

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 14, 1998 Revised: _____

Subject: The Department of Transportation

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>McAuliffe</u> | <u>Johnson</u> | <u>TR</u> | <u>Favorable/CS</u> |
| 2. | <u> </u> | <u> </u> | <u>CA</u> | <u>Withdrawn</u> |
| 3. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 4. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 5. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

I. Summary:

This CS: provides that drivers must yield to public transit buses reentering traffic; provides that the Department of Transportation may enter into an agreement with utilities to participate in the cost of clearing and grubbing; provides a definition of a commercial or industrial zone and an unzoned commercial or industrial area for the purposes of outdoor advertising; provides that communication towers may not be recognized as commercial or industrial activities; corrects an error concerning the jurisdiction of public roads; deletes the requirement that a contractor’s surety approve all supplemental contract agreements.

The CS also: revises provisions relating to the State Arbitration Board; provides that the department may enter into indemnity contracts with other governmental entities; authorizes the department to restrict the sale, transfer or lease of any portion of the turnpike system; provides counties may exempt certain trucks carrying agricultural products from local weight limits when the local road offers the only access into and out of a work site; authorizes consultants to be included in the department’s owner controlled insurance plan; provides for a determination of environmental feasibility by the DEP on Turnpike projects, and exempts hardship and protective purchases of advance right of way; provides the DOT flexibility to lower the reinstatement fee for outdoor advertising permits if the owner demonstrates a good faith error prior to DOT removing the sign, and provides that competing applications for the same site will not be approved until the sign with the expired permit has been removed.

Finally, the CS: provides that persons who have their driver’s license suspended for failure to comply with a civil penalty, failure to attend a driver improvement school or for failure to appear at a scheduled hearing may pay the \$25 reinstatement fee to the tax collectors if the tax collector clears the suspension; changes the renewal period for a mobile home from the month of January to the month of December; and, provides that suits at law and in equity may be brought and

maintained by and against the department on any claim arising from breach of express or implied provision of a written agreement or a written directive issued by the department pursuant to the written agreement.

This CS substantially amends sections 316.555, 318.15, 318.18, 320.055, 332.004, 334.0445, 335.0415, 337.11, 337.185, 337.19, 337.29, 337.403, 338.223, 338.229, 479.01, 479.07, 479.16, and 832.06, and creates section 316.0815 of the Florida Statutes.

II. Present Situation:

Currently, if a transit bus is trying to exit a “pull-out” bay, a specially prepared area for a bus to pull into to pick up or unload passengers, the bus must wait for traffic to clear before merging back into traffic. On busy roads transit buses have difficulty reentering traffic.

Section 316.555, F.S., provides that the department and local authorities may prescribe weight and speed limits lower than the state requires. Local authorities may establish weight limits on roads under their jurisdiction and require permits for vehicles which exceed the posted weight.

Section 318.15, F.S., provides that persons who have their driver’s license suspended for failure to comply with a civil penalty, failure to attend a driver improvement school or for failure to appear at a scheduled hearing must pay the \$25 reinstatement fee. Only the Department of Highway Safety and Motor Vehicles or the clerk of the court may collect the reinstatement fee. Tax collectors are authorized to clear a suspension, but are not authorized to collect the reinstatement fee.

Section 318.18, F.S., provides that a person exceeding the speed limit in a construction zone will pay double the speeding fine.

Section 320.055, F.S., provides that the renewal period for mobile homes is the 31-day period beginning January 1. Under current law, some mobile homes qualify to be taxed as real property, while others pay a license tax, and most property appraisers make the determination of which mobile homes are taxed as real property in the month of January.

Section 334.0445, F.S., authorizes the department to conduct a pilot program to develop and implement a model career service classification and compensation system. The authorization for the program ends on July 1, 1999.

Section 335.0415, F.S., provides that the jurisdiction of public roads and the responsibility for operation and maintenance within the right-of-way of any road within the state, county, and municipal road system is that which existed on July 1, 1995.

