

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB1456

SPONSOR: Government Oversight and Productivity Committee and Senator Sebesta

SUBJECT: Department of Transportation

DATE: April 1, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/1 amendment</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>ATD</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides for the reorganization of the Florida Department of Transportation’s (FDOT) management structure by permitting the Secretary of Transportation to combine, separate, or delete, as needed, a number of statutorily required offices. The bill provides flexibility to the secretary for the appointment of assistant secretaries and deputy assistant secretaries. The bill also provides district secretaries flexibility in appointing district directors.

The CS directs the removal of all tolls and precludes the use of future tolls on the Navarre Bridge in Santa Rosa County.

The CS permits a revision of previous cash advances made to the Emerald Coast Bridge Authority so that a good faith attempt at repayment is not deemed a failure to repay by the FDOT.

The CS authorizes both the FDOT and the respective expressway authorities to engage in public-private partnerships for transportation projects. For FDOT managed projects, the proposal must be included in the agency’s five-year work program adopted and funded by the Legislature.

This bill substantially amends the following sections of the Florida Statutes: ss. 20.23, 110.205, 338.251, 334.30, and 348.0004.

II. Present Situation:

In s. 20.23, F.S., the Secretary of the Department of Transportation must appoint two assistant secretaries -- one for Transportation Development and Operations and one for Transportation Support. The following offices are established statutorily:

Administration
Planning and Environmental Management
Design
Highway operations
Right-of-Way
Toll Operations
Information systems
Motor carrier compliance
Management and budget
Comptroller
Construction
Maintenance
Materials

Each office is required to be headed by a manager appointed by the secretary. No office at or above the division level may be established without specific legislative approval.

Currently, the secretary is required to appoint a state transportation development administrator, a state transportation operations administrator, and a state public transportation and modal administrator. Each is classified as a deputy assistant secretary.

Each district secretary is permitted to appoint district directors for transportation development, operations, and support, or, until July 1, 2005, district directors for planning and programming, production, operations, and administration.

Section 110.205, F.S., provides Senior Management Service status to specific positions within various state agencies including the FDOT.

The Navarre Bridge is one of five FDOT-owned and privately staffed bridges in the state. Built in 1960 at a cost of \$2 million the bridge is funded through a one-way toll levy of 50 cents per motor vehicle imposed in the southbound lane to Navarre Beach. The toll has been at its present level since 1995 when it was raised from the initial levy of 25 cents. A proposal to increase the levy to \$1 was not approved by the 2003 Legislature. The cost of the bridge was shared among three revenue sources¹ all of which paid the debt service on the bonds issued for its construction. There is no bonded debt remaining on the structure, but there is a growing and unserviced debt to the FDOT of some \$4 million that is arguably in default. Santa Rosa County is also owed an additional \$321,000 that is secured by local option gas tax revenues.

The Emerald Coast Bridge Authority, formerly the Fort Walton Beach Area Bridge Authority, has received cash advances from the FDOT of which some \$1 million remains outstanding. The successor authority assumed this obligation but has not made any repayment and is technically in default, although no demand has been served.

¹ State bonds, state transportation monies, and dedication of proceeds of locally imposed gas tax revenues by the Santa Rosa County Commission.

Section 334.30, F.S., provides for the building and financing of transportation facilities by private entities. The section provides the FDOT may receive or solicit proposals and, with Legislative approval, enter into agreements with private entities for the building, operation, ownership, or financing of transportation facilities.

An applicant seeking to construct a private transportation facility pursuant to this section must submit an application fee with the submission of the proposal sufficient to pay the costs of evaluating the proposal (\$50,000). The FDOT must determine a proposed project: (1) is in the public's best interest; (2) does not require state funds to be used unless there is an overriding state interest; and (3) would have adequate safeguards to ensure no additional costs or service disruptions by the traveling public. The section requires all reasonable costs for the project to be borne by the private entity. Agreements between the FDOT and the private entity may authorize the private entity to impose tolls; however, the amount of tolls and use of toll revenues may be regulated by the FDOT.

Each private transportation facility constructed pursuant to this section must comply with all requirements of federal, state, and local laws; state, regional and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions which the FDOT determines to be in the public's best interest.

In 2002, the FDOT had not entered into any agreements under this law and only had two proposals submitted for review. Both proposals at that time were unable to secure adequate financial backing to produce a project.

However, in early 2003 the FDOT received a series of unsolicited proposals from the Toll Road Corporation of America for an "I-95 Reversible HOT Lane System" in Miami that could be a candidate for this program if certain legislative changes are made. The proposed project involves the construction of reversible toll lanes in the median of I-95. The Miami-Dade County Metropolitan Planning Organization included a version of this I-95 High Occupancy Toll (HOT) Lane project in its long-range Transportation Improvement Plan.

Section 348.0004, F.S., establishes the purpose and powers of expressway authorities created by the Florida Expressway Authority Act. The Miami-Dade County Expressway Authority is the only functioning expressway authority created by the Florida Expressway Authority Act. Section 348.0004(2)(m), F.S., authorizes the Miami-Dade County Expressway Authority to consider unsolicited proposals from private entities for the planning, designing, engineering, constructing, operating, maintaining, and owning of additional expressways in Miami-Dade County.

III. Effect of Proposed Changes:

The bill allows for a reorganization of the FDOT management structure by removing the requirement to establish specific offices and effectively renaming the existing offices areas of program responsibility. It gives the secretary the ability to combine, separate, or delete existing statutory offices in consultation with the Governor's Office.

