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HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS

BILL #: CS/CS/HB 1053

RELATING TO: Transportation

SPONSOR(S): Council for Ready Infrastructure, Committee on Transportation and Representative(s) Russell

TIED BILL(S):

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

(1) TRANSPORTATION YEAS 12 NAYS 0
(2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS YEAS 13 NAYS 1
(3) COUNCIL FOR READY INFRASTRUCTURE YEAS 16 NAYS 0
(4)
(5)

I. SUMMARY:

The bill includes numerous transportation issues, ranging from substantive law changes to technical fixes. Among its substantive revisions of transportation-related statutes are:

- Streamlining airport registration and eliminating airport license fees.
- Transforming the state's Turnpike District into a "Turnpike Enterprise," in which it will operate much like an independent authority, except that DOT will retain management oversight.
- Raising DOT's debt-service cap for right-of-way and bridge bonds.
- Allowing the Orange County Expressway Authority to sell bonds, as an option to the state Division of Bond Finance selling bonds on the authority's behalf.
- Directing local governments and expressway/bridge authorities to accept bids from transportation contractors who are prequalified by DOT.
- Creating an arbitration process for local governments and billboard owners who can not reach agreement on just compensation for sign removal.
- Eliminating solicitation of funds at highway rest areas, welcome centers and similar facilities along the State Highway System.
- Making changes to the existing Transportation Outreach Program (TOP) to refocus its project selection on transportation improvements that promote economic competitiveness and development.
- Eliminating the limit on how many times motorists who violate traffic laws can attend driving school, rather than accumulate "points" against their driver's licenses.
- Facilitating opportunities for private entities to build and manage toll roads and other transportation facilities associated with state highway systems.

The bill also deletes a number of responsibilities – including regulation of train speeds – which the Florida Statutes assign to DOT, but which actually are governed by federal law.

The bill has a minimal fiscal impact on the DOT. The bill would take effect July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [X]	No [X]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
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:

Less Government: The bill supports the principle of less government by: streamlining DOT regulation of private airports; eliminating unnecessary rulemaking and licensing requirements; and deleting rail regulations that are duplicative of federal laws. It contradicts the principle of less government by: requiring counties, cities and expressway or bridge authorities to consider DOT-prequalified construction contractors for their local transportation projects, except in a narrow circumstance; establishing an arbitration process for local governments and sign owners to work out their differences over relocation and reconstruction agreements; and requiring additional motorists to attend driver improvement schools.

B. PRESENT SITUATION:

Because of the comprehensive nature of the changes in this bill, the "Present Situation" relating to each issue is set out in the "Section-By-Section Analysis."

C. EFFECT OF PROPOSED CHANGES:

Because of the comprehensive nature of the changes in this bill, the "Effect of Proposed Changes" relating to each issue is set out in the "Section-By-Section Analysis."

D. SECTION-BY-SECTION ANALYSIS:

Sections 1, and 2: DOT reorganization

Current situation:

The Department of Transportation has one of the most detailed statutory descriptions of any state agency, in terms of internal organization, the duties and responsibilities of agency officers, and DOT reporting requirements. DOT staff say there are no plans to reorganize the agency, but as staffing and other changes occur through outsourcing efforts and efficiencies, amending s. 20.23, F.S., provides the Secretary the flexibility needed to address these changes.

Effect of Proposed Changes:

The bill heavily amends s. 20.23, F.S., deleting unnecessary instructions on the Secretary's responsibilities and to whom the Secretary may delegate, the tasks assigned to other DOT officers and supervisors, and obsolete references in general.

This section also changes the Turnpike District into a "Turnpike Enterprise" -- just short of an authority. The DOT Secretary would delegate responsibility for the day-to-day operations of the Turnpike Enterprise to an executive director, who shall serve at the Secretary's pleasure. In

addition, the DOT Secretary may exclude the Turnpike Enterprise from rules, policies and procedures that the divisions and programs within DOT must adhere to, and initiate rulemaking specifically to assist the Turnpike Enterprise in using "best business practices" to operate much like a private company. *(See Sections 68-83 for more detail about the Turnpike Enterprise.)*

Section 2 of the bill corrects a cross-reference in s. 110.205, F.S., deletes references to review necessary because of the changes in s. 20.23, F.S.

Sections 3, 6 and 8: Consultant Competitive Negotiation Act

Current Situation:

Chapter 287, F.S., regulates the bidding, negotiation for, and procurement of goods and services by public agencies. In addition, it specifies circumstances where some activities don't have to be competitively bid, or even rebid every year.

Section 287.055, F.S., the "Consultants' Competitive Negotiation Act," (or CCNA) was created by the Legislature in 1975 to address the special circumstances faced by agencies in the hiring of engineers, architects, surveyors and other consultants. The law requires agencies to publicly notice projects for which they need consultant services, and to select at least three pre-certified firms, among those that submit proposals. Agencies are required to negotiate first with the top-ranked firm, and if they can't come to terms, then proceed to the next firm.

During the 2000 legislative session, CS/SB 2346, 2nd Engrossed, became law. It created s. 189.441, F.S., which allowed Community Improvement Districts to develop their own competitive bidding processes, outside of chapter 287, F.S. One intent of the bill was to promote the activities of these special districts. Proponents of the legislation now say they did not intend to exempt Community Improvement Districts from s. 287.055, F.S.

Another CCNA glitch occurred with the passage of CS/SB 772, 1st engrossed, last session. Language from a different Senate bill related to seaports specifically required the Florida Seaport Transportation and Economic Development Council to utilize chapter 287.057, F.S., for procurement of goods and contractual services. Most of this language was amended to CS/SB 772, 1st Engrossed, as well as a provision that seaports subject to the competitive bid requirements of local governments were exempt from the CCNA, s. 287.055, F.S. After CS/SB 772, 1st Engrossed, became law, proponents determined that the exemption was an internal inconsistency, since the CCNA also applies to local governments.

Effect of Proposed Changes:

The two "glitches" discussed above are corrected by the bill. Both s. 189.441, F.S., and s. 311.09(12), F.S., are amended to delete exemptions to the CCNA.

