Dade County, the authority to borrow money and refund bonds, a mandatory toll decrease for SunPass<sup>7</sup> users, and financial audit requirements.

Section 348.0005, F.S., authorizes bonds to be issued on an authority's behalf pursuant to the State Bond Act.<sup>8</sup> The MDX may issue its own bonds that do not pledge the full faith and credit of the state; these are considered approved for purposes of s. 11(f), Art. VII of the State Constitution.<sup>9</sup>

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

<sup>2</sup> The FDOT is statutorily organized into seven districts, each headed by a district secretary, and a turnpike enterprise and a rail enterprise, each headed by an executive director. Section 20.23(4)(a), F.S. For a map of the FDOT districts, see [https://fdotwww.blob.core.windows.net/sitefinity/images/default-source/content1/info/moredot/district-map-lg.jpg?sfvrsn=4afe7389\\_2](https://fdotwww.blob.core.windows.net/sitefinity/images/default-source/content1/info/moredot/district-map-lg.jpg?sfvrsn=4afe7389_2) (last viewed March 25, 2019).

<sup>3</sup> Section 348.0003(1), F.S.

<sup>4</sup> Section 348.0003(5), F.S.

<sup>5</sup> Section 348.0002(9), F.S., defines "expressway system" as any and all expressways within the geographic boundaries of an expressway authority established pursuant to the FEAA and appurtenant facilities thereto, including, but not limited to, all approaches, roads, bridges, and avenues of access for such expressway. In any county as defined in s. 125.011(1), F.S., for purposes of this part, an expressway system includes a public transportation facility. A "county" as defined in s. 125.011(1), F.S., means Miami-Dade County.

<sup>6</sup> Section 348.0002(12), F.S., defines "surplus revenues" as revenues in Miami-Dade County, *id.*, 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.

<sup>7</sup> SunPass is the state's primary electronic toll collection system.

<sup>8</sup> Sections 215.57 through 215.83, F.S.

<sup>9</sup> Section 11(f), Art. VII of the State Constitution requires each project, building, or facility to be financed or refinanced with revenue bonds to first be approved by the Legislature by an act relating to appropriations or by general law.

Section 348.0007, F.S., authorizes an authority to appoint the FDOT as its agent for the purpose of constructing improvements and extensions to an expressway system and for the system's completion.

Section 348.0008, F.S., authorizes expressway authorities to acquire land and property, including by eminent domain proceedings.

Section 348.0009, F.S., expressly authorizes other units, boards, agencies, and individuals to enter into contracts and other agreements with an expressway authority.

Section 348.0010, F.S., provides the state's pledge to expressway authority bondholders that the state will not limit or alter the rights vested in an authority and the FDOT until all bonds are fully paid and discharged.

Section 348.0011, F.S., provides a specified tax exemption for expressway authorities and provides that the authority's bonds are exempt from taxation except for income tax on interest, income, or profits on debt obligations owned by corporations.

Section 348.00115, F.S., requires the MDX to post specified information on its website including board meeting minutes, bond covenants, budgets, and contracts.

Section 348.0012, F.S., exempts a county in which an expressway authority has been created in another part of ch. 348, F.S.,<sup>10</sup> or the Jacksonville Transportation Authority from the requirements of the FEAA, except as expressly provided.<sup>11</sup>

#### Miami-Dade County Expressway Authority (MDX)

The Miami-Dade County Commission created the MDX in 1994 through adoption of an ordinance pursuant to the authorization in the FEAA allowing formation of an expressway authority as an agency of the state.<sup>12</sup> The MDX is the only expressway authority operating under the FEAA. The MDX system consists of the following roadways in Miami-Dade County:

- S.R. 112/Airport Expressway,
- S.R. 836/Dolphin Expressway,
- S.R. 874/Don Shula Expressway,
- S.R. 878/Snapper Creek Expressway, and
- S.R. 924/Gratigny Parkway.<sup>13</sup>

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<sup>10</sup> Chapter 348, F.S., also creates the Tampa-Hillsborough County Expressway Authority, the Central Florida Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority.

<sup>11</sup> The Jacksonville Transportation Authority is created in ch. 349, F.S.

<sup>12</sup> See Miami-Dade County Code of Ordinances, Part III, Chapter 2, Article XVIII, available at [http://miamidade.fl.elaws.us/code/coor\\_ptiii\\_ch2\\_artxviii](http://miamidade.fl.elaws.us/code/coor_ptiii_ch2_artxviii) (last viewed March 25, 2019).

<sup>13</sup> MDX, *About MDX*, available at <https://www.mdxway.com/about/mdx> (last viewed March 25, 2019). Operational and financial control of the system, comprised of the identified expressways, was transferred by the FDOT to the MDX in 1996 (copy of the Transfer Agreement on file in the Senate Infrastructure and Security Committee). The FDOT retains the underlying title to the facilities. See The Florida Senate Committee on Transportation Issue Brief 2011-227, *Toll Facility Lease-Purchase Agreements*, October 2010, p. 7, available at [http://archive.fl.senate.gov/data/Publications/2011/Senate/reports/interim\\_reports/pdf/2011-227tr.pdf](http://archive.fl.senate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-227tr.pdf) (last viewed March 25, 2019).

