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HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
ANALYSIS

BILL #: Committee Substitute for House Bill 893

RELATING TO: Transportation

SPONSOR(S): Committee on Transportation and Rep. K. Smith

TIED BILL(S): n/a

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) TRANSPORTATION YEAS 10 NAYS 0
(2) JUDICIARY
(3) COMMUNITY AFFAIRS
(4) CRIME & PUNISHMENT
(5) FINANCE & TAXATION
(6) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS YEAS 11 NAYS 0

I. SUMMARY:

The basis for this bill is the Department of Transportation's (DOT) 2000 legislative proposals. The bill addresses a number of transportation infrastructure issues and conforms state law to recent changes in federal transportation law. Many of the provisions in the bill are related to department operations and are intended to allow DOT to operate more efficiently. Major provisions in the bill would:

1. Provide an exemption from sales tax on the renting or leasing of travel center/truck stop facilities. The term “travel center/truck stop facility” is defined as a diesel fuel retail sale facility, which operates a minimum of 6 diesel fuel dispensers.

2. Improve statewide coordination and control of future investments in seaports and intermodal development. These changes are based on an audit of the seaport program recently completed by the Auditor General.

3. Update state motor carrier compliance laws to incorporate the latest changes to federal regulation of commercial motor vehicles.

4. Increases the current statutory cap on the Local Government Advance Reimbursement Program from $50 million to $100 million. This change would allow more local governmental entities to advance their highest priority transportation needs.

5. Provide DOT and the Commission for the Transportation Disadvantaged with specific statutory authorization for existing DOT or Commission rules which have been identified as necessary but which currently exceed the DOT’s or the Commission’s rulemaking authority.

The bill results in administrative cost-savings and increased departmental efficiencies which are expected to have an overall positive fiscal impact on DOT operating costs. The “travel center/truck stop facility” tax exemption has a negative fiscal impact to General Revenue of $.5 million annually. This exemption also has an insignificant negative impact to the state solid waste management trust fund and to the local government half-cent and local option sales tax trust funds. For more details about these impacts, see the Fiscal Analysis and Economic Impact Statement under Part III.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes [x]	No []	N/A []
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

Lower Taxes: The bill provides an exemption from sales tax on the renting or leasing of travel center/truck stop facilities. Truck stops with operators that rent or lease the facility's property and which operate 6 or more diesel pumps will not be subject to sales tax on rent or lease payments. This exemption will allow some truck stops in Florida to be more competitive with bordering state fuel retailers.

B. PRESENT SITUATION:

Because of the comprehensive nature of the transportation related changes contained in this bill, the present situation relating to each issue is set out in the Section-by-Section portion of this analysis.

C. EFFECT OF PROPOSED CHANGES:

Because of the comprehensive nature of the transportation related changes contained in this bill the effect of each proposed change is set out in the Section-by-Section portion of this analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. DOT Organizational Structure: The bill contains several minor changes to the department's organizational structure related to motor carrier compliance. The bill amends s. 20.23, F.S., to move the motor carrier enforcement activities for the Department of Transportation (DOT) from the Assistant Secretary for District Operations to the Assistant Secretary for Transportation Policy and designates the functions of motor carrier compliance as an office within the department. DOT's Motor Carrier Compliance Office is charged with enforcement of laws relating to the operation of commercial motor vehicles (trucks) within the state.

The section is also amended to add an additional statutory responsibility for the Florida Transportation Commission. The bill requires the Commission to recommend to the Governor and the Legislature improvements to DOT's organization, including a review of the Department's current district structure, in order to streamline and optimize the efficiency of DOT. The initial report by the commission must be delivered to the Governor and Legislature by December 15, 2000, and each year thereafter, as appropriate. The bill

authorizes the commission to retain experts as necessary to conduct this study, and DOT is responsible for the expenses of such experts.

Section 2. Travel Center/Truck Stops-Sales Tax Exemption: Since 1969, every person that engages in the business of leasing, renting, or letting real property is engaging in a taxable privilege; however, there are some exceptions. Under s. 212.031, F.S., the leasing, renting, letting or granting of a license for use of real property is not taxable if the property is:

-Assessed as agricultural property under s. 193.461, F.S.
-Used exclusively as dwelling units.
-Property subject to tax on parking, docking, or storage spaces under s. 212.03(6), F.S.
-Recreational property or the common elements of a condominium under certain conditions.
-Public or private street or right of way occupied or used by a utility for utility purposes.
-A public street or road used for transportation purposes.
-Airport property used for aircraft taxiing and landing, loading or unloading of passengers or property, or fueling aircraft.
-Property used at a port authority, as defined in ss. 315.02(2), F.S., exclusively for the purposes of oceangoing vessels or tugs docking, loading or unloading passengers or cargo, fueling, or to the extent that charges for the use of such property are based upon the tonnage actually imported or exported.
-Property used as an integral part of any activity or service performed directly in connection with the production of a qualified motion picture, as defined in ss. 212.06(1)(b), F.S.
-Property used to provide food and drink concessionaire services within a movie theater, publicly owned arena, sports stadium, convention or exhibition hall, auditorium or recreational facility or any business operated under a permit issued under chapter 550. F.S.
-Any property occupied pursuant to an instrument calling for payments which the Department of Revenue has declared in a Technical Assistance Advisement issued on or before March 15, 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c) of the Florida Administrative Code.

