

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 684

INTRODUCER: Senator Brandes

SUBJECT: Department of Transportation

DATE: March 9, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

SB 684 directs the Florida Department of Transportation (FDOT) to allow any person to purchase a commuter pass for each motor vehicle the person owns at an annual cost of \$60 per vehicle, which exempts the motor vehicle from any Pinellas Bayway System tolls during the term of the pass. Funds collected from the sale of the commuter passes must be deposited into the State Transportation Trust Fund (STTF), or in the Turnpike General Reserve Trust Fund if the system is transferred to the Florida Turnpike Enterprise (FTE), and the funds must be used for the operation and maintenance of the system.

In addition, the bill requires the FDOT or the FTE, as appropriate, to:

- Index the annual commuter pass to the Consumer Price Index (CPI), rounded to the nearest dollar, no more frequently than once a year and no less frequently than once every five years.
- Use the first \$10 of each commuter pass sold during the first 12 months after July 1, 2021, for landscaping and beautification of the system and, beginning July 1, 2022, to use no less than \$100,000 annually for the same purpose.
- Index the \$100,000 to the CPI beginning July 1, 2027, and every five years thereafter, with the result standing as the annual limitation on use of the funds for landscaping and beautification until the next scheduled adjustment, with any amounts that exceed the adjusted annual limitation to be deposited into the appropriate trust fund.

The bill takes effect July 1, 2021.

II. Present Situation:

Pinellas Bayway

The Pinellas Bayway System, currently owned by the Florida Department of Transportation (FDOT), is a tolled system of bridges and causeways that provide a connection between St.

Petersburg Beach, Fort DeSoto Park, and Interstate 275. The system is approximately 15.2 miles in length and includes 1.3 miles of bridges.¹ Tolls on the Pinellas Bayway System are collected by the FTE.

History of the Bayway System

In 1968, the predecessor of the FDOT entered into a settlement agreement in *Leonard Lee Ratner, Esther Ratner, and LEECO Gas and Oil Co., vs. State Road Department of the State of Florida*.² In the settlement agreement, the State Road Department agreed that owners and residents of real property in the Bayway Isles Development would have the right to purchase an annual pass through the toll gate at the easterly terminus of the Bayway system in St. Petersburg for \$15 per vehicle. That agreement remains in place.

In 1985, the Legislature authorized a \$50 “annual” pass for any person’s owned motor vehicles which exempted such vehicles from Bayway tolls during the term of the pass. Funds collected from sales of the pass were to be used first for payment of annual operating costs and, second, to discharge bond indebtedness. Thereafter, these funds, together with tolls collected for use of the Bayway, were to be used for a reserve construction account for “Phase II” of Bayway improvements. Upon completion, toll collection was to continue and be used to reimburse the FDOT for all accrued maintenance costs for the Bayway.³

In 1995, enacted legislation amending the 1985 law required a portion of the tolls collected to first be used for construction of Blind Pass Road/SR 699 improvements, and then for Phase II of the Bayway improvements. On-going toll collection after completion of Phase II remained in place to be used to reimburse the FDOT for all accrued maintenance costs.⁴

In 2014, section 48 of ch. 2014-223, L.O.F., repealed reference to the Blind Pass Road/State Road 699 improvements and provided that funds in the reserve construction account be used for the widening of State Road 682 from State Road 679 west to Gulf Boulevard. By the time the Blind Pass Road/SR 699 improvements had been completed, the bridge on State Road 679 over Boca Ciega Bay has been declared structurally deficient. However, no funds for replacement of the bridge were included in the FDOT District work program. The FDOT advised that transfer of the Bayway system from the FDOT to the FTE would allow replacement of the structurally deficient bridge to be moved up from 2020 to 2017 in the FDOT work program and to be funded through a combination of the accrued reserve account revenues and other financing available to the FTE.

In the 2016 Session, HB 7061 was enacted. Among other transportation-related provisions, the legislation created s. 338.165(11), F.S., authorizing the FDOT to transfer the Pinellas Bayway System to become part of the turnpike system. The bill also preserved the provisions of the *Ratner* settlement agreement and final judgment by retaining the ability to purchase a \$15 annual resident pass. Additionally, the bill transferred the construction reserve account to the FDOT

¹ See the 2020 Toll Operations Annual Report, *Pinellas Bayway System*, available at https://floridasturnpike.com/wp-content/uploads/2021/02/03_Department-owned-Facilities.pdf (last visited March 4, 2021).

² No. 67-1081 (Fla. 2nd Cir. Ct. 1968).

³ Ch. 85-364, L.O.F.

⁴ Ch. 95-382, L.O.F.

when ownership of the system is transferred to the FTE. Further, the bill repealed ch. 85-634, L.O.F., as amended by ch. 95-382 and section 48 of ch. 2014-223, L.O.F., thereby removing the authorization for purchase of the \$50 “annual” pass.

Consistent with the 2016 legislation, the SunPass website currently lists for purchase a \$15 resident pass that “expires on June 30th regardless of when the \$15 pass was purchased. Up to five passes may be purchased for a fee of \$15. The pass is valid at the East Plaza only. Proof of residency is required.”⁵

However, in addition to the resident pass, the site lists for purchase a \$50 “commuter” pass, “a yearly pass system for two-axle vehicles that expires on September 30th regardless of when the \$50 pass per vehicle was purchased. Pass is valid at all three Pinellas Bayway Plazas and available to all motorists.”⁶

Research reveals no specific grant of authority to the FDOT for the sale of “commuter” passes on the Bayway System.