### Recent Legislation and Litigation

In 2017, legislation was enacted to require the MDX, subject to compliance with its bond covenants, to reduce the toll charged on any of its toll facilities by at least 5 percent, but not more than 10 percent, for each SunPass account in good standing.<sup>14</sup>

In 2018, legislation was enacted to require the MDX's governing body, by October 1, 2018, to submit information to the Governor regarding its compliance with the minimum five percent toll reduction required in 2017. If the required toll reduction had not taken place, effective October 31, 2018, the existing board was to be dissolved and, except for the FDOT district secretary, a new board was to be appointed by that date. The 2018 legislation also prohibited a member of the board on October 1, 2018, from being appointed to the new board. Qualifications and appointments to the new board remained the same.<sup>15</sup> On May 29, 2018, the MDX's board approved a toll rate reduction on the authority's facilities, providing a 5.7 to 8 percent reduction in the toll rate, depending upon the existing toll rate. The new toll rates took effect on July 1, 2018.<sup>16</sup>

The MDX has challenged the legality of some portions of the 2017 and 2018 legislation on grounds that the legislation violates the constitutional prohibition against an impairment of contracts and violates a statutory covenant of the state that the state will not alter the rights vested in the authority until all bonds are fully paid and discharged.<sup>17</sup>

### *Effect of Proposed Changes*

**Section 13** repeals part I of ch. 348, F.S., repealing the FEAA and the MDX. Repeal of the FEAA precludes any other county, or two or more contiguous counties within a single FDOT district, from creating an expressway authority under that part.

**Section 14** creates an undesignated section of law transferring the governance and control of the MDX to the FDOT effective upon the bill becoming a law. This transfer includes the assets, facilities, tangible and intangible property and any rights in such property, any other legal rights of the authority, and the expressway system operated by the authority. The FDOT succeeds to all powers of the MDX. The operation and maintenance of the expressway system are deemed under the control of the FDOT. Revenues collected on the expressway system are considered to be FDOT revenues, subject to the lien of the trust indentures securing the MDX bonds.

The FDOT, in consultation with the Division of Bond Finance, is directed to review all contracts, financial obligations, and contractual relationships and liabilities of the MDX and is authorized

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<sup>14</sup> Section 4, ch. 2017-182, L.O.F.

<sup>15</sup> Chapter 2018-145, L.O.F.

<sup>16</sup> Miami-Dade Expressway Authority Press Release, *MDX Board of Directors Approves Toll Reduction*, July 11, 2018, available at

[https://www.mdxway.com/press\\_releases/downloads/592/original\\_TOLL\\_REDUCTION\\_PRESS\\_RELEASE\\_FINAL.pdf?1531322342](https://www.mdxway.com/press_releases/downloads/592/original_TOLL_REDUCTION_PRESS_RELEASE_FINAL.pdf?1531322342) (last viewed March 25, 2019).

<sup>17</sup> *Miami Dade County Expressway Authority v. State of Florida*, Case No. 2018 CA 002300, Second Judicial Circuit, Leon County, Florida.

to assume the obligations determined to be necessary or desirable for the continued operation of the expressway system.

MDX employees, officers, and members are prohibited from selling, disposing, encumbering, transferring, or expending authority assets as reflected in the authority's financial statements for the fiscal year ended June 30, 2018, other than in the ordinary course of business. Incurring debt or issuing bonds for projects contained in the five-year work program adopted by the MDX on December 5, 2018, is not considered the ordinary course of business; however, the bill does not prevent the MDX from designing and planning projects contained in that adopted five-year work program.

The transfer of the MDX to the FDOT is subject to all terms and covenants provided for the protection of holders of bonds in the trust indentures or resolutions adopted in connection with issuance of such bonds. Additionally, the bill provides that the transfer does not impair the terms of the contract between the MDX and the bondholders, does not act to the detriment of the bondholders, and does not diminish the security for the bonds. The FDOT must expressly assume all obligations relating to the bonds to ensure the transfer will have no adverse impact on the security of the bonds.

After the transfer, the bill directs the FDOT to:

- Operate and maintain the expressway system and any other facilities of the MDX in accordance with the terms, conditions, and covenants in the trust indentures or bond resolutions securing the bonds.
- Collect toll revenues and apply them to the payment of debt service as provided in the indentures or resolutions.
- Consider refinancing all or a portion of outstanding bonds if doing so would result in net cost savings.
- Use any resulting cost savings from refinancing to reduce toll rates.

The bill further requires the FDOT to use the transferred, unencumbered cash balances to prepay or defease outstanding MDX bonds or debts to the extent allowed by or consistent with the terms and covenants provided for protection of bondholders in the indentures or resolutions adopted in connection with issuance of such bonds.

The bill requires the FDOT to display signs, near the roadway signage that displays toll rates, showing the date or year in which the bonds will be paid.

Lastly, annually by October 1 beginning in 2020, the bill requires the FDOT to provide a report to the Miami-Dade County Board of County Commissioners and the Miami-Dade County Transportation Planning Organization detailing the toll collections, costs, and net revenues collected from the expressway system and turnpike operations in Miami-Dade County. The report must include details on projects funded and scheduled to be funded by toll revenues, including revenues of the Florida Turnpike Enterprise, in Miami-Dade County.