In addition, s. 287.055, F.S., is amended to raise the threshold amount that triggers when a continuing contract must be re-bid. Under the bill, no rebidding of professional service continuing contracts is required for projects in which the construction costs do not exceed $1 million, nor for studies to be performed by a professional service continuing contract that does not exceed $50,000. These amounts are double the current statutory thresholds. Proponents say the increased thresholds are necessary because the costs of doing business have grown in recent years.

Section 4: Right-of-way bonds

Current Situation:

Section 206.46(2), F.S., authorizes that a maximum of 7 percent of the total revenues deposited in the State Transportation Trust Fund be transferred to the Right-of-Way Acquisition and Bridge Construction Trust Fund to pay debt service on bonds issued to buy right-of-way and build/repair

bridges. The law also specifies that no more than the amount actually needed to pay debt service, up to a maximum $135 million, shall be transferred.

In fiscal year 2000-2001, 7 percent of the State Transportation Trust Fund revenues equaled $139 million. The actual debt service was $59.3 million.

However, DOT financial projections indicate that by fiscal year 2006-2007, the debt service will be $139.5 million, which exceeds the $135 million statutory cap. Although exceeding the cap is projected to be five years away, DOT staff recommends raising the cap to $200 million now because the agency plans its Work Program in five-year increments.

Effect of Proposed Changes:
The bill amends s. 206.46(2), F.S., to raise the cap on DOT's maximum debt service on right-of-way acquisition and bridge construction bonds to $200 million. DOT staff has said this will help ensure an uninterrupted flow of revenue to pay projected increases in debt service.

Sections 5, 33, 34 and 37: Contractor bidding on local government/expressway projects
Current Situation:
The basic process for counties, municipalities, special districts and other political subdivisions of the state to award contracts for construction projects is described in s. 255.20, F.S., and elsewhere in statute. Typically, any construction project with a cost in excess of $200,000, and any electrical project costing more than $50,000, must be competitively awarded. However, s. 255.20, F.S., lists 10 types of projects where a competitive award is not required, such as emergency repair of facilities damaged by hurricanes, riots, or other "sudden unexpected turn of events."
Section 255.20, F.S., also includes a basic definition and framework for the competitive award process, but allows local governmental entities to establish specific procedures for conducting the process. This has resulted in differences among counties, cities, and other local governmental entities in bidding and contractor qualification requirements.

Sections 336.41 and 336.44, F.S., more specifically relate to county road contracting. Each county is required to competitively bid transportation projects, except in emergency situations and for projects that either don't exceed $250,000 or 5 percent of the county's share of the 2-cents-gallon constitutional fuel tax, whichever is greater.

Section 337.14, F.S., details DOT's contractor certification process. All contractors who wish to bid on transportation projects costing in excess of $250,000 must meet DOT qualifications and be certified.

Effect of Proposed Changes:
Section 255.20 (1)(a) is amended to add an eleventh exemption – projects subject to chapter 336, F.S., County Road System -- from the provisions that set competitive bidding thresholds and allow local-government variations in the competitive award process. In effect, any contractor who is prequalified by DOT and eligible to bid on DOT projects to perform certain work also would be prequalified to obtain bid documents and to submit a bid on those same types of projects for any local government or expressway authority. A local government entity would be able to disqualify a prospective bidder who is at least 10 percent behind on another construction project for that same entity. Sections 336.41 and 337.14, F.S., are similarly amended.

Section 7: Seaport funding issues
Current situation:
In 1990, the Legislature created the Florida Seaport Transportation and Economic Development Program (FSTED). The FSTED Program began with an annual $8 million appropriation in grants. In subsequent years, a total of $25 million in bondable state revenues was provided to the program,

on an annual basis. State funding cannot exceed 50 percent of the total cost of a project. In order to be approved, a proposed project must be found consistent with the seaport's comprehensive master plan and the appropriate local government's comprehensive plan, be of demonstrable economic benefit to the state, and be found consistent with DOT's adopted five-year work program. Candidate projects to be financed through bondable funding must also meet statutory eligibility and consistency requirements. Waterside dredging related improvements require a 75-percent port to 25-percent local government match. Off-port access improvements and on-port bonded projects require a minimum 50/50 contribution from recipient ports.

The FSTED Program is managed by the Florida Seaport Transportation and Economic Development Council, which consists of the fourteen deep-water port directors, the Executive Director of the Office of Tourism, Trade and Economic Development, and the Secretaries of the DOT and the Department of Community Affairs. The Council is responsible for preparing a five-year Florida Seaport Mission Plan, which defines the goals and objectives of the seaports. Additionally, the FSTED Council meets semi-annually to review project applications submitted by each of the individual seaports and recommends which projects should be forwarded to the agencies for further review and possibly recommended for funding with state funds.

As Florida's seaports have expanded --in size, in cargo moved, and in international importance -- so have concerns about seaport security.

Florida is home to four of the 20 busiest container ports in the nation and the top three cruise ports in the world, so significant opportunities exist for drug smuggling, cargo theft, and other criminal activities. Recent assessments, including by the Interagency Commission on Crime and Security in U.S. Seaports, concluded that illegal drug trafficking is the single most prevalent crime problem in U.S. ports. In February, the Florida Office of Drug Control and the Florida Department of Law Enforcement completed their review of the preliminary security plans drafted by Florida seaports, and issued a report summarizing the ports' security needs. These plans include security projects valued at an estimated $45 million, some amount of which the ports would contribute.

Governor Bush has recommended in his FY 01-02 budget that $19 million be appropriated for seaport security. The House and Senate are recommending less funding, utilizing Transportation Outreach Program (TOP) funds.

Effect of Proposed Changes:
Section 311.07, F.S., is amended to extend eligibility for FSTED funds to seaport security projects, and specifies that funds earmarked for security projects don't have to be matched by the ports, unlike their economic development projects.

Sections 9, 10, 31, 43, 44 and 84*:* Federal pre-emption issues
Current situation:
DOT has general authority over the State Highway System, certain federally delegated responsibilities for the Interstate System, and general responsibilities for public transportation systems. In terms of federal transportation regulations or federally delegated responsibilities to DOT, Florida Statutes periodically need to be reviewed for compliance and accuracy with federal law.