Toll Indexing

Section 338.165(3), F.S., requires the FDOT, including the FTE, to index *toll rates* on existing toll facilities to the annual CPI or similar inflation indicators, no more frequently than once a year and no less frequently than once every 5 years as necessary to accommodate cash toll rate schedules. Toll rates may be increased beyond these limits as directed by bond documents, covenants, or governing body authorization or pursuant to FDOT administrative rule. It appears that indexing has never been applied to purchase amounts for any *passes*.

Landscaping and Beautification

Among the FDOT’s powers and duties, s. 334.044(26), F.S., directs the FDOT, in part, to:

[P]rovide for the enhancement of environmental benefits, including air and water quality; to prevent roadside erosion; to conserve the natural roadside growth and scenery; and to provide for the implementation and maintenance of roadside conservation, enhancement, and stabilization programs. At least 1.5 percent of the amount contracted for construction projects shall be allocated by the department *statewide* for the purchase of plant materials. Department districts may not expend funds for landscaping in connection with any project that is limited to resurfacing existing lanes unless the expenditure has been approved by the department’s secretary or the secretary’s designee.

Generally, when allocating funds to the FDOT’s districts, a unit price per area for landscape maintenance is determined. The unit prices are multiplied by the applicable landscape areas in the FDOT’s Roadway Characteristic Inventory.⁷ Each district then receives its budget for

⁵ See SunPass, *Tolls*, available at <https://www.sunpass.com/en/tolls/tollsSunPass.shtml> (last visited March 4, 2021).

⁶ *Id.*

⁷ According to the FDOT’s website, “RCI is a database of roadway physical, administrative and conditions.” Its current applications include funding apportionment. See the FDOT’s graphic available at [https://www.fdot.gov/docs/default-source/statistics/multimodaldata/multimodal/Roadway-Characteristic-Inventory-\(RCI\).pdf](https://www.fdot.gov/docs/default-source/statistics/multimodaldata/multimodal/Roadway-Characteristic-Inventory-(RCI).pdf) (last visited March 5, 2021).

landscape maintenance based on those calculations. Maintenance is performed in-house or by contract, with the majority being performed by contract. Local agencies also maintain landscape areas per agreement with the FDOT.⁸

III. Effect of Proposed Changes:

The bill provides the FDOT with statutory authority for an existing commuter pass relating to the Pinellas Bayway System, indexes the cost of the pass to the CPI, sets a minimum amount for annual expenditures for landscaping and beautification of the system, periodically indexes the minimum amount, and provides for use of funds collected from sale of the passes.

Section 1 of the bill creates an undesignated section of law directing the FDOT to allow any person to purchase a commuter pass for each motor vehicle the person owns at an annual cost of \$60 per vehicle, exempting the vehicle from any Pinellas Bayway System tolls during the term of the pass. Funds collected from the sale of the commuter passes must be deposited into the STTF, or in the Turnpike General Revenue Fund if the system is transferred to the FTE. The funds must be used for the operation and maintenance of the system.

The bill directs the FDOT or the FTE, as appropriate, to index the annual commuter pass cost to the annual CPI or similar inflation indicators, rounded to the nearest dollar. CPI adjustment to the commuter pass cost may be made no more frequently than once a year and no less frequently than once every five years. This is the same adjust for inflation required of the FDOT and the FTE.

Notwithstanding the requirement to deposit funds collected from sale of the passes into the STTF to be used for operation and maintenance of the system, the bill requires the first \$10 of each pass sold during the first 12 months after July 1, 2021, to be used by the FDOT or the FTE, as appropriate, for landscaping and beautification of the system.

Beginning July 1, 2022, the FDOT or the FTE, as appropriate, must use no less than \$100,000 annually for such landscaping and beautification. Beginning July 1, 2026, and every five years thereafter, the FDOT or the FTE, as appropriate, must index the \$100,000 annual minimum amount to the CPI, as well, the result of which would stand as the new annual limitation on use of the funds for landscaping and beautification until the next scheduled adjustment. Any amounts collected that exceed the adjusted annual limitation must be deposited into the STTF and used for operation and maintenance of the system.

Lastly, the funds provided in the bill for landscaping and beautification of the system are in addition to any funds otherwise allocated by the FDOT or the FTE, as appropriate, for such purposes.

The bill takes effect July 1, 2021.

⁸ See the FDOT email to committee staff dated March 5, 2021 (on file in the Senate Transportation Committee).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19, of the Florida Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

The bill increases an existing fee and provides for its use. The bill requires approval by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None identified.

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

The bill increases the existing fee for a Bayway System commuter pass from \$50 to \$60 annually.

B. Private Sector Impact:

Purchasers of the commuter pass will be required to pay \$60 annually, which amount would be adjusted to inflation as specified.

C. Government Sector Impact:

According to the FDOT, an *average* of approximately 11,000 passes are sold, which under the bill would produce approximately \$110,000 for the first year. However, based on the FDOT’s estimated increase of about \$1.00 to the pass price due to indexing,

approximately \$11,000 would be generated in year 2 and beyond.⁹ This amount would be insufficient to meet the requirement that the FDOT use an annual minimum amount of \$100,000 for landscaping and beautification, adjusted as provided in the bill to inflation. The FDOT would be required to find another source of revenue for the annual minimum expenditure requirement, in addition to any funds otherwise allocated by the FDOT or the FTE for landscaping and beautification purposes.

VI. Technical Deficiencies:

The bill is effective July 1, 2021. Commuter passes expire annually on September 30th, regardless of when the pass was purchased. The FDOT advises that the \$10 increase in the cost of the commuter pass will require rulemaking, which would not be completed in time for passes to be issued beginning October 1, 2021, at the \$60 price.¹⁰

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

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.

⁹ See the FDOT's email to committee staff dated January 4, 2021 (on filed in the Senate Transportation Committee).

¹⁰ *Id.*