**Section 11** creates s. 338.271, F.S., directing the FDOT to acquire the assets and assume the liabilities of the MDX, and to continue the system of tolls of the former authority until any

outstanding bond obligations are fully discharged. This section is effective upon the bill becoming law.

The bill prohibits the FDOT from collecting tolls on a facility of the former MDX after the discharge of any bond obligations that are outstanding as of July 1, 2018.<sup>18</sup> The bill also prohibits the FDOT from indexing toll rates on existing MDX toll facilities to the annual Consumer Price Index<sup>19</sup> and from increasing toll rates on former MDX facilities except as required by bond covenants.

The bill requires fees generated from toll revenues (until outstanding bond obligations as of July 1, 2018, are discharged) to be deposited into the State Transportation Trust Fund, which may be used to:

- Reimburse outstanding contractual obligations.
- Operate and maintain the highways and toll facilities, including reconstruction and restoration, at FDOT standards.
- Pay for projects funded by toll revenues from the former MDX which are contained in the five-year work program adopted by the MDX on December 5, 2018.

Annual revenues in excess of those required to pay expenses identified above must be used by the FDOT to fund transportation projects in the area served by the former authority. Notwithstanding any other law, the bill prohibits the facilities of the former MDX from becoming part of the Florida Turnpike Enterprise or being subject to the Florida Turnpike Enterprise Law.<sup>20</sup>

The operational and financial control of the five identified expressways in Miami-Dade County are transferred to the FDOT, and the FDOT would acquire the assets and assume the liabilities of the former authority subject to the terms and covenants of any outstanding bonds upon the bill becoming a law.

#### Technical Revisions Related to the FEAA Repeal and the MDX Transfer

**Section 1** amends s. 20.23(2)(b)8., F.S., relating to the Florida Transportation Commission's duty to monitor specified transportation, bridge, and expressway authorities, to remove reference to "any authority formed using part I of chapter 348," as the bill repeals that part of ch. 348, F.S.

**Section 4** amends s. 215.68(2), F.S., which currently authorizes bond issuance under the State Bond Act as well as various related terms and conditions. The statute specifies that those terms and conditions do not supersede the limitations of the FEAA relating to bond issuance. The bill repeals this provision, thus conforming the statute to the repeal of the FEAA.

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<sup>18</sup> As of June 30, 2018, the MDX had approximately \$2.5 billion in assets and \$1.6 billion in liabilities and deferrals, including approximately \$1.5 billion in bonds outstanding. Miami-Dade County Expressway Authority, *2018 Comprehensive Annual Financial Report*, Fiscal Years ended June 30, 2018 and 2017, available at [https://www.mdxway.com/pdf/annual\\_reports/CAFR\\_2018.pdf](https://www.mdxway.com/pdf/annual_reports/CAFR_2018.pdf) (last viewed March 25, 2019).

<sup>19</sup> These toll rate adjustments must be made no more than once a year and no more than once every five years. Section 338.165(3), F.S.

<sup>20</sup> The Florida Turnpike Enterprise Law is located in ss. 338.22 through 338.241, F.S.

**Section 8** amends s. 338.165, F.S., to remove references to s. 348.0004, F.S., relating in part to uses of MDX revenues, as the bill repeals that section contained in the FEAA.

**Section 2** of the bill relocates the statutory provision requiring financial disclosure forms to be filed by transportation and expressway authorities from s. 348.0003(4)(c), F.S., which the bill repeals, to s. 112.3144(1), F.S. The actual financial disclosure requirements do not change.

**Section 12** amends s. 343.1003(6), F.S., to update a reference to conform to the repeal of s. 348.0003(4)(c), F.S. The obligation of the members of the Northeast Florida Regional Transportation Commission to file statements of financial interests remains unchanged.

## **High Occupancy Toll Lanes and Express Lanes**

### ***Present Situation***

A high-occupancy-vehicle (HOV) lane is generally a lane of a public roadway designated for use by vehicles in which there is more than one occupant.<sup>21</sup> A high-occupancy toll (HOT) lane is an HOV lane, the use of which requires payment of a toll.

Current law does not define the terms “high-occupancy toll lane” or “express lane.” However, the FDOT provides the following descriptions:<sup>22</sup>

Managed lanes are a [] strategy in which a set of lanes within an existing highway facility proactively implements a managed response to changing traffic conditions. A combination of tools such as access control, vehicle eligibility, and dynamic pricing<sup>23</sup> are used for a managed lane, and there are several different types of managed lanes such as High-occupancy Vehicle (HOV) lanes, high-occupancy toll lanes, express toll lanes, reversible lanes and bus lanes.

Express lanes are a type of managed travel lane that is physically separated from the general use or general toll lanes within an existing roadway corridor. FDOT implements express lanes for congestion management purposes by designing them to operate at free-flow speed. Free-flow conditions in the express lanes are established when vehicles can safely operate at speeds of 45 miles per hour or higher, [and toll] amounts in the express lanes are dynamically updated to support free-flow conditions.

Section 338.166, F.S., authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on HOT lanes or express lanes established on FDOT-owned facilities. The FDOT may continue to collect the tolls on HOT lanes or express lanes after

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<sup>21</sup> Section 316.0741(1)(a), F.S.

