

HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #: SB 2152

FINAL HOUSE FLOOR ACTION:
85 Y's 33 N's

SPONSOR: Budget

GOVERNOR'S ACTION: Approved

COMPANION BILLS: N/A

SUMMARY ANALYSIS

SB 2152 passed the House on May 7, 2011. The bill was approved by the Governor on May 26, 2011, chapter 2011-64, Laws of Florida, and becomes effective July 1, 2011. The bill contains various provisions related to transportation, including technical and conforming changes throughout Florida Statutes. Specifically, the bill:

- Clarifies that the Florida Department of Transportation (DOT) is authorized to adjust toll rates by rule and is not subject to the legislative ratification requirement provisions of ss. 120.54(3)(b) and 120.541., F.S.;
- Authorizes the use of excess toll revenues from the Alligator Alley Toll Road to develop and operate a fire station at mile marker 63 on Alligator Alley to provide, fire, rescue, and emergency management services to the adjacent counties along Alligator Alley;
- Deletes references for lease-purchase agreements and obsolete expressway authority statutes;
- Repeals various sections of law relating to and authorizing lease purchase agreements between certain transportation authorities and DOT;
- Clarifies that an airport providing communications services within its own confines is exempt from the definition of a telecommunications company; and
- Directs state agencies to develop and adopt assessment protocols for evaluating damaged equipment before a request for purchase is approved.

The bill is estimated to have an indeterminate, negative fiscal impact on the State Transportation Trust Fund.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Toll Adjustments

Current Situation

Section 120.54(3)(b), F.S., requires agencies, prior to the adoption, amendment, or repeal of any rule, other than an emergency rule, to prepare a statement of estimated regulatory costs (SERC) of the proposed rule if the rule either will have an adverse impact on small business or will increase aggregate regulatory costs.¹ The required contents of a SERC are delineated in s. 120.541(2), F.S., and include:

- An economic analysis showing whether the rule, directly or indirectly, is likely to have a specified adverse economic impact, or increase regulatory costs, in excess of \$1 million in the aggregate within 5 years of the rule going into effect.²
- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule,
- A good faith estimate of the costs to the agency and other governmental entities and the anticipated effect on state or local revenues,
- A good faith estimate of the transactional costs likely to be incurred by public and private entities in complying with the rule,
- An analysis of the impact on small businesses, and small cities and counties, and
- A description of any proposed alternatives along with a statement adopted such alternative or a statement of reasons rejecting the alternative.

Section 120.541(3), F.S., provides that, if the adverse impact or regulatory costs of the rule exceed certain economic criteria, the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.³

Section 338.155(1), F.S., provides that DOT is authorized to adopt rules pursuant to Ch. 120, F.S., relating to the payment, collection, and enforcement of tolls. Section 338.165(3), F.S., requires DOT, including the turnpike enterprise, to index toll rates on existing toll facilities “to the annual Consumer Price Index or similar inflation indicators.” Toll rate adjustments for inflation may be made no more frequently than once a year and must be made no less frequently than once every 5 years.

Proposed Changes

The bill amends s. 120.80, F.S., to exempt DOT’s indexing of toll rates from the statutory requirements relating to SERCs and legislative ratification. The adjustment of toll rates would still be subject to the state’s rulemaking procedures and scrutiny in the rulemaking process.⁴

¹ S. 120.541(1)(b), F.S., added by Ch. 2010-279, Laws of Florida.

² S. 120.541(1)(b), F.S., added by Ch. 2010-279, Laws of Florida.

³ Section 120.541(3), F.S., originated with HB 1565, passed during the 2010 regular session but vetoed by the Governor. On November 16, 2010, the Legislature, in special session, voted to override that veto and the bill became law as Chapter 2010-279, L.O.F.

⁴ S. 120.54(3), F.S.

Alligator Alley Fire Station

Current Situation

Section 338.26, F.S., provides that Alligator Alley, designated as State Highway 84 and federal Interstate Highway 75, is a convenient and necessary connection of Florida's east and west coasts, and directs the Department of Transportation to continue the system of tolls on this highway.⁵ The statute further provides that fees generated from these tolls shall, among other requirements, be used to operate and maintain the highway and toll facilities.⁶

Proposed Changes

The bill amends s. 338.26, F.S., to provide that toll revenues generated on Alligator Alley be additionally used to develop and operate a fire station at mile marker 63, providing fire, rescue and emergency management services to the adjacent counties along Alligator Alley.