Effect of Proposed Changes:
The bill makes several adjustments to statutes where either federal law has changed and the state law needs to be updated, or to eliminate references to DOT authority where federal law actually regulates. Specifically, the bill:

- Updates s. 316.302 (1), F.S., related to requirements for drivers of commercial motor vehicles. It changes the date of relevant federal rules and regulations from March 1, 1999, to October 1, 2000.

- Corrects s. 316.3025, F.S., by deleting a statutory reference to commercial motor vehicle penalties and replacing it with a reference to 49 Code of Federal Regulations (C.F.R.) s. 390.21.

- Deletes references in s. 335.141(3) and (4), F.S., to DOT's authority to regulate train speed limits and assess penalties on railroad companies in violation of speed limits. These are federal responsibilities.

- Deletes references in s. 341.051(5), F.S., to DOT developing a major capital investment policy and methodology for funding public transit projects that receive federal dollars. DOT must use already-established federal guidelines.

- Deletes references in s. 341.302(7), (8), and (10), F.S., to DOT's authority to develop and administer state standards on the transporting of hazardous materials by trains and on train speed limits. Again, these are governed by federal regulations.

- Repeals two statutory references. Section 316.327, F.S., requires the location and design of identification stickers on commercial motor vehicles, but says any such vehicle meeting federal identification requirements shall be considered in compliance with this section. To avoid having multiple stickers, the majority of commercial vehicle owners attached the federally required identification. DOT is recommending deleting the state requirement. And, s. 316.610(3), F.S., which allowed the owners of commercial motor vehicles to pay DOT $25 per vehicle safety inspection, is being repealed because of a lack of inspection requests.

Section 11: Height of auto transporters

Current situation:

DOT regulates the height, width and length of motor vehicles, pursuant to s. 316.515, F.S. Subsection (2), for example, establishes a maximum height of 13 feet, 6 inches for a vehicle, regardless of cargo, although it allows automobile transporters to have a maximum height of 14 feet if they obtain a DOT permit. The industry standard for automobile transports is 14 feet high.

Effect of Proposed Changes:

The DOT permit requirement for automobile transporters is repealed because it is unnecessary paperwork.

Sections 12 and 13: Truck weight limits

Current situation:

Section 316.535, F.S., regulates the weights of trucks, based on their axle spacing. During the 2000 legislative session, s. 316.540, F.S.**,** was identified as an obsolete section of law and repealed. However, upon further review in the interim, DOT came to the conclusion that one subsection in the repealed law was necessary, because without it, there would be no weight limits on concrete mixers, septic tank pump trucks, dump trucks and other "special use trucks" that don't comply with the standard axle spacing.

Effect of Proposed Changes:

A new subsection (6) is added to s. 316.535, F.S., to include weight limits on these specialty trucks, and to specify they have to meet all safety and operational requirements under law.

Section 316.545, F.S., is amended to add a cross-reference, in light of the amendment to s. 316.535, F.S.

Sections 14-19: Driving schools

Current situation:

Section 318.14(9), F.S., permits a person cited for certain traffic infractions to elect to attend a basic driver improvement course in lieu of a court appearance. If a person attends a driver improvement course, adjudication is withheld, points are not assessed on the offender's driving record, and the civil penalty is reduced, provided the person has not elected to attend such a school in the previous 12 months. A person may only elect to attend driver improvement course in lieu of court appearance five times. In addition, s. 318.1451, F.S., currently allows an assessment of a $2.50 fee only on those persons electing to attend a driver improvement course and does not address driver improvement attendees who attend pursuant to court order. This assessment is remitted to the state Department of Highway Safety and Motor Vehicles (DHSMV).

Section 322.0261, F.S., also makes the DHSMV responsible for screening crash reports to identify motor vehicle operators required to attend a driver improvement course. One criterion for mandatory attendance are two crashes within two years involving property damage of at least $500.

During the 2000 Legislative Session, the Legislature passed CS/HB 2368, which contained similar language to these sections of this bill. CS/HB 2368 was subsequently vetoed by the Governor.

Effect of Proposed Changes:

The bill is nearly identical to last session's CS/SB 2368. It:

- Amends s. 316.650, F.S., to direct traffic enforcement officers to issue a copy of the Traffic School Reference Guide to persons they cite for violations of state and local traffic laws.
- Amends s. 318.14, F.S., to delete the provision that persons who commit certain traffic violations can elect to attend a driver improvement course no more than five times. Adjudication is withheld and no points are assessed against the driver's licenses of persons who attend these courses.
- Amends s. 318.1451, F.S., to allow the DHSMV to collect a $2.50 assessment from each person who is ordered by the court to attend a driver improvement course. Currently, the assessment is collected only from persons who elect to attend the course.
- Amends s. 322.0261(1)(b), F.S., to direct DHSMV to screen all reports of any crash involving property damage of at least $2,500.
- Creates s. 322.02615, F.S., which provides for mandatory driver improvement courses for motorists who commit specified violations.
- Amends s. 322.05, F.S., to specify that a person who is at least 16 years old, but less than 18 years old, can not obtain a driver's license unless the person has satisfactorily completed a Department of Education driver's education course, a commercial driving school course pursuant to chapter 488, or a basic driver improvement course approved by the DHSMV, in addition to existing statutory requirements.

Sections 20-25: State regulation of airports

Current situation:

Airports, airlines and aircraft are primarily regulated by the Federal Aviation Administration. Chapter 330, F.S., governs the state regulation of public and private airports. DOT's general responsibilities include licensing and inspecting public and private airports; reviewing airport siting plans; and providing funds for expansion or improvements. Florida has 20 commercial service airports, a total of 131 public airports, and in excess of 230 privately operated airports, airparks, heliports and seaplane landing areas

Effect of Proposed Changes:
Chapter 330, F.S., is amended throughout. The site and license fees for all airports are abolished. The proposal also replaces the current requirement for physical inspection of private airport sites for approval and licensing with an electronic self-certification registration program; however, DOT may continue to inspect and license private airports with 10 or more planes, at the request of the owners of these private airports. This is expected to affect 46 private airports or airparks. The amendments include authority and requirements for DOT to establish the data system to register private airports, standards to accomplish self-certification for site approval and registration, and requirements for administering and enforcing the new provisions. The amendments also include editorial changes to remove outdated, obsolete, or incorrect language, including airport definitions.