<sup>22</sup> See FDOT, SIS Connections, *Florida’s Strategic Intermodal System*, December 2018, at pp. 5-6, available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/systems/sis\\_newsletter\\_winter2019.pdf?sfvrsn=d6a066fc\\_4](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/systems/sis_newsletter_winter2019.pdf?sfvrsn=d6a066fc_4) (last viewed March 25, 2019).

<sup>23</sup> Also known as “variable pricing.” See s. 338.166(4), F.S.

any bond debt is discharged. Such tolls must first be used to pay the annual cost of operation, maintenance, and improvement of the HOT lanes or express lanes project or associated transportation system.<sup>24</sup>

The FDOT must use any remaining toll revenue from HOT lanes or express lanes for the construction, maintenance, or improvement of any road on the State Highway System 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.

### ***Effect of Proposed Changes***

**Section 9** amends s. 338.166, F.S., to prohibit the FDOT from charging a toll that is more than \$5 on any HOT lane or express lane in a county as defined in s. 125.011(1), F.S.; *i.e.*, Miami-Dade County.<sup>25</sup> The FDOT's ability to manage congestion through variable pricing in such lanes may be negatively affected.

## **Expressway Authority Public-Private Partnerships**

### ***Present Situation***

The FEAA authorizes any expressway authority, transportation authority, bridge authority, or toll authority to receive or solicit proposals and enter into public-private partnership agreements, for the building, operation, ownership, or financing of authority transportation facilities or new transportation facilities within the authority's jurisdiction which increase transportation capacity. The statute provides determinations that must be made regarding a proposed project, requires certain costs to be borne by the private entity, provides how transportation authorities are to provide notice of certain proposals, and allows these authorities to exercise certain powers related to these agreements.<sup>26</sup>

### ***Effect of Proposed Changes***

**Sections 15 and 16** create s. 348.635, F.S., relating to the Tampa-Hillsborough County Expressway Authority, and s. 348.7605, F.S., relating to the Central Florida Expressway Authority, to generally relocate public-private partnership authorization and related provisions that the bill repeals in the FEAA. The relocated provisions are substantively the same as the statutory provisions currently in the FEAA. Any other expressway, transportation, bridge, or toll authority currently relying on the FEAA provisions for authorization to engage in public-private partnerships will no longer be authorized.

## **Southeast Florida Turnpike Toll Revenue**

### ***Present Situation***

Section 338.231, F.S., requires the FDOT to fix, adjust, charge, and collect such tolls on the turnpike system as are required in order to provide sufficient funds, with other turnpike system

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<sup>24</sup> Section 338.166, F.S., expressly does not apply to the turnpike system.

<sup>25</sup> For more information on Florida's express lanes, including a map of those in Miami-Dade County, *see* FDOT, *Florida Express Lanes*, available at <http://floridaexpresslanes.com/> (last viewed March 25, 2019).

<sup>26</sup> Section 348.0004(10), F.S. The FDOT's similar authority is contained in s. 334.30, F.S.

revenues, to pay the cost of maintaining, improving, repairing, and operating the turnpike system; to pay the principal and interest on any bonds issued to finance or refinance any portion of the turnpike system as the bonds become due and payable; and to create reserves for such purposes.

Section 338.231(3)(a), F.S., requires the FDOT, for the period July 1, 1998, through June 30, 2027, to the maximum extent feasible, to program sufficient funds in its tentative work program, such that the percentage of turnpike toll and bond financed commitments in Miami-Dade, Broward, and Palm Beach Counties, as compared to total turnpike toll and bond financed commitments, is at least 90 percent of the share of net toll collections attributable to users of the turnpike system.<sup>27</sup> This requirement does not apply when its application would violate any bond covenants for turnpike bonds.

### *Effect of Proposed Changes*

**Section 10** of the bill amends s. 338.231(3)(a), F.S., to remove the maximum feasibility and date references, making permanent the FDOT's duty to program sufficient funds in its tentative work program such that *all* of the net toll collections attributable to users of turnpike facilities in the three identified counties are committed to projects and bond finance commitments in such counties. The bill retains the current provision rendering the requirement inapplicable when application would violate bond covenants.

## **Charter County and Regional Transportation System Surtax**

### *Present Situation*

Section 212.055(1), creates the charter county and regional transportation system surtax, authorizing each charter county, each county government consolidated with one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority to levy, subject to voter approval, a discretionary sales surtax of up to one percent.<sup>28</sup>

Thirty-one counties are currently eligible to levy the surtax.<sup>29</sup> However, only Broward, Duval, Hillsborough, and Miami-Dade Counties currently impose the surtax. Duval and Miami-Dade both levy the tax at a rate of one-half percent.

In Miami-Dade County, the surtax is dedicated to support the People's Transportation Plan.<sup>30</sup> In 2002, Miami-Dade County's voters approved the surtax for the purpose of funding the People's Transportation Plan, including plans to build rapid transit lanes, expand bus service, purchase additional buses, improve traffic signalization, improve major and neighborhood roads and highways, and provide funding to municipalities for road and transportation projects. The

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<sup>27</sup> The 2017 Legislature last amended this provision, previously set to sunset on June 30, 2017, to extend the expiration date to June 30, 2027. ch. 2017-182, L.O.F.