The bill revises s. 20.23, F.S., to permit the secretary to appoint up to three assistant secretaries rather than requiring the appointment of two to statutorily-created positions. The bill removes the requirement to appoint deputy assistant secretaries to statutory positions, allowing the appointment of deputy assistant secretaries or directors with responsibility for accomplishing the mission and goals of the department including, but not limited to, the areas of program responsibility. Further, the bill allows each district secretary to appoint up to three district directors, or, until July 1, 2005, up to four district directors without specifying titles or positions by statute.

The bill revises s. 110.205, F.S., to update a reference.

Section 334.30, F.S., is amended to authorize the FDOT to use state resources and to enter into public-private partnership agreements for a transportation facility project that is either in the FDOT adopted and legislatively funded work program. The section requires the FDOT to ensure all reasonable costs to the state related to transportation facilities that are not part of the State Highway System are to be borne by the public-private entity and all reasonable costs to the state, local governments, and utilities are to be borne by the public-private entity for transportation facilities that are owned by private entities.

The section is further amended to authorize the FDOT to request proposals for projects or, if the FDOT receives an unsolicited proposal the FDOT must publish notice in Florida Administrative Weekly and a newspaper of general circulation at least once a week for 2 weeks stating the FDOT has received the proposal and will accept other proposals for the same project for 60 days after the initial publication. A copy of the notice must be mailed to each local government in the affected area.

After the public notification period has expired, the FDOT will rank the proposals in order of preference. When ranking the proposals, the FDOT may consider professional qualification, general business terms, innovative engineering or cost reduction terms, finance plans, and the need for state funds. The FDOT will negotiate with the top-ranked proposer, and if the FDOT is not satisfied with the results of the negotiations, the FDOT may terminate negotiations with the top-ranked proposer and begin negotiations with the lower ranked proposer using the same procedure. If there is only one proposer, the FDOT may negotiate in good faith, and terminate negotiations if the FDOT is not satisfied with the results of the negotiations. The section provides the FDOT, at its discretion, may reject all proposals at any point in the process up to completion of a contract with a proposer.

The FDOT may lend funds from its Toll Facilities Revolving Trust Fund for such public-private partnerships provided that the private entity must comply with s. 338.251, F.S., and provide investment grade debt with credit assurances acceptable to the agency.

The CS also permits expressway authorities the ability to enter into similar agreements with to share in the development of public-private transportation facilities. The expressway authority must determine beforehand that such a project is in the best interests of the public; does not require state funds, other than funds allocated as part of the state highway system; and has adequate safeguards to prevent service disruptions in the event of its termination. The CS authorizes loans and grants from the State Transportation Trust Fund. The CS further authorizes

loans from the Toll Facilities Revolving Trust Fund such public-private partnerships sponsored by expressway authorities.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill removes the 50 cent toll on the Navarre Bridge which will result in a reduction in revenues of \$564,000 in 2004.

B. Private Sector Impact:

Motorists using the Navarre Bridge will no longer have to pay the fifty-cent toll or purchase an annual pass for \$25.

C. Government Sector Impact:

As noted above, the effect of the repeal of tolls on the Navarre Bridge will eliminate FDOT operating costs of \$549,000. The private company employing the toll operators will have its contract terminated and the staff will be unemployed. The FDOT will continue to incur \$101,608 in annual operating costs.

The FDOT reports that the Navarre Bridge has experienced sustained negative cash flow for the past several years, and is estimated to continue to incur negative cash flow for the foreseeable future, as follows:

Estimated Navarre Bridge Revenue and Expenditures, FY 2004-2007

Fiscal Year	\$.50 Toll	Operating Expenses	Maintenance	Repair & Renovation	Total	Net Revenue	Payment to STTF
2004	\$ 564,000	\$ 594,023	\$ 56,960	\$ 44,648	\$650,631	(\$ 86,631)	\$ 3,197,427
2005	572,000	568,239	58,945	282,543	909,736	(337,736)	3,535,163
2006	579,000	588,127	61,017	250,703	899,747	(320,847)	3,856,010
2007	587,000	608,712	63,153	143,008	814,873	(227,873)	4,083,883

The FDOT reports that recent repairs to the bridge have extended its useful life by an additional 10 to 15 years. Since the bridge is close to the end of its nominal useful life, the cost of any replacement structure will have to be borne by the FDOT or shared with other governments using a financing means other than tolls. The existing bridge does not have any major repairs or renovations scheduled through 2009. The removal of the toll authorization on the Navarre Bridge essentially removes any revenues that could be used to service the cumulative debt in the State Transportation Trust Fund. One consequence of this could be a certification to the Chief Financial Officer by the FDOT that this indebtedness is uncollectible with a request that it be extinguished and removed from the state accounting system as an account receivable. The Santa Rosa County Commission has a receivable in the amount of \$321,000 that also has not been serviced.

The Emerald Coast Bridge Authority assumed the financial indebtedness of some \$1 million of its predecessor authority. That debt has not been serviced and is in technical default.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A close variation of this proposal was introduced in the 2003 Legislature. The distinguishing feature of that bill, not present in this bill, is the explicit use of an alternative financing arrangement to fund the public-private partnership. That mechanism, referred in the Internal Revenue Code as a 63-20 not-for-profit corporation, permits the issuance of debt on behalf of a public agency which assumes ownership of the assets upon its satisfaction. As a special purpose entity, the debt does not constitute an obligation of a public agency, even though it is afforded tax-exempt status. Such mechanisms have been used for transportation projects in other states and localities. Because of the variable nature of the revenue stream in such undertakings, the underlying debt assumes a speculative character without credit enhancements raising it to an investment grade.

VIII. Amendments:

None.