Section 337.11, F.S., provides that supplemental agreements to contracts between the department and the contractor must be approved by the contractor’s surety. This is an unnecessary provision since contractors’ surety for the original contract also covers all supplemental agreements.

The section further authorizes the department to provide an owner controlled insurance plan. This allows the department to contract for insurance for all contractors and subcontractors on a department project. Consultants are not currently authorized to participate in the owner controlled insurance plan.

Section 337.185, F.S., provides for the State Arbitration Board to facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between the department and the various contractors with whom it transacts business. All claims in an amount up to \$100,000 per contract must go before the State Arbitration Board, and, at the contractor's option, all claims up to \$250,000 per contract that cannot be resolved by negotiation between the department and the contractor may go before the board.

The State Arbitration Board is composed of three members: one appointed by the department; one elected by the construction companies under contract with the department; and one chosen by agreement of those two members. Each member serves a 2-year term. Board members which are not employees of the department may be compensated for their time not to exceed \$750 per day. Compensation to board members is paid for by fees which are paid to the board by the party requesting arbitration.

Section 337.19, F.S., provides that suits at law and in equity may be brought and maintained by and against the department on any claim under contract for work done; provided, that no suit sounding in tort shall be maintained against the department.

Section 337.29, F.S., provides for the vesting of title of roads. The section does not provide that the department may enter into indemnity contracts with other governmental entities.

Section 778.28(18), F.S., provides that neither the state, or any agency or subdivision of the state, waives any defense of sovereign immunity or increases the limits of its liability, upon entering into a contractual relationship with another agency or subdivision of the state. Such a contract must not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence or to assume any liability for the other party's negligence. This does not preclude a party from requiring a nongovernmental entity to provide such indemnification or insurance.

Section 337.403, F.S., provides that, when necessary for a Department of Transportation project, utility owners must remove or relocate utilities at their own expense. One exception occurs when the project is on the federal-aid interstate system and federal funding is identified for at least 90 percent of the cost under the Federal Aid Highway Act, in which case the department pays for the removal or relocation with federal funds. Another exemption occurs where the cost of the utility improvement, installation, or removal exceeds the department's official cost estimates for such work by 10 percent. In the latter exception, the department's participation is limited to the difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract.

Most construction contracts impact utilities, generally requiring relocations. These relocations often occur in areas where clearing and grubbing of existing vegetation or removal of other features is necessary. Currently, these activities occur as part of the construction contract (i.e., the contractor performs the clearing and grubbing, which then allows the utility company to relocate the utilities.) Delays are sometimes caused by lack of adequate coordination, material or labor issues, or scheduling conflicts between the contractor's clearing and grubbing activities and the utility company's needs. According to the department, these delays extend project time and add cost.

Section 338.223, F.S., provides that the department may acquire lands and property for proposed turnpike projects before making a final determination of the economic feasibility of a project.

Section 338.229, F.S., provides a pledge to turnpike bond holders. The section provides that the state will not limit or restrict the rights vested in the department to construct, reconstruct, maintain, and operate any turnpike project. Bond rating agencies have expressed concern that the threat of the sale or transfer of portions of the turnpike may negatively affect the turnpike's bond rating.

Chapter 479, F.S., and the agreement between Florida and the U.S. Department of Transportation requires outdoor advertising signs to be located in commercial or industrial zones, or in unzoned commercial or industrial areas.

Section 479.01, F.S., provides that a "commercial or industrial zone" means an area within 660 feet of the nearest edge of the right-of-way of the interstate or federal-aid primary system designated predominately for commercial or industrial use under the future land use map of the comprehensive plan. In a case where the local government has not enacted a comprehensive plan by local ordinance, the zoning of the area determines whether the area may be designated for commercial and industrial use for the purposes of outdoor advertising.

The section further provides that an "unzoned commercial or industrial area" means an area within 660 feet of the nearest edge of the right-of-way of the interstate or federal-aid primary system where land use is not designated by a future land use map or zoning regulations, where there are located three or more separate and distinct industrial or commercial uses located within a 1,600 foot radius of each other and generally recognized as commercial or industrial by zoning authorities in the state.