<sup>28</sup> Section 212.055(1)(a) and (b), F.S.

<sup>29</sup> See the 2019 Florida Tax Handbook, p. 227, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last viewed March 25, 2019).

<sup>30</sup> See MiamiDade.Gov, *The People's Transportation Plan*, for information on the plan, last updated February 22, 2016, available at <https://www.miamidade.gov/publicworks/peoples-transportation.asp> (last viewed March 25, 2019).

ordinance also establishes the Citizens' Independent Transportation Trust as an advisory entity created to oversee the use of the surtax proceeds.<sup>31</sup>

Currently, proceeds from the surtax may be:

- Deposited by the county in the trust fund and used for a countywide bus system, on-demand transportation services,<sup>32</sup> and related costs of a fixed guideway rapid transit system;
- Remitted to an expressway, transit, or transportation authority to be used for roads or bridges, a bus system, on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, or, upon approval by the county commission, as pledge for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges; or
- Used by the county for roads and bridges; bus and fixed guideway systems; on-demand transportation services; the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; or as pledge by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement, the county may distribute tax proceeds to a municipality, or an expressway or transportation authority for these purposes.<sup>33</sup>

### *Effect of Proposed Changes*

**Section 3** amends the allowed uses of the charter county and regional transportation systems surtax in s. 212.055(1)(d), F.S. The bill repeals a largely duplicative sub-subparagraph describing allowed uses of the funds.

Effective October 1, 2022, to the extent not prohibited by contracts or bond covenants in effect on that date, the bill limits Miami-Dade County's use of proceeds from the surtax to only the following purposes:

- The planning, design, engineering, or construction of, or the acquisition of rights-of-way for, fixed guideway rapid transit systems and bus systems, including bus rapid transit systems, and for the development of dedicated facilities for autonomous vehicles.<sup>34</sup>
- The purchase of buses or other capital costs for bus systems, including bus rapid transit systems.
- The payment of principal and interest on bonds previously issued related to fixed-guideway rapid transit systems or bus systems.
- As security by the governing body of the county to refinance existing bonds or to issue new bonds for the planning, design, engineering, or construction of fixed-guideway rapid transit systems, bus rapid transit systems, or bus systems.

<sup>31</sup> Florida Department of Transportation, Agency Analysis of 2019 HB 385, at p. 5. (January 22, 2019) (On file in the Senate Infrastructure and Security Committee).

<sup>32</sup> Section 212.055(1)(e), F.S., defines "on-demand transportation services" as transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

<sup>33</sup> Section 212.055(1)(d), F.S.

<sup>34</sup> Section 316.003(3), F.S., defines "autonomous vehicle" as any vehicle equipped with autonomous technology.

Also effective October 1, 2022, to the extent not prohibited by contracts or bond covenants in effect on that date, no more than 25 percent of the surtax proceeds may be distributed to municipalities in total in Miami-Dade County. A municipality in Miami-Dade County may use surtax proceeds to plan, develop, construct, operate, and maintain roads and bridges in the municipality and to pay the principal and interest on bonds issued to construct road or bridges. The governing body of the municipality may pledge the proceeds for bonds issued to refinance existing bonds or new bonds issued to construct such roads and bridges. Additionally, each such municipality may use surtax proceeds for transit systems within the municipality.

On the same effective date, the bill additionally prohibits use of proceeds from the surtax in Miami-Dade County for salaries or other personnel expenses of the county's transportation department.

### **Rebuilt Motor Vehicle Inspection Program**

#### *Present Situation*

In 2013, the Legislature created s. 319.141, F.S., creating a Pilot Rebuilt Motor Vehicle Inspection Program in Miami-Dade and Hillsborough counties through June 30, 2018.<sup>35</sup> The Department of Highway Safety and Motor Vehicles (DHSMV) set standards for the program and certified private sector inspection facilities in Miami-Dade County. The program's purpose was to evaluate private sector alternatives for rebuilt inspection services, including the feasibility of using private facilities, the cost impact to consumers, and the potential savings to the DHSMV. The DHSMV was required to establish a memorandum of understanding allowing private parties participating in the pilot program to conduct rebuilt vehicle inspections and specifying requirements for oversight, bonding and insurance, procedures, forms, and the electronic submission of documents.

To be approved for the program, an applicant was required to:

- Have and maintain a surety bond or irrevocable letter of credit in the amount of \$100,000, executed by the applicant;
- Secure and maintain a facility at a permanent structure at an address recognized by the U.S. Postal Service where the only services provided were rebuilt inspection services;
- Annually attest that he or she was not employed by or did not have an ownership interest in or financial arrangement with a motor vehicle repair shop, motor vehicle dealer, towing company, storage company, vehicle auction, insurance company, salvage yard, metal retailer, or metal rebuilder, from which he or she received remuneration for the referral of customers for rebuilt inspection services;
- Have and maintain garage liability and other insurance required by the DHSMV;
- Have completed criminal background checks of the owners, partners, and corporate officers and the inspectors employed by the facility; and
- Meet any additional criteria that the DHSMV determined necessary to conduct proper inspections.<sup>36</sup>

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<sup>35</sup> Section 319.14(1)(c)3., defines "rebuilt vehicle" for purposes of that section as a motor vehicle or motor home built from salvage or junk.