Lease Purchase Agreements

Current Situation

Various sections of ch. 348, F.S., provide toll authorities the ability to enter into lease-purchase agreements with DOT and the department is authorized to enter into these agreements by s. 334.044, F.S. Additionally, s. 339.08(1)(g), F.S., allows the department to lend or pay a portion of the operation and maintenance (O&M) and capital costs of any revenue-producing transportation project located on the State Highway System (SHS) or that is demonstrated to relieve traffic congestion on the SHS. The department pays such costs using funds from the State Transportation Trust Fund. Using the authority provided in these sections, the Florida Department of Transportation has, over the years, entered into lease-purchase agreements with legislatively-approved expressway and bridge authorities throughout the state.

In a typical lease-purchase agreement between the department and an expressway authority, DOT, as lessee, agrees to pay the O&M (which usually includes replacement and renewal) costs of the associated toll facility. Upon completion of the lease-purchase agreement, ownership of the facility would be transferred to the State and DOT would retain all revenues collected, as well as the O&M responsibility. The department assumes a position which permits reimbursement of O&M costs only after the authority's debt service and administrative cost requirements have been satisfied. Lease-purchase agreements are currently in place for the Mid-Bay Bridge Authority, Santa Rosa Bay Bridge Authority, Orlando-Orange County Expressway Authority, and Tampa-Hillsborough County Expressway Authority, and these authorities collectively owe more than \$379 million to DOT under the terms of lease-purchase agreements.

Proposed Changes

The bill repeals various sections of law relating to and authorizing lease purchase agreements between certain transportation authorities and DOT, and further deletes references for lease-purchase agreements and obsolete expressway authority statutes. These changes are not intended to inhibit any of the existing lease purchase agreements currently in place, only future agreements. Obsolete tolling authorities deleted from Florida Statutes include: the Brevard County Expressway Authority, Broward County Expressway Authority, Pasco County

⁵ S. 338.26(2), F.S.

⁶ S. 338.26(3), F.S.

Expressway Authority, St. Lucie County Expressway Authority, Seminole County Expressway Authority, and the Southwest Florida Expressway Authority.

Airport Communications

Current Situation

Section 364.02, F.S., provides for definitions of telecommunications service and providers over which the Florida Public Service Commission is given jurisdiction for regulation. There are currently seven exceptions made to the term “telecommunications company” as defined in s. 364.02(13), F.S., and airports are not included on this list.⁷ Some airports, however, provide communications services and could be defined as a telecommunications company and thus be subject to additional regulation.

Proposed Changes

The bill amends Florida Statutes to clarify and exempt an airport that provides communications services within the confines of its airport layout plan from these telecommunications provisions.

Damaged Equipment

Current Situation

Each state agency is appropriated funding through operating capital outlay or other special appropriation categories, to provide their offices with necessary furnishings, equipment, machinery and necessary supplies. Subject to these basic budgetary constraints, agencies determine what equipment requires purchase or replacement.

Proposed Changes

The bill provides Legislative intent that purchases of new equipment, machinery, or inventory by any state agency as a result of damage from fire, smoke, water, or similar incident be limited to those absolutely necessary due to irreparable condition. By January 1, 2012, each agency is required to develop and adopt assessment protocols for evaluating and determining if repairs are possible before requests to purchase replacement equipment is approved.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The provisions relating to the development and operation of a fire station along Alligator Alley will not negatively impact toll collections, but will significantly increase state expenditures. The exact fiscal impact of this issue cannot be determined at this time.

⁷ S. 364.02(13), F.S.

To the extent that the provisions regarding damaged equipment replacement slow or decrease expenditures made for this purpose, there could be a reduction in these state expenditures. The impact of this requirement, however, is not quantifiable at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The provisions relating to the development and operation of a fire station along Alligator Alley may impact the amount of excess toll revenues ultimately transferred to the Everglades Trust Fund of the South Florida Water Management District pursuant to Florida Statute.⁸ The exact fiscal impact of this issue cannot be determined at this time.

2. Expenditures:

Indeterminate. To the extent there are less excess toll revenues available for subsequent transfer to the South Florida Water Management District after satisfying the additional contract and operational obligations for these revenues along Alligator Alley, there may be a commensurate decrease in expenditures associated with authorized environmental projects within the district.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁸ S. 338.26(3), F.S.