The bill also amends s. 332.004(4), F.S., broadening the definition of "airport or aviation development project" to include off-airport noise mitigation projects as eligible for state funding. These off-site mitigation projects, such as installing noise-buffering insulation in homes around airports, is less expensive than buying out the homeowners. DOT funds have been spent for these type projects in the past, and the agency wanted to ensure that such expenditures are clearly legal.

Sections 26 and 54-59: Development of Regional Impact (DRI) Review
Current Situation:
Currently, airports and petroleum storage facilities are among the types of large-scale developments that must go through a "development of regional impact" (DRI) review prior to being built or expanded, pursuant to ss. 380.06 and 380.0651, F.S. The DRI review process allows the Department of Community Affairs and regional boards to scrutinize an eligible project's impact on the health, safety and welfare of the citizenry, and to determine if it is consistent with the area's approved land-uses and comprehensive plans.

Each type of development has at least one numeric threshold, above which a DRI review is mandated. Examples of numeric thresholds that trigger a DRI review include: 10,000 permanent spectator seats in a stadium; an office park to be operated under common ownership that will encompass 30 or more acres; and recreational vehicle parks that will accommodate 500 or more parking spaces.

Percentage thresholds in s. 380.06(2)(d), F.S., are applied to the guidelines and standards in s. 380.0651(3). If a development is at or below 80 percent of all numerical thresholds in the guidelines, then that development is not required to undergo DRI review. If a development is at or above 120 percent of the guidelines, the development must undergo DRI review. This is also known as the "fixed thresholds" for DRI review.

In addition to "fixed thresholds," there are also "rebuttable presumptions." If a development is between 80 percent and 100 percent of a numerical threshold, the development is presumed not to require DRI review. If a development is at 100 percent or between 100 percent and 120 percent of a numerical threshold, then the development is presumed to require DRI review. But being "rebuttable," these presumptions can be challenged before DCA. For example, a developer whose project is at 105 percent of the threshold can make a case to DCA that the project should not be treated as a DRI, because of other circumstances.

This past summer, the Governor's Growth Management Study Commission evaluated the DRI process as one of its tasks. The Commission recommended eventually replacing DRIs with less-cumbersome "regional cooperation agreements."

Effect of Proposed Changes:
The bill eliminates DRI review of airports and petroleum storage facilities that are consistent with a local comprehensive plan or a port master plan. Publicly owned and operated airports are directed to send to "affected local governments" all copies of master plans, environmental assessments, site-selection studies and other specified documents which the airports are either submitting to, or requesting from, state and federal government agencies. "Affected local governments" are defined as any city or county having jurisdiction over the airport and any city or county located within 2 miles of the boundaries of the land subject to the airport master plan.

The bill also addresses the status of airports and applicable petroleum storage facilities that have received a DRI development order, but would no longer be required to undergo DRI review, because of passage of this legislation. In such cases, the development would continue to be governed by the terms of the development order, which may be enforced by the appropriate local government. The landowner or development may request that the DRI development be amended or rescinded, consistent with the local comprehensive plan and land-development regulations. Airports and petroleum storage facilities with an application for development approval, or notification of approval, pending as of the effective date of this act, may decide to continue with the review. In any event, the resulting development order would be governed by the provisions of this act.

In addition, the bill deletes the language that creates "rebuttable presumptions" of whether a project is subject to DRI review, based on the percentage above or below numeric thresholds established in statute or rule. It creates a so-called "bright line:" any project which is below the 100 percent of all numeric thresholds for its category is automatically not subject to DRI review, while any project that is at or above 100 percent of any numeric threshold shall undergo DRI review.

The bill also deletes s. 380.0651(3)(j), F.S., meaning that a residential development, where more than 25 percent its area is within 2 miles of a less-populous county, can no longer be regulated under the growth-management provisions for the less-populous county, rather than those applicable to its home county.

Finally, the bill either exempts or raises numeric thresholds that trigger a DRI review for wholesale automobile auction lots. These auto auction lots would be exempt from the current threshold of more than 2,500 parking spaces. And, the acreage threshold for auto auction lots, which conduct sales activities no more frequently than an annual average of three days a week, would be in excess of 500 acres.

Section 27: DOT's authority to delegate permitting and to promote scenic highways
Current Situation:
DOT's powers and duties are listed in s. 334.044, F.S. Among its responsibilities is the ability to purchase, lease, or otherwise acquire promotional or educational materials on traffic and train safety awareness, commercial motor vehicle safety, and alternatives to single-occupant vehicle travel.

DOT also is authorized to regulate and prescribe conditions for the transfer of stormwater to state right-of-way because of development of, or other manmade changes to, adjacent properties. Pursuant to s. 334.044(15), F.S., DOT is authorized to adopt rules for issuing stormwater management permits. However, the section also directs DOT to accept stormwater permits from the water management districts, the Department of Environmental Protection, or local governments, provided those permits are based on requirements equal to, or even more stringent than, DOT's requirements. Situations have arisen where a water management district's permit criteria were not equal to or more than stringent than DOT's criteria, yet still would have accomplished the goal of protection of state right-of-way.

Effect of Proposed Changes:
Section 344.044(5), F.S., is amended to include "scenic roads" among the topics for which DOT can purchase promotional materials.

Also, subsection (15) is amended to allow DOT to delegate stormwater permitting to a water management district or other entity, provided that the permit is based on requirements, as determined by DOT, that ensure the safety and integrity of transportation facilities being affected by the runoff.

Section 28: DOT employee bidding
Current Situation:
Section 334.193, F.S., forbids DOT employees from entering into agreements for, or having a financial interest in, the purchase or furnishing of materials or supplies to the agency, contracts to build roads, acquire land, or any other work for which DOT is responsible.

As part of the Governor's initiative to outsource state agency work and to trim staffs, DOT has been researching ways to creatively address these issues.