The bill provides an exemption from sales tax on the renting or leasing of travel center/truck stop facilities. The bill defines “travel center/truck stop facility” for the purposes of the exemption as any facility that has declared its primary business activity, under s. 206.404(1)(g), F.S., as the retail sale of diesel fuel, and which operates a minimum of 6 diesel fuel dispensers.

Section 3. Fixed-Guideway Revenue Bonds/Technical Correction: The issuance of revenue bonds to finance fixed-guideway systems was authorized last session and is codified at s. 215.615, F.S. Due to scrivener’s errors, last year’s legislation included an incorrect cross reference and an incorrect word usage. The bill corrects the cross reference, and replaces a reference to the word *technologies* with the word *techniques*.

Sections 4, 6, 7 & 14. Florida Seaport Transportation and Economic Development (FSTED) Program: The FSTED Program is provided by statute with a minimum of $8 million funding per year. The funds are used to fund approved port projects on a 50-50 matching basis with any of Florida’s deepwater ports. In 1996 the Legislature provided an additional $15 million of annual funding which may be bonded to fund projects in the Florida seaport program. In 1997 the Legislature provided that beginning in 2001 an additional $10 million per year will be deposited into the State Transportation Trust Fund for the purpose of funding Florida’s seaport program and for funding seaport intermodal access projects of

statewide significance. The revenues may be bonded by the seaports and provisions relating to project eligibility for seaport program funding were modified to authorize the use of FSTED funds for seaport intermodal access projects identified in the 5-year Florida Seaport Mission Plan.

Based on an operational audit of the seaport program recently completed by the Auditor General (Report Number 13612), there is a need to establish improved statewide coordination and control of investments in seaports and intermodal access roads. The growing importance of trade to Florida's economic prosperity makes the modernization and globalization of Florida's seaports and intermodal access a priority issue.

The bill amends ss. 311.07, 311.09, and 320.20, F.S., and creates s. 215.617, F.S., to clarify the state's role in seaport planning and financing. The bill improves statewide coordination and control of future investments in seaports and intermodal development by:

-Giving DOT and the Office of Tourism, Trade and Economic Development (OTTED) authority to review and approve seaport projects submitted by the FSTED Council.

-Requiring that seaport program funding be deposited in Florida Seaport and Economic Development Trust Fund within DOT (this trust fund will be created by a separate bill).

-Allowing DOT to assume administration of outstanding seaport bonds; and requiring that future seaport bonds be issued through the Division of Bond Finance.

Sections 5, 22, 23 & 26: Contractor Qualification/Counties and Authorities: Currently s. 337.14(4), F.S., requires that a contractor apply for prequalification with DOT if the contractor wishes to bid on DOT transportation contracts in excess of $250,000. DOT rules regarding the qualification of a contractor to bid on construction contracts includes requirements with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the contractor seeks certification. Counties and expressway authorities may require persons interested in bidding on projects to be certified as qualified to perform the work before they may bid on the project. These prequalification requirements can differ depending on the county or expressway authority, and some counties and expressway authorities do not recognize DOT prequalification to bid on projects as sufficient certification to bid on county or expressway authority contracts.

The bill amends ss. 336.41 and 337.14, F.S., to create a presumption that a contractor prequalified by DOT to perform a type of work on state projects is also qualified to perform the same type of work for a county, or for a bridge, expressway, or transportation authority created pursuant to Chapter 348 and 349, F.S. To overcome the presumption, the county or authority would have to establish through clear and convincing evidence supported by findings of fact and conclusions of law that the contractor is not qualified. The bill provides for notice and publication of criteria and procedures for prequalification and bidder selection prior to adoption by the county or authority, with an opportunity for public comment. Further, the county or authority must provide for an internal appeal process for objections to such criteria and procedures, with an opportunity for de novo appeal of rulings on the objection to circuit court. A de novo appeal means that the circuit court is not restricted to the evidence considered, or to the rulings made during the internal appeal process, and may consider new evidence and arguments regarding objections to the criteria and procedures.

The bill amends s. 336.44, F.S., to provide that county contracts must be let to the lowest responsible bidder, rather than the lowest competent bidder, this is the same standard for DOT's award of contracts. The bill also exempts county transportation contracts from the competitive bidding requirements of s. 255.20, F.S. The effects of these changes are unknown, but it could be argued that the legislature was attempting to conform county contracting practices with DOT contracting practices. A logical extension of that argument would be that the case law applicable to DOT contract awards should be applicable to counties.

Contractor Prequalification/Financial Statements: Current law requires that the financial statement used by a contractor for prequalification show the applicant's audited financial condition no more than 4 months prior to the date on which the application is filed with DOT. Most applicants provide an audited financial statement covering 12 months of the applicant's fiscal operations. This 12 months, plus the 4 month period above, results in the current 16-month prequalification period provided in s. 337.14(4), F.S. According to DOT, more than half of prequalified contractors have fiscal years ending December 31, resulting in over half of prequalification renewal applications being received between December 31 and April 30 of each year. The bulk of these applications are received in late March and April each year. Contractors have difficulty in submitting their renewal applications on time because of delays in completion of required audits by their independent CPA's during this time (tax season) each year.