The section provides the following are not recognized as commercial or industrial activities:

1. Signs;
2. Communication towers;
3. Agriculture, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;
4. Transient or temporary activities;
5. Activities not visible from the main-traveled way;

6. Activities conducted more than 660 feet from the nearest edge of the right-of-way;
7. Activities conducted in a building principally used as a residence;
8. Railroad tracks or minor sidings.

The department's interpretation of comprehensive plans and land use maps, which are developed from the inexact definition of a zoned or unzoned commercial or industrial area provided in this section for the purpose of outdoor advertising placement, has resulted in numerous lawsuits by outdoor advertising companies challenging the department's interpretation.

Section 479.07, F.S., provides that if a permittee for an outdoor advertising sign does not pay for the permit, and does not respond to a notice of violation from the department within 30-days, the department will, within 30 days, issue a final notice of sign removal, and may remove the sign within 90 days of the final notice of sign removal. However, if the permittee demonstrates that a good faith error by the permittee resulted in the cancellation or nonrenewal of the permit the department may reinstate the permit if: the sign has not yet been disassembled; conflicting applications have not been filed; a reinstatement fee of \$300 is paid; all other delinquent fees are paid; and, the permittee reimburses the department for all costs resulting from the cancellation.

Section 479.16, F.S., currently has contradicting measurements (16 and 8 square feet) for outdoor signs which do not require a permit.

Section 832.06, F.S., provides for the prosecution of worthless checks given to a tax collector. Some tax collectors provide driver's license services and are not currently authorized to prosecute for worthless checks written to the tax collectors for a driver's license.

III. Effect of Proposed Changes:

Section 316.0815, F.S., is created to provide that the driver of a vehicle must yield the right of way to a publicly owned transit vehicle traveling in the same direction when the transit vehicle driver has signaled and is reentering the traffic flow. This provision does not relieve the driver of a public transit bus from the duty to drive with due regard for the safety of all persons using the roadway.

Section 316.555, F.S., is amended to provide that counties may exempt trucks carrying agricultural products from local weight limits when the local road offers the only access into and out of a work site. This exemption does not apply to any truck exceeding 80,000 pounds or any bridge or other structure that has a posted weight restriction for safety purposes.

Section 318.15, F.S., is amended to authorize tax collectors to collect the \$25 reinstatement fee from persons who have their driver's license suspended for failure to comply with a civil penalty, failure to attend a driver improvement school or for failure to appear at a scheduled hearing if the tax collector clears the suspension.

Section 318.18, F.S., is amended to provide that a person exceeding the speed limit in a construction zone will pay double the speeding fine only when workers are present or operating equipment on the road or immediately adjacent to the road under construction.

Section 320.055, F.S., is amended to change the renewal period for a mobile home from the month of January to the month of December. Some mobile homes qualify to be taxed as real property while others pay a license tax, and most property appraisers make the determination of which mobile homes are taxed as real property in the month of January. Requiring all mobile homes which are not taxed as real property to register before January 1, will help the property appraisers with their appraisal and avoid unnecessary confusion.

Section 334.0445, F.S., is amended to extend the time period for the department to conduct a pilot program to develop and implement a model career service classification and compensation system to June 30, 2000.

Section 335.0415, F.S., is amended to clarify that the jurisdiction of public roads and the responsibility for operation and maintenance within the right-of-way of any road within the state, county, and municipal road system is that which exists on immediately preceding the adoption of chapter 95-257, L.O.F.

Section 337.11, F.S., is amended to provide that supplemental agreements to contracts between the department and the contractor do not have to be approved by the contractor's surety. This eliminates an unnecessary provision since contractors' surety for the original contract also covers all supplemental agreements.

The section further amended to authorize the department to include consultants in the owner controlled insurance plan.