Effect of Proposed Changes:
Section 334.193, F.S., is amended to authorize DOT to consider competitive bids or proposals from its employees for services that are being outsourced. If the DOT employee or group of employees are determined to be the successful bidders, the employee or employees must resign from the agency prior to executing an agreement to perform the work.

In addition, DOT can consider bids from an employee or group of employees, submitted on behalf of the agency, to continue to perform the work in-house.

DOT is directed to either update existing rules, or promulgate new rules, pertaining to employee usage of department equipment, facilities, and supplies during business hours, in order to prevent any abuses that could occur under these employee bidding procedures.

Section 29: Public-private transportation facilities
Current situation:
Section 334.30, F.S., was created in 1991 to allow for the development of private transportation facilities, such as toll roads or passenger rail service, that would serve to reduce burdens on public highway systems. The private entity developing the transportation facility would be able to charge tolls or fares for its use, under agreement with DOT, and DOT could regulate the amount charged, if the proposal was determined to be too unreasonable to users. No state funds were to be expended on these projects, except those with an "overriding state interest," in which case DOT had the discretion to exercise eminent domain and other powers to assist in such projects, and any maintenance, law enforcement, or other services provided by DOT had to be fully reimbursed by the private entity.

According to DOT, this section of law has never been used. However, DOT has recently received a series of unsolicited trial 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 from its intersection with State Road 112 to north of the Golden Glades Interchange. Typically, HOT (high-occupancy toll) lanes attract motorists willing to pay a fee to use them, because traffic flows quicker.

Effect of Proposed Changes:
The bill rewrites s. 334.30, F.S., throughout. The section is renamed "public-private transportation facilities," and allows DOT to use state "resources" (most likely public right-of-way) for a transportation facility that is either on the State Highway System or which provides increased mobility for the state system. State funds could be used to advance projects that are in the 5-year work program and which a private entity wants to help build. Or, up to $50 million in DOT funds could be spent for partnership projects, statewide, that aren't in the work program. Partnership projects that seek more than the $50 million would have to be approved by the Legislature.

The amended s. 334.30, F.S., also establishes some noticing requirements; allows DOT to participate in funding operating and maintenance costs of partnership projects that are on the State Highway System; allows DOT to participate in the creation of tax-exempt, public-purpose corporations (dubbed chapter 63-20 corporations by the IRS) and to lend toll revenues to these corporations for eligible projects.

Section 30: Safe Paths to Schools Program
Current situation:
Section 335.065, F.S., directs DOT to establish bicycle and pedestrian pathways in conjunction with its state transportation projects, with special emphasis on projects in or within 1 mile of an urban area. DOT is authorized to set construction standards for these paths, and to implement uniform signage. The current law also directs DOT and the Department of Environmental Protection to establish a statewide, integrated system of bicycle and pedestrian paths. The statute does list circumstances when bike or pedestrian pathways aren't required to be established, such as where there is an absence of need or the cost would be prohibitive.

During the 2000 legislative session, a proposal to create a DOT-funded "Safe Paths to Schools" Program was discussed, but it did not pass. In order to determine the extent of the need for such a program, the Department of Education over the interim compiled a survey from county school districts that identifies hazardous walking or biking locations near schools. The Department of Education did not request any legislation based on the survey information, but three bills filed for the 2001 session generally address the issue of hazardous walking or biking conditions near schools. They generally direct county school boards to work with the governmental entities responsible for the hazardous walking or biking conditions on the streets near schools to correct the problem. None of the bills has been voted on in a committee.

Effect of Proposed Changes:
The bill creates s. 335.066, F.S., the "Safe Paths to Schools Program." DOT is directed to consider the planning and construction of bicycle and pedestrian paths to provide safe passageways for children from their neighborhoods to their schools, local parks, and public greenways and trails. DOT is allowed to create a grants program to fund these types of projects, and to adopt rules to administer the new program. However, DOT is not specifically directed to allocate funds for the new program.

Section 32: Abandonment of county roads
Current Situation:
Chapter 336, F.S., discusses the funding, construction and maintenance, designation, and abandonment of county roads. In particular, s. 336.12, F.S., states only that an act by a county commission in closing, abandoning, or renouncing any rights in a recorded road abrogates the public's use of that road. Depending on the circumstances of the county acquiring use of the land as a public, the property can either be returned to the previous fee owners, or surrendered to the abutting property owners.

Some subdivisions that deeded their platted roads to their counties, for public use and maintenance, have expressed an interest in becoming gated communities, and have sought a standardized process for re-acquiring those roads.

Effect of Proposed Changes:
Section 336.12, F.S., is amended to create a standardized process by which a county commission can consider, and at its discretion agree to, a request from a subdivision for a return of roads it originally owned but deeded to the county. Counties would have an option to abandon such roads, and simultaneously convey the county's interest in such roads, rights-of-way, drainage systems, lighting, and other appurtenant facilities, to the recorded subdivision. A subdivision's homeowners' association must request this abandonment and conveyance in writing; the reason for the request is that the subdivision wants to become a gated community; at least four-fifths of the subdivision's property owners of record have consented in writing to the plan; the homeowners' association is a not-for-profit corporation in good standing under chapter 617, F.S., meets the definition in s. 720.301(7) for "homeowners' association;" and has the authority to levy and collect assessments to pay for the maintenance of the road and related facilities.

Sections 35 and 36: Design-build contracts
Current Situation:
Chapter 337, F.S., describes DOT's contracting and acquisition processes. In particular, s.337.107, F.S., gives DOT the authority to enter into contracts, using state procurement guidelines, to purchase right-of-way or related services for transportation corridors and facilities. Section 337.11, F.S., governs DOT's overall contracting authority; one of its provisions prohibits the advertisement of bids and the publication of bid notices for projects until title to the affected right-of-way has either been vested in DOT or a local government, and all railroad crossing and utility agreements have been executed.