Further, DOT is required to act on these applications within 30 days of filing. The peak for bid lettings usually occurs in May and June. The large volume of prequalified contractor certificates which expire on April 30 and which must be renewed prior to bidding in May and June, coupled with the 30-day application processing time, creates an undue workload on DOT's prequalification staff. In addition, contractors report concerns relating to potential loss of bid opportunities for the peak months of May and June. The bill extends the period of qualification from 16 months to 18 months. This should provide sufficient time for submission of applications while ensuring compliance with application processing requirements.

Sections 8 - 13. Motor Carrier Compliance Office: DOT's Motor Carrier Compliance Office is charged with enforcement of law relating to the operation of commercial motor vehicles within the state, including those safety regulations applicable to owners or drivers engaged in intrastate commerce. The bill addresses the following Motor Carrier Compliance issues:

Log and Pole Trucks/Amber Strobe Lights: Section 316.228, F.S., currently requires any vehicle having a load which extends more than 4 feet beyond its rear, to display 12 inch square red flags, marking the extremities of the load. The bill amends this section to require trucks carrying logs, pulpwood, poles or posts to display an amber strobe light on the end of projecting logs. The bill exempts utility trucks, and also has a delayed effective date until July 1, 2001.

Federal Regulations/Update Reference: Current law adopts the federal safety regulations as they existed on March 1, 1999. The bill amends section 316.302(2)(b), F.S., to update the reference to the current safety regulations contained in the Code of Federal Regulations (C.F.R.) on March 1, 2000. This update is needed to take into account changes that may have been made to the regulations.

Hours of Service/Enforcement: Commercial motor vehicles are currently subject to 49 C.F.R., part 385, governing hours of service for both interstate and intrastate commercial motor vehicles, pursuant to section 316.302(1), F.S. However, DOT currently has no

authority to enforce these provisions. The bill amends s. 316.302(5), F.S., to add 49 C.F.R., part 385, to DOT's current enforcement authority.

Motor Carrier Compliance/Law Enforcement Officers: Section 316.302(8), F.S., specifies that the entities responsible for the enforcement of federal and state motor carrier regulations include agents of the Department of Transportation described in s. 316.545(9), F.S., the Florida Highway Patrol, and those employed by a sheriff's office or municipal police department. The bill amends ss. 316.302(8), F.S., to delete the reference to DOT 'agents' and to insert a reference to DOT 'law enforcement officers'. The bill also amends ss. 316.516(1) and 316.545, F.S., to delete references to "weight and safety" officers and to insert references to "law enforcement" officers to conform these subsections to section 316.640, F.S. DOT's Motor Carrier Compliance Officers must meet the same qualifications established by law for any other law enforcement officer. In addition, the bill restores language to s. 316.302(8), F.S., regarding removal of unsafe vehicles from the road. This language was removed due to a drafting error in a prior session.

Auto Haulers: The bill also amends s. 316.515(2), F.S., to delete the requirement that an automobile transporter must get a permit from DOT to operate a vehicle with of height of 14 feet, currently such vehicles may operate without a permit at a height of up to 13 feet and 6 inches. This provision does not authorize automobile transporters to operate a vehicle that exceeds 14 feet in height.

Boat Trailer Haulers: The bill amends s. 316.515(3), F.S., to allow truck-trailer combinations that are hauling boat trailers to have a maximum length of 65 feet, and to allow the load to extend an additional 6 feet beyond the rear of the truck-trailer combination. This is the same length limitations that currently apply to boat haulers.

Commercial Motor Vehicles/Safety Inspections: Section 316.610, F.S., provides that motor carriers registered in Florida may request their vehicles be inspected by DOT personnel in order to obtain an inspection sticker valid for 6 months. This was requested by the industry in response to Florida based vehicles being cited in other states for not having an inspection sticker, either from the state it was being operated in, or in the state from which it was based. Federal regulations have since been changed to require annual inspections and documentation of such on the vehicle. The motor carrier may meet the federal requirements through self-inspection, approved third-party inspection, or a periodic inspection performed by any state with a program that meets federal requirements. This satisfies the requirements of the other states that were requiring the stickers. The bill deletes subsection (3) of s. 316.610, F.S., to remove this obsolete reference to inspections of commercial motor vehicles by DOT.

Section 15. Airport Licenses: Current law requires joint submission of applications for airport site approval and for an airport license. Airports are not constructed until after site approval, and construction can take up to five years. Issuance of an airport license is contingent on a determination that a constructed site complies with all safety and licensing requirements. The bill amends s. 330.30, F.S., to remove the requirement for joint submission of applications for airport site approval and for an airport license. This change would provide for issuance of an airport license upon completion of a favorable airport inspection report indicating compliance of the constructed airport with all license requirements.

Section 16. Airport Noise Mitigation Section 332.004, F.S., provides the definition of the term "airport or aviation development project" or "development project" as any activity associated with the design, construction, purchase, improvement, or repair of a public-use

airport. The term includes many activities associated with an airport proper, but does not include off-site airport noise mitigation projects. Although DOT has participated in these projects in the past, the issue of whether such projects are specifically authorized in state law has recently been raised. The bill amends this section to include off-site airport noise mitigation projects within the definition of airport development projects. This change will conform state law with federal aviation program requirements for funding airport noise mitigation projects, and will allow DOT to continue to participate in the projects.