Section 337.185, F.S., is amended to raise the contractual claim amount which must go to arbitration from \$100,000 to \$250,000 and the contractual claim amount which may go to arbitration at the claimant's option from \$250,000 to \$500,000. The section also provides that the DOT secretary may select an alternate or substitute to serve as the department's member of the arbitration board for any hearing or term, and clarifies that the DOT's board member may not be compensated if they are a current employee of the department. The section provides an hourly compensation for other board members of \$125 per hour and raises the daily maximum pay from \$750 to \$1,000, and raises the arbitration fees to cover administrative costs and compensation of the board.

Section 337.19, F.S., is amended to provide that suits at law and in equity may be brought and maintained by and against the department on any claim arising from breach of express or implied provision of a written agreement or a written directive issued by the department pursuant to the written agreement. In any such suit, the department and contractor shall have all the same rights, obligations, remedies and defenses as a private person under a like contract, except that no liability may be based on an oral modification of the written contract or written directive. The

section further amended to provide that no employee or agent of the department may be held personally liable to an extent greater than described under s. 768.28, F.S.

Section 337.29, F.S., is amended to provide that the department may enter into indemnity contracts with other governmental entities.

Section 337.403, F.S., is amended to authorize the Department of Transportation to contract directly with utility companies for clearing and grubbing work necessary for the relocation of utilities prior to letting a construction contract for a department project.

Section 338.223, F.S., is amended to require that the department have a determination of environmental feasibility before making advanced acquisition of lands and property for turnpike projects. The requirement for a determination of environmental feasibility does not apply to hardship and protective purchases of advance right-of-way by the department. Hardship purchases are purchases from a property owner of a residential dwelling of not more than four units who is at a disadvantage due to health impairment, job loss, or significant loss of rental income. A protective purchase means a purchase to limit development, building, or other intensification of land uses within the right-of-way needed for transportation facilities.

The section is further amended to require the department to notify the Department of Environmental Protection (DEP) to allow DEP to comment on the purchase. Costs to acquire and dispose of property acquired as hardship and protective purchases are considered costs of doing business for the department and are not to be considered in the determination of environmental feasibility for the project.

Section 338.229, F.S., is amended to provide that the department is authorized to restrict the sale, transfer, lease, other disposition or operation of any portion of the turnpike system, which reduces the revenue available for payment of bondholders.

Section 479.01, F.S., is amended to define a commercial or industrial zone as a parcel of land designated by both the future land use map of a comprehensive plan and the land development regulations of a local government as commercial or industrial. If the parcel of land is located in an area designated for multiple uses on the future land use map of a comprehensive plan and land development regulations do not clearly designate the parcel for a specific use, the area may be considered an unzoned commercial area for the purposes of outdoor advertising if there are located three or more separate and distinct conforming industrial or commercial activities where:

1. At least one of the commercial or industrial activities is located on the same side of the highway and within 800 feet of the sign location;
2. The commercial or industrial activities are within 660 feet from the nearest edge of the right-of-way; and
3. The commercial or industrial activities are within 1600 feet of each other.

Distances must be measured from the nearest outer edge of the primary building, or primary building complex when the individual units of the complex are connected by covered walkways. The section is further amended to provide that communication towers may not be recognized as commercial or industrial activities.

Section 479.07, F.S., is amended to provide the department flexibility to lower the reinstatement fee for outdoor advertising permits if the owner demonstrates a good faith error prior to the department removing the sign, and provides that competing applications for the same site will not be approved until the sign with the expired permit has been removed.

Section 479.16, F.S., is amended to correct a technical problem by providing that unpermitted signs denoting distance or direction to a small business not visible from the road junction or to farm operations, may be up to 16 square feet.

Section 832.06, F.S., is amended to provide for the prosecution of worthless checks written to a tax collector for a driver's license or identification card.

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:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

According to the Department of Transportation, contracting directly with utility companies for clearing and grubbing work will give the department the opportunity to relocate utilities ahead of construction where it would reduce overall project time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.