<sup>36</sup> Section 319.141(4), F.S.

As required by law, in 2015, the DHSMV submitted a report<sup>37</sup> that summarized the implementation of the pilot program and program results. The DHSMV certified eight private businesses in the Miami area to conduct rebuilt vehicle inspections.<sup>38</sup> The DHSMV employees in Miami-Dade County were responsible for conducting rebuilt vehicle inspections at the DHSMV Regional Office and at various off-site locations and for monitoring the businesses to ensure inspections were conducted in accordance with program standards.

According to the DHSMV, each of the eight pilot program participants met all of the statutory requirements and the requirements of the memorandum executed with the DHSMV.<sup>39</sup> Statutorily authorized state rebuilt inspection fees (\$40) and re-inspection fees (\$20) were collected and remitted to the state as required. In addition, each pilot program participant was allowed to assess customers a service fee for each inspection. Service fees ranged from \$50 to \$85 and were not regulated in any manner by the DHSMV.<sup>40</sup>

As provided in its authorizing legislation, the program was repealed on July 1, 2018, as it was not saved from repeal or reauthorized by the Legislature.

### *Effect of Proposed Changes*

**Section 5** of the bill revives, reenacts, and amends s. 319.141, F.S., notwithstanding its repeal on July 1, 2018. The bill makes the inspection program permanent in Miami-Dade County.

## **FDOT Review of Design Plans**

### *Present Situation*

Section 334.175, F.S., requires all design plans and surveys prepared by or for the FDOT to be signed, sealed, and certified by the duly registered professional engineer or surveyor, architect, or landscape architect responsible for the project work. However, while FDOT may review plans for highway projects that impact the FDOT right-of-way, the FDOT is not required to approve the design plans.

### *Effect of Proposed Changes*

**Section 6** of the bill amends s. 334.175, F.S., requiring the FDOT to approve design plans for all transportation projects on, under, over, or abutting right-of-way owned by FDOT, if the plans meet FDOT standards. This requirement would apply regardless of the transportation project's funding source.

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<sup>37</sup> DHSMV, *Florida's Private Rebuilt Vehicle Inspection Program – Pilot Program Report* (Jan. 30, 2015), available at <http://www.flhsmv.gov/pdf/cabinetreports/privaterebuiltreport.pdf> (last viewed March 25, 2019). No entities from Hillsborough County applied to participate in the pilot program.

<sup>38</sup> DHSMV, Office of Inspector General, *Rebuilt Vehicle Inspection Program Audit Report 201617-24* (Dec. 5, 2017), available at <https://www.flhsmv.gov/pdf/igoffice/20161724.pdf> (last viewed March 25, 2019).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

## **Innovative Transportation Projects and Techniques**

### ***Present Situation***

Section 337.025, F.S., entitled *innovative highway projects*, authorizes the FDOT to establish a program for highway projects demonstrating innovative techniques of highway construction, maintenance, and finance which have the intended effect of controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway construction and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. The FDOT may annually enter into up to \$120 million in contracts for innovative transportation projects. However, the annual cap does not apply to turnpike enterprise projects and to certain transportation projects funded in the past by the federal government.

### ***Effect of Proposed Changes***

**Section 7** of the bill amends s. 337.025, F.S., revising its title to *innovative transportation projects* and authorizing the FDOT to establish a program for such projects, including those demonstrating innovative techniques of bridge design (along with those of highway, construction, maintenance, and finance), which in addition to controlling time and cost increases have the intended effect of measuring resiliency and structural integrity.

## **Osceola County Expressway Authority**

### ***Present Situation***

In 2010, the Legislature created the Osceola County Expressway Authority Law, codified in part V of ch. 348, F.S.<sup>41</sup> The Osceola County Expressway Authority law contains many references to the FEAA. The Osceola County Expressway Authority (OCX) operated the Poinciana Parkway in Osceola County.

In 2014, the Legislature created the Central Florida Expressway Authority (CFX), in part III of ch. 348, F.S.<sup>42</sup> In summary, the Legislature transferred the former Orlando-Orange County Expressway Authority to the CFX. At the time of its creation, the CFX included Lake, Osceola, Orange, and Seminole Counties. Brevard County was subsequently added to the authority.

The 2014 act limited the exercise of the OCX's powers. Under that act, the OCX could 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 and an additional, specified extension of the Osceola Parkway Extension.

The 2014 act provided for the future transfer of all powers, governance, and control of the Osceola County Expressway System and all assets, liabilities, facilities, tangible and intangible property, any rights in such property, and any other legal rights of the OCX to the CFX. The effective date of the transfer was December 31, 2018, or extended until the date on which the

<sup>41</sup> Chapter 2010-225, L.O.F. Part V of ch. 348, F.S., consists of ss. 348.9950 through 348.9961, F.S.

<sup>42</sup> Chapter 2014-171, L.O.F.

current and forecasted total debt service coverage ratios of the OCX could be certified to be equal to or greater than 1.5 for each and every year during which debt obligations are outstanding. Through the extension the OCX can only exercise its powers through a contract with another governmental entity (or entities).<sup>43</sup>

The 2014 act repeals part V of ch. 348, F.S., on the same date that the OCX is transferred to the CFX. Following the repeal and transfer, uncompleted elements of the OCX's May 8, 2012, master plan will be included in the CFX's master or long-range plan,<sup>44</sup> including the additional, specified extension of the Osceola Parkway Extension.