Section 17. Purchasing/Promotional Items: DOT has been notified by the State Comptroller's Office that reimbursement of funds expended to purchase promotional items will not be allowed because current statutory language does not provide specific authority to purchase marketing items. DOT and the commuter services, transit agencies, trucking industry and railroad companies with which DOT works rely on using promotional items to educate the public regarding safety issues and alternative transportation modes. The bill amends s. 334.044, F.S., to provide specific statutory authority allowing DOT to purchase promotional items for use in public education and information campaigns.

Section 19. State Highway System/Maximum Number of Lanes: Section 335.02, F.S., provides DOT with authority to set standards for the number of lanes on the State Highway System, including the Florida Intrastate Highway System. DOT's current policy provides that for limited access highways, the maximum number of lanes that will be constructed is ten lanes, with six of those lanes being general purpose lanes and four of those lanes being 'special use' lanes. Special use lanes include those exclusively for through traffic, for public transit vehicles and for other high occupancy vehicles. DOT's policy also allows exceptions to the policy on a case-by-case basis, with final approval of exceptions by the Secretary of Transportation.

The bill provides that DOT must evaluate all alternatives and consider certain criteria in establishing the number of lanes of a highway. The criteria includes such issues as the economic importance of the corridor, use of the corridor as an evacuation route, traffic volumes, multimodal alternatives, right-of-way costs, and MPO and local comprehensive plans. Further, the bill specifically provides that allowing more that ten lanes on a highway is not precluded, but that DOT must also consider the facility's capacity to accommodate alternative forms of transportation in the future within its right-of-way.

Sections 20 & 37. State Train Speed Regulation: In a 1993 decision known as CSX Transportation v, Easterwood, 507 U.S. 658 (1993), the U.S. Supreme Court held that regulations adopted by the U.S. Secretary of Transportation under the Federal Railroad Safety Act regarding maximum train speeds covered the same subject matter as relevant state law and, therefore, preempted state authority to regulate train speeds. Thus, DOT's authority to regulate train operating speeds, by virtue of existing regulations under the Federal Railroad Safety Act covering the same subject matter, has been preempted by federal law. The bill deletes s. 335.141(3), F.S., and amends s. 341.302(10), F.S., to remove DOT's authority to regulate train operating speeds.

Section 21. Local Option Gas Taxes/Unpaved County Roads: Section 336.025, F.S., authorizes a local option gas tax of up to eleven cents per gallon. One to six cents per gallon of tax may be levied by a simple majority of the county commission, the additional five cents of gas tax may only be levied by a majority plus one of the county commissioners. Alternatively, these local option gas taxes may be levied by a county through passage of a referendum approving the tax.

The use of the revenues from the last five cents of gas tax may only be used for transportation expenditures needed to meet the capitol improvement element of an adopted comprehensive plan, including construction of new roads, or resurfacing or reconstruction of existing paved roads. The bill expands the allowable uses of the five cent gas tax revenues to include paving of unpaved roads only when the paving is necessary to mitigate an adverse environmental impact. This will help some counties address environmental concerns raised by the Department of Environmental Protection concerning run-off from unpaved roads washing into rivers, creeks, and wetlands.

Section 24. Maintenance Contracts/Innovative Highway Projects: Pursuant to s. 337.025, F.S., DOT is authorized to establish a program for highway projects demonstrating innovative techniques of highway construction and finance to control time and cost increases on construction projects. This may include innovative bidding and financing techniques; accelerated construction procedures; and techniques that can reduce project life cycle costs. Prior to using an innovative technique, DOT documents the need for using the technique and identifies anticipated public benefits. Current law provides that DOT may enter into no more than $120 million in innovative contracts annually. The bill expands the innovative highway project program to allow maintenance of transportation facilities to be undertaken using innovative techniques.

Section 25. Design-Build Contracts/Right-of-Way: Section 337.11(7) F.S., allows DOT to combine the design, construction, construction engineering and inspection, and acceptance requirements for a project into a single contract. This allows the design firm/contractor team to participate in the design in an effort to reduce costs and expedite construction. Section 337.11(3)(c), F.S., prohibits advertising for bids on DOT contracts until all right-of-way needed for the project is acquired. The bill provides that DOT may advertise and award design-build contracts prior to the right-of-way being acquired. The bill specifically prohibits construction activities starting on a portion of a project until the necessary right-of-way is acquired and necessary easements are executed for that portion of the project.

Section 27. Retainage: Section 337.175, F.S., provides that DOT must provide in its construction contracts for retaining a portion of the amount due a contractor for work the contractor has completed, until completion and final acceptance of the project by DOT. The section further provides a contractor has the right to substitute securities, certificates of deposit, or irrevocable letters of credit approved by the DOT comptroller in lieu of retainage. The bill deletes the mandatory requirement that DOT retain a portion of the amount due a contractor for work completed, and allows this as an option for DOT to include in its contracts. In addition, DOT is given discretion as to whether to accept securities, certificates of deposit, or letters of credit from a contractor in lieu of retainage. These proposal will give DOT more flexibility concerning retainage requirements for contractors.