Traditionally, individual phases of a transportation project are separately bid and awarded. Florida's DOT is among a handful of state transportation agencies that are awarding contracts to one provider who agrees to perform multiple project tasks. In Florida, these are called "design-build contracts," because the bidders agree to design and build the entire project. DOT is examining the feasibility of expanding this new type of contract to include even more activities, but lacks specific statutory authority, pursuant to s. 337.11(7)(a), F.S., to combine more than the design and construction phases of buildings (including rest areas and weight stations), a major bridge, or a railroad corridor. In fiscal year 2000-2001, DOT has programmed in its budget to spend $349.4 million on design-build projects, primarily to widen or replace bridges.

DOT also has interpreted s. 337.025, F.S., related to "innovative highway projects," to include design-build contracts for all types of transportation work. DOT is limited to spending no more than $120 million annually for innovative highway projects, so most of these projects have been small resurfacing jobs. In fiscal year 2000-2001, DOT has programmed into its budget to spend about $74 million on projects in this category.

DOT also is trying to promote "fast-tracking" of small construction and maintenance projects, meaning contracts that don't need to be competitively bid. Currently, s. 337.11(6)(c), F.S., sets the threshold at $60,000 for projects that don't have to go through competitive bid. As construction and materials costs have increased, DOT staff considers the $60,000 cap too low.

Effect of Proposed Changes:
The bill amends s. 337.107, F.S., to add right-of-way services to those activities that can be included in a design-build contract.

Also, s. 337.11(7)(a), F.S., is amended to make "enhancement projects" eligible for design-build contracts. Examples of enhancement projects are sidewalks, bike paths, pedestrian crossings, landscaping, and street lighting. Language also is added to specify that design-build contracts can be advertised and awarded, but that construction cannot begin until title to all necessary right-of-way has vested in DOT or a local government, and all railroad crossing and utility agreements have been executed.

Finally, s. 337.11(6), F.S., is amended by raising from $60,000 to $120,000 the cap on maintenance and construction projects contracted without a competitive bid. DOT expects this will expedite completion of smaller transportation projects that are sometimes held up because of the need to competitively bid out the finishing touches, such as traffic signal improvements.

Section 38: Utility easements on public right-of-way
Current situation:
DOT or a local government, where applicable, have the authority to allow utilities the use of public right-of-way. Pursuant to s. 337.401, F.S., no utility shall be installed, located or relocated on a public right-of-way unless authorized by a permit issued by the entity owning the right-of-way. By practice, DOT also enters into utility relocation schedules and relocation agreement, which it treats like a utility permit, but this has raised legal issues.

Effect of Proposed Changes:
Section 337.401(2), F.S., is amended to allow DOT and a utility to execute a utility relocation schedule or relocation agreement in lieu of a permit, for activities on state-owned rights-of-way or rail corridors.

This is expected to expedite the process and clear up legal confusion over whether a permit overrides a relocation schedule or agreement.

Section 39: **Unnecessary rulemaking authority**
Current situation:
DOT is directed by s. 339.08, F.S., to expend its funds according to its rules. According to the statute, these rules must restrict the type of expenditures to the 13 categories listed in the statute. DOT has taken the position that the rule is unnecessary, since the statute and other sections of law specifically direct how the agency is to spend its funds.

Effect of Proposed Changes:
References in s. 339.08(1) and (2), F.S., to DOT expenditures being governed by rule are deleted.

Section 40: Local government compensation
Current situation:
Section 339.12, F.S., guides DOT on the acceptance of monetary aid and contributions from federal, local and other governmental entities. There are different accounting processes for handling a situation where a local government is advancing money to DOT in order to expedite a state road project of community importance, and where a local government agrees to expend its own funds and perform the work. In the latter example, local governments are reimbursed their actual costs, pursuant to s. 339.12(5), F.S.

Effect of Proposed Changes:
Section 339.12(5), F.S., is amended so that the words "compensation" and "compensate" replace, where appropriate, the words "reimbursement" and "reimburse." Agency accountants have said the changes more accurately reflect the situation.

Also, a new subsection (10) is added to s. 339.12(5), F.S. The new language seeks to address local governments' concerns about losing future state transportation funding because they raised and spent local tax monies for improvements to the state road system. Counties with at least 50,000 people and at least 15.5 percent of its property off the tax rolls, and which have passed a 1-cent local-option sales tax for transportation projects, are assured of still receiving at least as much state funding as they have in the past, based on a 10-year rolling average. As written, the new provision apparently affects only Leon and Alachua counties.

Sections 41 and 68-83: "Turnpike Enterprise"

Current Situation:

In 1953, the Legislature created an independent Florida State Turnpike Authority to finance, build and operate the Sunshine State Parkway. By 1964, the original 265-mile Mainline, connecting Miami to Wildwood, was completed. With the passage of the State Government Reorganization Act of 1969, the authority was dissolved and oversight responsibility of the Florida Turnpike shifted to DOT. Since 1994, the Florida Turnpike has been DOT's eight "district," with ultimate oversight by the DOT Secretary.

Today, the Florida Turnpike is 401 miles long, and includes the Beeline West in Orange County, the Veterans Expressway near Tampa, the Suncoast Parkway in Hernando County, the Sawgrass Expressway, and the Polk Parkway. Nearly 60 more miles of turnpike are under construction. It is the fourth-largest toll highway system in the United States, the Turnpike District has 1,217 FTEs.

In 1999, the Turnpike District generated $311 million in toll revenues and $8 million in concession revenues. This reliable and steady stream of revenues supports the repayment of state bonds issued to build turnpike projects, and finances their operation and maintenance. One of the reasons the Florida Turnpike is financially solid is that its projects are required by law to generate sufficient revenue to pay at least 50 percent of its bond debt service by the end of its fifth year in operation, and to pay at least 100 percent of its debt serve by the end of its 15th year.

Because it is a significant revenue-generator and outsources more than 80 percent of its activities (including many toll-collection duties), the Florida Turnpike has been mentioned as one of the better examples of state government that could be privatized. Separate studies by KPMG and the Infrastructure Management Group (IMG), Inc., evaluated the potential of privatizing the Florida Turnpike. Released in early 2001, these studies concluded that outright privatization would result in short-term cash flow benefits to the state, but could raise long-term public policy concerns. These studies seemed to support a middle ground, between outright privatization or retaining the status quo. The IMG study seemed to support turning the system into an enterprise (utilizing private-sector business practices but remaining under state oversight), while KPMG favorably discussed making the system into an independent authority.