The OCX entered into a lease purchase agreement with Osceola County to acquire the Poinciana Parkway, a facility owned by the county and financed by Osceola County, Polk County, and the FDOT. Toll revenues from Poinciana are pledged to the repayment of the bonds that Osceola County issued. The OCX, Osceola County, and the CFX have entered into an interlocal agreement addressing the operation of the Poinciana, services provided by the CFX, and the potential acquisition of the Poinciana by the CFX. The OCX, Osceola County, and the CFX are working on the transfer of the lease purchase agreement to the CFX. The OCX does not own other facilities and has not issued bonds to finance facilities.<sup>45</sup>

On December 11, 2018, the OCX board voted to transfer all of its projects to the CFX.<sup>46</sup>

### *Effect of Proposed Changes*

**Section 17** of the bill repeals the Osceola County Expressway Authority Law codified in part V of ch. 348, F.S. Due to the OCX's board vote to transfer all of its projects to the CFX, the OCX is effectively dissolved, and this repeal will have no impact on its or other entities' operations.

### **Effective Date**

Except as otherwise expressly provided, the bill is effective on July 1, 2019.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>43</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>44</sup> The CFX's master or long-range plan will define the term "master plan" or "long range plan."

<sup>45</sup> FDOT, *2019 Agency Legislative Bill Analysis: SB 898*, February 12, 2019, at p. 3 (On file in the Senate Infrastructure and Security Committee).

<sup>46</sup> Stephanie Bechara, Spectrum News 13, *Osceola County Expressway Authority Coming to an End*, December 11, 2018, available at <https://www.mynews13.com/fl/orlando/news/2018/12/11/osceola-county-expressway-authority-coming-to-an-end> (last viewed March 27, 2019).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

**Section 11:** Travelers in Miami-Dade County will be able to use the former MDX expressways without payment of a toll when any outstanding bond obligations as of July 1, 2018, are discharged. Travelers in Miami-Dade County may benefit from toll rates that will not increase, except as required by bond covenants.

**Section 9:** Travelers in Miami-Dade County will be able to use HOT or express lanes for a maximum toll of \$5. However, such travelers may experience reduced travel options if the \$5 cap on tolls results in increased congestion in HOT or express lanes.

**Section 3:** The revisions to authorized uses of the charter county and regional transportation system surtax in Miami-Dade County may increase mobility for users of fixed-guideway rapid transit systems, bus rapid transit systems, bus systems, or dedicated facilities for autonomous vehicles.

C. Government Sector Impact:

**Sections 11, 13, and 14:** The bill transfers the assets and liabilities of the MDX to the FDOT. All tolls and other revenue collected by the Authority would become payable to the FDOT, including any cash balances.<sup>47</sup> The bill also prohibits the FDOT from assessing a toll for use of former MDX facilities after discharge of any bonds associated with the facilities. On February 1, 2019, the Revenue Estimating Conference analyzed

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<sup>47</sup> Office of Economic and Demographic Research, Revenue Estimating Conference, Analysis of HB 385 (2019), *Transfer of Miami-Dade Expressway Authority to the State*, February 1, 2019, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/pdf/page50-51.pdf> (last viewed March 27, 2019).

similar provisions in HB 385 (2019) as originally filed and identified an initial positive cash impact to a FDOT trust fund<sup>48</sup> and a corresponding negative fiscal impact to the MDX of \$542.7 million and recurring impacts of:

2020-2021	\$264.1 million
2021-2022	\$269.3 million
2022-2023	\$275.0 million
2023-2024	\$281.5 million

The FDOT will be prohibited from increasing toll rates on the expressway system except as required by bond covenants, which may reduce toll revenues that would otherwise be collected. However, the extent of any such reduction is unknown. The FDOT will no longer collect toll revenues on the identified expressways once any outstanding bond obligations are discharged, currently in 2044. Toll revenues will no longer support the operations, maintenance, or improvement of the expressways and funds for these purposes will have to be paid from other sources. The exact amount of such expenses, or the extent of any potential impact of such expenses on projects in the FDOT's work program in the future, is indeterminate.

The \$5 cap on tolls for use of HOT lanes or express lanes in Miami-Dade County may reduce toll revenues collected by the FDOT, thus, reducing available funds for operations and maintenance of the lanes. However, the extent of any such reduction is unknown.

The FDOT and the Division of Bond Finance will incur expenses associated with the required review of all MDX contracts, financial obligations, and contractual relationships and liability and with making a determination as to the assumption of responsibility for those obligations, which expenses are expected to be absorbed within existing resources.

The FDOT will incur expenses associated with consideration given to refinancing outstanding MDX bonds to determine if doing so would result in a net cost savings. These expenses are expected to be absorbed within existing resources. If a net savings would result, such savings would be offset by the expenses of the required review, as well as costs associated with refinancing the bonds. The extent of any savings is unknown.

The FDOT will incur expenses to fabricate and install the signage required by the bill, showing the day or year in which the bonds will be paid off. These expenses are expected to be absorbed within existing resources.