Section 30. Advertising Toll Facilities/Turnpike: Currently, s. 338.161(1), F.S., allows DOT to pay for advertising, marketing and promotion of electronic toll collection products and services. This section does not allow DOT to pay for advertising, marketing and promotion of the actual toll facility. The bill amends this section to allow DOT to pay for advertising, marketing and promotion of toll facilities. This would allow the promotion of the Turnpike and other toll roads and bridges. If these promotions result in increased use of toll facilities, more toll revenues would be collected.

Section 32. Local Government Advance Reimbursement Program: Pursuant to s. 339.12 F.S., DOT and a local government may enter into an agreement by which the local government agrees to perform a highway project or project phase in DOT's adopted work

program. DOT may agree to reimburse the governmental entity the actual cost for the project or project phase. Reimbursement is to begin in the year the project or project phase was originally scheduled in the work program. DOT is also authorized to enter into agreements for a project or project phase not included in the adopted work program. The project must be a high priority of the local government. However, because of concerns about excessive use of these agreements, the Legislature limited the total amount of DOT agreements for advancement of projects not included in the adopted work program to $50 million. DOT agreements are currently near this amount. The bill increases the current statutory cap from $50 million to $100 million. This change would allow more local governmental entities to advance their highest priority transportation needs.

Section 33. Tentative Work Program/Advanced Right-of-Way Acquisition Projects: The bill amends s. 339.135(4), F.S., to delete a requirement that the tentative work program specifically identify advanced right-of-way acquisition projects and separately allocate funds for advanced right-of-way acquisition in each fiscal year. In 1996 the Legislature removed the requirement that a certain portion of advanced right-of-way acquisition bond proceeds be used to support the construction phase of projects planned 3 to 4 years from the date of acquisition, and removed the requirement that remaining bond proceeds be spent on right of way for projects with construction phases planned a minimum of 5 years from acquisition. This revision removes a tentative work program development requirement that is no longer applicable to the advanced acquisition program.

Tentative Work Program/Review by Department of Community Affairs: At least 14 days prior to the convening of the regular legislative session DOT must submit a preliminary copy of the tentative 5-year work program to the Department of Community Affairs (DCA). The tentative work program is reviewed by DCA, which transmits to the Transportation Commission a list of those projects and project phases contained in the tentative work program which are identified as being inconsistent with approved local government comprehensive plans. The current tentative work program contains over 17,000 projects and 52,000 project phases. DCA identified twenty-three project phases as being inconsistent with approved local government comprehensive plans. Twelve of the project phases identified were project development and environmental (PD&E) study phase.

The PD&E study phase of a project studies solutions to improve a transportation corridor. These solutions can include, for example, increasing the number of lanes and adding public transportation alternatives, or can result in making no changes in the corridor (the 'no build' alternative). Until this process is complete it is not reasonable to determine if a project is consistent with a local government's comprehensive plans. In addition, many of the projects in years four and five of the work program are likely to change before the project is undertaken. Section 339.135(4)(b)4., F.S., provides explicit statutory recognition of this by stating that "the first 3 years of the adopted work program stand as the commitment of the state to undertake transportation projects that local governments may rely on for planning purposes..."

The bill makes two changes to the work program review process. First, the bill requires DCA to review only the first three years of the tentative work program. Second, the bill excludes project development and environment phases from the DCA's review. These changes will allow DCA's limited review resources to be focused on reviewing projects that are most important to the comprehensive planning process.

Section 34. Public Hearings/Transportation Planning: Section 339.155(6), F.S., sets out the requirements for DOT procedures for public participation in the transportation planning process, including public hearings and notice requirements for such hearings. The bill

amends this section to clarify current language relating to public participation in transportation planning, to delete the current 14 consecutive day notice requirement, and to require that notice be published twice, with the first publication being at least 15 days and no more than 30 days before the hearing.

Sections 35 - 36. Evaluation Methodologies/Public Transit Capital Projects: DOT is required by s. 341.051, F.S., to develop a major capital investment policy, including criteria and guidelines for the use of state funds for public transit capital projects. The policy is supposed to include methods: to be used to determine consistency of a transit project with the approved local government comprehensive plans; for evaluating the level of local commitment to the project; and, for evaluating alternative transit systems and alternative methods for providing transit service.

The bill deletes the requirement that DOT develop methodologies for evaluating public transit capital projects. Capital investments of this type are rare, and the methodologies have never been developed by DOT. Other portions of the same statute, specifically 341.051(5)(a), F.S., limits DOT's participation in financing public transit capital projects. Further, the necessity for state evaluation methodologies would be duplicative of federal laws regarding transit project evaluation methodologies. The bill also amends s. 341.031, F.S., to conform a cross-reference to this change.