Effect of Proposed Changes:

The bill significantly amends ss. 338.221 – 338.241, F.S., which is related to the Florida Turnpike. The Turnpike District is recreated as the "Turnpike Enterprise." The term "enterprise" is not defined; instead, it is described in context as an entity that has the autonomy and flexibility to be able to pursue "innovations as well as the best practices found in the private sector in management, finance, organization, and operation.'' A major change in how the Turnpike Enterprise will operate differently than the Turnpike District is that no longer will its toll road projects have to eventually generate enough toll revenue to repay the bond debt incurred to build them. Under the bill, "economically feasible" is redefined as meaning "the revenues of the proposed turnpike project in combination with those of the existing turnpike system are sufficient to service the debt of the outstanding turnpike bonds to safeguard investors."

Other changes include:

- The Turnpike Enterprise is not bound by a cap on the amount of money to be spent on innovative highway projects; the authority of the enterprise to plan, design, build and maintain the Florida Turnpike system is expressed;
- DOT may adopt rules pertaining to the enterprise's ability to use procurement procedures that are alternatives to those in chapters 255, 287 and 337, F.S.;
- The enterprise may automatically carry forward each fiscal year its unexpended funds;
- DOT may enter into contracts or licenses with persons to create business opportunities on the turnpike system; and
- Florida Highway Patrol Troop K is officially recognized as the preferred law enforcement troop of the Turnpike Enterprise. The enterprise's executive director may contract with the DHSMV for additional officers to patrol the turnpike system.

The word "district" is replaced throughout with "enterprise," and other cross-reference changes are made in these sections.

Section 42: Transportation Outreach Program (TOP)
Current Situation:
CS/CS/SB 862, 2nd Engrossed (chapter 2000-257, Laws of Florida), created a number of transportation-funding programs, under the umbrella of "Mobility 2000," to accelerate construction of transportation projects that promote economic development. One such program was the Transportation Outreach Program (TOP) created in s. 339.137, F.S. TOP was intended to fund transportation projects of a high priority that would enhance Florida's economic growth and competitiveness, preserve existing infrastructure, and improve travel choices to ensure mobility. Projects for this program are selected by a seven-member advisory council made up of representatives of private interests directly involved in transportation or tourism; the Governor appoints four members, while the Senate President and the Speaker of the House of Representatives each appoints three. The final project selection is made by the Legislature.

The drafters of TOP intended for the program to receive approximately $60 million a year for the next 10 fiscal years, in funds that originally were set aside for the now-defunct FOX high-speed rail project, which was terminated by Governor Bush in 1999. Additionally, s. 339.1371, F.S., specifies that any of the general revenue funds remaining after Mobility 2000 project needs are met, must be appropriated to the TOP program. TOP wound up with an additional $56.3 million in general revenue, for a total FY 01-02 appropriation of $116.3 million. Over the next decade, TOP may receive an estimated $936 million.

According to s. 339.137, F.S., the key criterion is that a TOP project must be consistent with the "prevailing principles" of preserving the existing transportation infrastructure, enhancing economic growth and competitiveness, and improving the public's travel choices to ensure mobility. Other criteria, which can be waived under certain circumstances, are that the project:
- Is able to be made production-ready within five years;
- Is listed in an outer year of the DOT Five-Year Workplan, but could be made production ready and advanced to an earlier year;
- Is consistent with a current transportation system plan;
- Is not inconsistent with a local government comprehensive plan, or if inconsistent, can document why it should be undertaken.

The TOP project list is forwarded to the Governor and the Legislature for their review, and its approval is subject to the General Appropriations Act.

Section 339.1137, F.S., also lists a broad range of transportation projects generally eligible for TOP consideration; everything from improvements to the state highway system, to Spaceport Florida improvements, to bicycle and pedestrian paths.

The TOP Advisory Council met three times over the interim, and reviewed 207 project applications. The council adopted its final project list on January 8, 2001. It listed 24 projects, totaling $115.3 million. The list has been criticized by some legislators and others for including projects without a clear economic benefit. Another criticism is that the projects don't reflect an equity in spending among the seven DOT districts. The council's TOP list does not include a project within DOT District 4, which encompasses Broward, Indian River, Martin, Palm Beach and St. Lucie counties.

The House and Senate appropriations bills each include a TOP project list with different projects than the council's list. The final list of TOP projects ultimately will be approved in the FY 01-02 budget conference report.

Effect of Proposed Changes:
The bill reorganizes and amends s. 339.137, F.S., throughout. It deletes references to the prevailing principal of "preserving the existing transportation infrastructure,'' because that serves to maintain the status quo, and TOP has a different focus. It also deletes hurricane evacuation routes and pedestrian and bicycle paths as eligible projects because they are covered in the existing DOT work program, or have other sources of public funding.

The language also emphasizes economic growth and competitiveness as the primary criterion for TOP project selection; re-emphasizes intermodal connectivity as an important component of proposed projects; gives priority to eligible projects with matching funds; directs the TOP Advisory Council to create a methodology to score and rank project proposals, in order to bring more accountability to the project selection process; and directs the Florida Transportation Commission to review the TOP Advisory Council's program list, and submit a report to the Legislature on its findings and recommendations.

These changes are nearly identical to HB 1905 (formerly PCB TR 01-03).

Section 45: Expressway authorities
Current situation:
Chapter 348, F.S., deals with the creation and regulation of expressway authorities. Part I of the chapter, created by the Legislature in 1990, specifies the process for a county or counties to create and operate an expressway authority, including appointment of members. Parts II through IX refer to specific expressway authorities that were legislatively created. But other than the requirement that all the voting members of an authority must live in the county served by the expressway, no other qualifications for authority members are listed in statute.

Effect of Proposed Changes:
The bill amends s. 348.003(2)(d), F.S., to give a charter county, as defined by s. 125.011(1), F.S., the authority to establish qualifications, terms of office, and the obligations and rights of appointees to an expressway authority within its jurisdiction. Although there are several charter counties in Florida, only Miami-Dade County meets all of the conditions relevant to the section being amended. So, only the Dade County Expressway Authority will be impacted by the law change.