The FDOT will incur annual expenses associated with the required reports to the Miami-Dade County Board of County Commissioners and the Miami-Dade County Transportation Planning Organization, beginning October 1, 2020. These expenses are expected to be absorbed within existing resources.

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<sup>48</sup> Section 20.06, F.S., requires the financial segregation of inherited funds. See the Revenue Estimating Conference (REC) analysis of HB 385 for an explanation of "net revenue" that would be available for deposit in a "to be determined" FDOT trust fund. The REC also assumed there is no general revenue service charge.

The MDX provides salary, benefits, and expenses to approximately 34 full-time employees. As a special district and agency of the State of Florida, employees participate in the state's group health, dental, and life insurance plans and participate in the Florida Retirement system. **Section 14** of the bill requires the FDOT to assume responsibility for all obligations of the MDX which could include any pension and employee benefit liabilities and payments. The bill does not require the FDOT to retain any MDX employees.

**Section 3:** Effective October 1, 2022, use of any proceeds of the charter county and regional system surtax in Miami-Dade County will be limited to the uses specified in the bill and may not be used for currently authorized purposes; e.g., for roads and bridges or on-demand transportation services in the county. Funding for fixed-guideway rapid transit systems, bus rapid transit systems, bus systems, and development of dedicated facilities for autonomous vehicles is increased in that county. Municipalities in Miami-Dade County will be limited to a distribution of no more than 25 percent of the proceeds to be limited for use for roads and bridges, to pay the principal and interest on bonds, to refinance existing bonds, and for transit systems. To the extent that Miami-Dade County uses the proceeds for salaries or other personnel expenses, those expenses would have to be paid from other sources available to that county.

**Section 10:** The bill requires the FDOT to program sufficient funds in its tentative work program such that *all* of the net toll collections attributable to users of turnpike facilities in Miami-Dade, Broward, and Palm Beach Counties are committed to projects and bond finance commitments in such counties. The current requirement is 90 percent of that revenue. To the extent that some of the toll revenues from those counties are currently being used in other parts of the state, these other counties could see a reduction in funding for projects, while the three counties named in the bill may see an increase in funding for projects.

**Section 5:** The DHSMV may incur indeterminate expenses associated with the reenactment of the Rebuilt Motor Vehicle Inspection Program.

**Section 6:** The FDOT may incur indeterminate expenses associated with approving design plans impacting its rights-of-way.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The FDOT advises the revenue stream from MDX facilities currently covers the costs of operating, maintaining, and improving these facilities. That revenue stream would no longer be available once outstanding bond obligations are discharged, and the operations, maintenance, and improvements would have to be paid from other sources. "The bill adds responsibilities for operations, maintenance and capacity improvements on additional transportation facilities with

limited revenues.”<sup>49</sup> The FDOT further advises it expects a significant but indeterminate impact on operations and maintenance costs for HOT or express lanes in Miami-Dade County, which are currently covered by collected toll revenues. The bill would require these costs to be supplemented by “regular” non-toll transportation revenues in the event that costs are greater than the maximum \$5 toll allowed by the bill.<sup>50</sup>

### VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 20.23, 112.3144, 212.055, 215.68, 319.141, 334.175, 337.025, 338.165, 338.166, 338.231, and 343.1003.

This bill creates the following sections of the Florida Statutes: 338.271, 348.635, and 348.7605.

This bill repeals the following sections of the Florida Statutes: 348.0001, 348.0002, 348.0003, 348.0004, 348.0005, 348.0007, 348.0008, 348.0009, 348.0010, 348.0011, 348.00115, 348.0012, 348.9950, 348.9951, 348.9952, 348.9953, 348.9954, 348.9956, 348.9957, 348.9958, 348.9959, 348.9960, and 348.9961.

This bill creates an undesignated section of Florida Law.

### IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Infrastructure and Security on March 12, 2019:**

The CS:

- Revises a number of provisions relating to the terms and conditions of the transfer of the MDX and its asset and liabilities to the FDOT.
- Limits revisions to uses of the proceeds of the Charter County and Regional Transportation System to Miami-Dade County and provides additional provisions relating to distribution of such proceeds to municipalities in that county.
- Reenacts and makes permanent the rebuilt motor vehicle inspection program in Miami-Dade County.
- Removes the prohibition against the FDOT using toll revenue from HOT or express lanes to offset funding the facility would receive if the facility were not a HOT lane or express lane.
- Removes the provisions that revised the membership of the Miami-Dade County metropolitan planning organization.
- Removes provisions relating to the preservation principle of the FDOT’s goals.
- Removes provisions that would provide an additional exception from the prohibition against the FDOT selling property at a price less than the FDOT’s current estimate of

<sup>49</sup> FDOT, *2019 Agency Legislative Bill Analysis: SB 898*, February 12, 2019, at p. 8 (On file in the Senate Infrastructure and Security Committee).

<sup>50</sup> See FDOT, *2019 Agency Legislative Bill Analysis: SB 1044*, February 14, 2019, at pp. 7-8 (On file in the Senate Committee on Infrastructure and Security). SB 1044 addresses a similar issue related to HOT lanes.

value after determining property of a specified value is not needed for a transportation facility.

B. Amendments:

None.

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

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