Sections 38 - 39. Central Florida Regional Transportation Authority (CFRTA): The CFRTA (also known as LYNX) is an independent special district responsible for providing residents and visitors in Orange, Osceola and Seminole Counties with public transportation services. The CFRTA Board of Directors is composed of nine members representing the three counties served, the largest city in each of those counties, DOT, and two gubernatorial appointments. The bill amends s. 343.63, F.S., to increase the board to eleven voting members, by increasing the number of appointments by the Governor from two to five members. In addition, the member appointed by DOT (the DOT District Five Secretary) is made a non-voting member. The bill also amends s. 343.64, F.S., to allow CFRTA to expand its service area to include any county that is contiguous to the existing service area, and to allow CFRTA to set the terms and conditions of such a partnership with an adjoining county.

Section 40. Train Whistles/Railroad-Highway Grade Crossings: Section 351.03, F.S., requires that a train approaching within 1,500 feet of a public railroad-highway grade crossing must emit a signal audible for the entire 1,500 foot distance. This signal is given to warn motorists and pedestrians of the train's approach. A narrow exception is authorized where a train whistle ban has been approved by DOT and the Federal Railroad Administration. The bill amends this section to require the train to blow its whistle for 20 seconds or for 1,500 feet from the grade crossing, whichever results in the whistle sounding for a shorter period of time. Under current law, if a train is operating at 10 miles per hour it must sound its whistle for 102 seconds, and this can be a burden on the public to hear the whistle for this length of time. Conversely, if a train is operating at 60 miles per hour its whistle must blow for 17 seconds; and the differences in the length of time the whistle blows can be confusing to the public. Basing the length of time for the train warning whistle to blow as a function of time and distance, rather than being based on distance alone is a more appropriate requirement.

Section 41. Environmental Mitigation Program/DOT: DOT submits annually to the Department of Environmental Protection (DEP) and the water management districts (WMDs) a copy of the adopted work program and an inventory of wetlands and habitats which may be impacted by transportation projects in the next three years of the tentative

work program. Section 373.4137, F.S., requires DOT to identify and maintain an escrow account within the State Transportation Trust Fund for environmental mitigation phases of projects budgeted for the current fiscal year. The section also requires DOT to transfer to the DEP and the WMDs $75,000 for each acre where an impact upon wetlands has been projected. The funds are used by the WMDs for use in mitigation development and implementation activities, including the acquisition of property. In some instances, inverse condemnation suits have been filed against the state and local governments arguing that the value of wetlands has been statutorily established based on the provisions of s. 373.4137, F.S.

The bill provides that the statutory $75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions, nor is the cost admissible as evidence of full compensation for any property acquired through eminent domain or inverse condemnation. In such suits, the value of wetlands property would be established based on appraisals and expert opinion.

Technical Correction: Section 373.4137(2)(a), F.S., relating to environmental mitigation requirements for transportation projects was amended during the 1999 legislative session. The legislation that passed contained incorrect references to the adopted work program and tentative rules. The bill corrects these references to DOT's tentative work program and to adopted rules.

Sections 1, 17, 18, 28, 29, 31, 42, 43 & 44. Rule Authorization Provisions: In 1996, the Legislature enacted s. 120.536, F.S., which eliminates an agency's ability to rely on broad statutory authority for its rules and requires specific statutory authority for the powers exercised in a rule.

Pursuant to s. 120.536, F.S., DOT and the Commission for the Transportation Disadvantaged (Commission) have identified the areas of current rule making authority where specific grants of power by the Legislature are necessary to continue implementation of the rules. These provisions of the bill provides statutory authorization for existing DOT or Commission rules which have been identified as necessary but which currently exceed the DOT's or the Commission's rulemaking authority. The bill amends ss. 20.23, 334.187, 334.044, 337.18, 338.155, 339.09, 427.013, 427.0135, and 427.015, F.S., to provide rule authorization language as follows:

-The bill provides specific legislative authority for the DOT to promulgate rules: to delegate authority beyond the assistant secretaries; to establish prepaid escrow accounts; to approve aggregate sources; to provide for prompt settlement or legal defense of claims and disqualification for failure to settle claims; to provide for toll facility operations; and to provide for relocation assistance.

-The bill authorizes the Commission to develop by rule standards for community transportation coordinators and any transportation operator or coordination contractor from whom service is purchased or arranged by the community transportation coordinator, including minimum liability insurance requirements for all transportation services purchased.

-Further, the bill provides specific legislative authority for the Commission to promulgate rules providing that an agency which is a member of the Commission may not serve as the community transportation coordinator.

Section 45. Effective Date: Except for section 8 of the bill which is effective July 1, 2001, the bill becomes effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See D. Fiscal Comments, below.

2. Expenditures:

See D. Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See D. Fiscal Comments, below.

2. Expenditures:

See D. Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Truck stops with operators that rent or lease the facility's property and which operate 6 or more diesel pumps will not be subject to sales tax on rent or lease payments. This exemption will allow some truck stops in Florida to be more competitive with bordering state fuel retailers.

Contractors who are prequalified with DOT to bid on state transportation projects will be presumed to be qualified to bid on county projects and on transportation authority projects. Therefore, these business entities will not incur the cost of completing local prequalification processes.

Automobile transporters will no longer have to get an over-height permit from DOT to operate with vehicles up to 14 feet in height.

D. FISCAL COMMENTS:

Section 1. DOT Organizational Structure: The bill requires the Transportation Commission to recommend to the Governor and the Legislature improvements to DOT's organization, including a review of the department's current district structure, in order to streamline and optimize the efficiency of DOT. The initial report by the commission must be delivered to the Governor and Legislature by December 15, 2000, and each year thereafter as appropriate. The bill authorizes the commission to retain experts as necessary to conduct this study, and DOT is responsible for the expenses of such experts.

Section 2. Travel Center/Truck Stops-Sales Tax Exemption: The bill provides an exemption from sales tax on the renting or leasing of travel center/truck stop facilities, and this has a negative fiscal impact to General Revenue of $.5 million annually. There will

also be an insignificant negative impact to the state solid waste management trust fund and to the local government half-cent and local option sales tax trust funds.

Sections 5, 22, 23 & 26: Contractor Qualification/Counties and Authorities: The bill amends ss. 336.41 and 337.14, F.S., to create a presumption that a contractor prequalified by DOT to perform a type of work on state projects is also qualified to perform the same type of work for a county, or for a bridge, expressway, or transportation authority created pursuant to Chapter 348 and 349, F.S. To overcome the presumption, the county or authority would have to establish through clear and convincing evidence supported by findings of fact and conclusions of law that the contractor is not qualified. The bill provides for notice and publication of criteria and procedures for prequalification and bidder selection prior to adoption by the county or authority, with an opportunity for public comment. Further, the county or authority must provide for an internal appeal process for objections to such criteria and procedures, with an opportunity for de novo appeal of rulings on the objection to circuit court. These additional requirements will cause local governments and various authorities to incur the costs of implementing the bill's provisions, but the amount of these costs cannot be accurately estimated.

Section 30. Advertising Toll Facilities/Turnpike: The bill allows DOT to pay for advertising, marketing and promotion of toll facilities. This would allow the promotion of the Turnpike and other toll roads and bridges. If these promotions result in increased use of toll facilities, more toll revenues would be collected.

Section 32. Local Government Advance Reimbursement Program: The bill increases the current statutory cap on the value of agreements between DOT and local governments to advance projects not included in the adopted work program from $50 million to $100 million. DOT agreements are currently near the $50 million cap. This change would allow more local governmental entities to advance their highest priority transportation needs.

Section 33. Tentative Work Program/Review by Department of Community Affairs: The bill makes two changes to the DCA 5-year work program review process. First, the bill requires DCA to review only the first three years of the tentative work program. Second, the bill excludes project development and environment phases from the DCA's review. These changes will allow DCA's limited review resources to be focused on reviewing projects that are most important to the comprehensive planning process.

Section 34. Public Hearings/Transportation Planning: The bill deletes the current 14 consecutive day notice requirement for public hearings and requires the hearings to be noticed twice between 30 and 15 days before the meeting. The current cost in advertising to the Department for one public hearing per district per year is estimated to range from $123,475 - $143,908, depending upon hearing site location and the general circulation newspaper used. By reducing the number of days that notice must be published, the bill would provide a cost savings to the Department.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Contractor Qualification/Counties: The bill amends s. 336.41, F.S., to create a presumption that a contractor prequalified by DOT to perform a type of work on state projects is also qualified to perform the same type of work for a county. To overcome the presumption, the county would have to establish through clear and convincing evidence supported by

findings of fact and conclusions of law that the contractor is not qualified. The bill provides for notice and publication of criteria and procedures for prequalification and bidder selection prior to adoption by the county, with an opportunity for public comment. Further, the county must provide for an internal appeal process for objections to such criteria and procedures, with an opportunity for de novo appeal of rulings on the objection to circuit court. These additional requirements will cause counties to incur the costs of implementing the bill's provisions, but the amount of these costs cannot be accurately estimated. Therefore, it is unknown whether the fiscal impact to counties is insignificant.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

This bill was considered the Committee on Transportation on March 14, 2000. The committee adopted an amendment to the bill and a series of amendments to the amendment as follows:

Amendment 1: This strike everything amendment was a conforming amendment incorporating many of the provisions in the Senate companion bill [CS/SB 1368].

The amendment deleted the following provisions which were in HB 893 but which were not in the Senate bill:

-Language for the State Infrastructure Bank and the Fast Track programs, these were covered in HB 1965, the funding package voted out of committee on March 7, 2000.

-Language for using 50 percent of SCETS revenues on FIHS; HB 1965 provides additional funding for the Intrastate System.

-Language on DUI and Open Container laws, these provisions are not in the Senate companion and are more appropriate for the legislative package of the Department of Highway Safety & Motor Vehicles. Committee Substitute for House Bill 1911 includes both of these issues.

The amendment incorporated technical changes and revisions contained in the Senate bill to the following issues which were in HB 893:

-DOT Motor Carrier law enforcement officers: Changes references from “weight and safety” officers to “law enforcement” officers to conform to other statutes; and, restores language removed in a drafting error in 1995 regarding removal of unsafe vehicles.

-Design-Build Contracts: Clarifies that eminent domain authority is not delegated; requires right-of-way to be acquired prior to construction.

-Public Hearing Notice for Transportation Planning: Deletes the 14 consecutive-day notice requirement to clarify notice requirements for public hearings.

The amendment added the following issues that were included in the Senate Bill but were not in HB 893 as filed:

-Authorizes the Transportation Commission to make recommendations concerning organization improvements to DOT.

-Deletes the requirement that an automobile transporter must acquire a permit from DOT to operate a vehicle with of height of 14 feet.

-Allows off-site airport noise mitigation projects to be included as aviation projects.

-Provides criteria for DOT to use in determining the maximum number of lanes for a project; requires evaluation of alternatives.

-Provides that contractor prequalification by DOT is presumed to qualify a contractor to bid on county and expressway authority projects; provides due process protections and chapter 120 rights.

-Allow counties to use local option gas tax funds to pave graded roads when undertaken to mitigate adverse environmental impacts.

-Makes retainage optional rather than mandatory, this gives DOT more flexibility concerning retainage requirements for contractors.

Amendments to the Amendment:

Amendment A1: Rule Authorization Language [CS/SB 772] this amendment provided legislative authorization for existing agency rules.

Amendment A2: This amendment included maintenance contracts in the innovative contracting program.

Amendment A3: Train Whistles - This amendment allowed train whistles to sound based on time and distance from a rail crossing (20 seconds or 1500 feet whichever is less).

Amendment A4: DCA review of the Work Program- This amendment provided that DCA will review the first three years of the work program for consistency with local comp plans. Also the review will not include the PD&E phase of projects.

Amendment A5: This amendment provided that the $75,000 per acre amount used by DOT in its environmental mitigation program for wetlands is not admissible as evidence of full compensation in inverse condemnation proceedings.

Amendment A6: This amendment addressed Seaport Program issues raised by the Auditor General.

Amendment A7: This amendment required log and pole trucks to display an amber strobe light on the end of projecting logs; the amendment has a delayed effective date until July 1, 2001.

Amendment A8: This amendment revised the membership of the Central Florida Regional Transportation Authority to include additional representatives appointed by the Governor. Also, the amendment allowed the authority to partner with contiguous counties to expand its service area.

Amendment A9: This amendment gave boat trailer haulers the same load extension limits as is currently allowed for boat haulers.

Amendment A10: This amendment provided a tax exemption for “travel center/truck stops.”

Amendment A11: This amendments was withdrawn.

Amendment A12: This amendments was withdrawn.

Amendment A13: This amendment set out additional requirements relating to prequalification of contractors for county transportation projects.

Amendment A14: This amendment set out additional requirements relating to prequalification of contractors for expressway and transportation authority transportation projects.

The bill as amended was reported favorably as a committee substitute.

On April 26, 2000, the Transportation and Economic Development Appropriations Committee adopted a strike-all amendment to HB 893. The strike-all included the following changes and additions from the original bill:

Continues M.P.O.'s Chairmen's Coordinating Committees which have been established to coordinate the planning of transportation projects within contiguous M.P.O. areas.

Modifies Seaport Audit Recommendations to address issues raised by the Seaports and the Division of Bond Finance.

Adds a provision which will allow placement of 4-way stop signs in Private Communities.

Adds language which allows local government signs which advertise government services and activities to be located on local government property.

Modifies Spaceport Management Council provisions to require a report on council recommendations to the Governor and affected agencies, to allow various federal agencies to have official liaisons to the council, and to make a number of technical and clarifying changes to council authorizing provisions.

Modifies a provision of the bill related to Contractor Prequalification to address concerns expressed by local governments.

Allows federal money passed through DOT to Tri-Rail and state matching funds to be used to pay Tri-Rail bonds.

Creates authority for tolls on Interstate Highways for the limited purpose of implementing High Occupancy Toll (HOT) lanes and Express lanes.

Allows DOT to cooperate with local governments and state agencies to implement Safe Paths to Schools.

Allows Orlando-Orange County Expressway Authority to issue its own bonds to refinance bonds used to finance Expressway Authority projects.

Five amendments were adopted to the strike all amendment on April 26, 2000 as follows:

· Amendment #1 requires locals to pay compensation for amortizing of, or requiring alterations to, billboards.

· Amendment #2 authorizes a county who owns and operates a deepwater port, which is located within the boundaries of a municipality, to contract the boundaries of the port property by ordinance of the county commission and to enter into an interlocal agreement with such municipality for a reasonable payment in lieu of any ad valorem taxes lost to the municipality. The amendment also repeals two special acts relating to the port, but authorizes the board of county commissioners to adopt any necessary provisions of those acts by ordinance. This is in conformance with the general law of this state which already authorizes county governments to own and operate deepwater ports. See, Section 125.01(1)(l), Florida Statutes.

· Amendment #3 requires that the qualifications, the terms of the office and the obligations and rights of members of the authority shall be determined by resolution or ordinance of the governing body of the county in a manner that is consistent with certain requirements.

· Amendment #4 provides that public works contracts having a formal procedure for dispute resolution that authorizes one of the parties to unilaterally decide the dispute is inoperative and unenforceable.

· Amendment #5 provides that through mutual agreement between the department and a municipality, county or authority; the period for general aviation airports for reimbursing the department for projects costs may be extended.

VI. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:	Staff Director:
Phillip B. Miller	John R. Johnston

AS FURTHER REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS:

Prepared by:	Staff Director:
Eliza Hawkins	Eliza Hawkins