Sections 46-52: Orlando-Orange County Expressway Authority

Current situation:

The Orlando-Orange County Expressway Authority (OOCEA) was created by the Legislature in 1963; it's first project, the Beeline Expressway (State Road 528) opened to traffic four years later. Comprising the system are 90 total centerline miles, 11 main toll plazas, 42 ramp toll plazas, and 186 total toll lanes. More than 186 million motorists used the toll lanes in fiscal year 2000. OOCEA has adopted a 2025 Expressway Master Plan that includes expansions of the current system to better link with I-4, adding new lanes, and upgrading its toll plazas.

OOCEA's 2000 Annual Report indicated that for the seventh year in a row, the expressway authority experienced double-digit traffic and revenue growth. For example, total system revenues grew from $112.4 million in 1999 to $125.55 million in 2000. Forty-eight percent of the expressway authority's 2000 revenues were earmarked to pay debt service.

Pursuant to state laws, bonds for OOCEA's projects are issued by the State Board of Administration's Division of Bond Finance on behalf of the authority.

Effect of Proposed Changes:

Sections 348.0012, 348.754, 348.7543, 348.7544, 348.7545, 348.755, and 348.765, F.S., are amended in various ways to give the OOCEA authority to issue its own bonds. A specific amendment to s. 348.755, F.S., says these bonds "shall not pledge the full faith and credit of the state."

Section 53: Wetlands Mitigation Requirements for expressway and bridge authorities

Current Situation:

Many DOT projects involve the dredging and filling of wetlands, Florida's environmental "kidneys" that filter surface water runoff before it is absorbed into the ground, help hold floodwaters, and provide natural habitat. Since the 1970s, the state's environmental agencies have required "mitigation" for damage done to wetlands by human development. Originally, this mitigation was either done on-site, or adjacent to the damaged area, by trying to create or restore a wetland area, or to leave existing green space untouched. But a wealth of biological studies in the early 1990s indicted that this piece-meal, project-by-project approach to mitigation was largely unsuccessful in restoring an ecosystem. Florida and other states began developing regional or basin approaches to mitigating for wetlands damage.

In 1996 the Legislature created s. 373.4137, F.S., detailing a process by which DOT could pay a per-acre sum of money to the Department of Environmental Protection (DEP) and the water management districts (WMDs) for their staffs to perform basinwide mitigation to offset the adverse environmental impacts of road projects. Currently, DOT, DEP and the WMDs match up transportation projects with wetlands impacts, and develop environmental impact inventories for each WMD region of the state. Based on a current $80,000 per acre of impact cost, DOT makes quarterly deposits in a special escrow account within the State Transportation Trust Fund, and DEP can withdraw funds from it to pay for the mitigation projects within the basins overseen by each WMD. Much of the funds have been spent over the years to acquire and preserve lands from future development.

From DOT's perspective, this has proven to be a cost-effective and environmentally sound approach.

Effect of Proposed Changes:

Section 373.4137, F.S., is amended throughout to allow expressway authorities to utilize the process developed for DOT to pay mitigation funds into escrow accounts, managed by DEP, which

finance WMD mitigation projects to offset the adverse environmental impacts of expressway projects.

Section 60: ROW acquisition

Current Situation:

Chapter 475, F.S., regulates real estate brokers, sales persons, appraisers and real estate schools. There are very stringent training and licensing requirements for persons who want to sell real estate in Florida, but s. 475.011, F.S., does list 12 exemptions from those requirements. For example, an employee of a public utility, rural electric cooperative, railroad, or state or local governmental entity, acting within the scope of his employment and receiving no additional compensation apart from his or her salary, may buy, sell, appraise, rent, or lease real property for the use of his or her employer, without being a licensed realtor in Florida.

Effect of Proposed Changes:

Section 475.011, F.S., is amended to add a 13th exemption from Florida real estate licensing requirements for firms and their employees who are under contract with DOT, or other state or local governmental entity to acquire right-of-way, if the compensation for such services is not based upon the value of the property acquired. DOT has said this exemption is necessary because there are not enough state-licensed realtors with expertise in road right-of-way acquisition, and out-of-state firms would be interested in bidding for this work, if they didn't have to go through the Florida licensing requirements.

Sections 61 and 63: Local government regulation of outdoor advertising signs

Current situation:

Chapter 479 governs billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by DOT and obtain permits, regulating height, size and other characteristics of the billboards. The majority of the provisions relate to DOT's duties and authority as they relate to permitting, removing, and otherwise regulating billboards along the interstate highway system and the federal–aid primary highway system, which includes state roads. Because federal dollars helped build or maintain these roads, DOT must adhere to federal guidelines, as first expressed in the Highway Beautification Act of 1965.

A recurring issue is what to do about billboards that were lawfully erected, but are now classified as "non-conforming," because the zoning, land-use, lighting and similar regulations have changed since they were permitted.

If DOT orders the removal of a legally erected, but now nonconforming, sign along the interstate or a federal-aid primary highway, it must pay the billboard owner just compensation. But Florida's local governments are not required to pay just compensation to billboard owners when they remove, or force the removal of, legal but nonconforming signs along local roads. Currently, 44 Florida counties or municipalities have ordinances that specify amortization schedules and/or removal provisions for non-conforming signs, based on information provided by the Florida Outdoor Advertising Association. An "amortization schedule" is a set period of time during which it is assumed the value of a billboard depreciates. A typical time-frame for amortization is five to seven years. For example, a local government would not owe compensation for the removal of a billboard that has been in use past the amortization period.

The Florida Supreme Court has not addressed the issue of amortization of legally erected, but non-conforming, outdoor signs that must be removed. However, the Fifth District Court of Appeals has ruled that local governments are not constitutionally required to compensate billboard owners, and may amortize nonconforming signs, as long as the amortization period is reasonably long enough to allow the sign owner to recoup his investment. [See *Lamar Advertising Associates, Ltd. V. Daytona Beach*, 450 So.2d 1145, 1150 (Fla. 5th DCA 1984]

Effect of Proposed Changes:
The bill creates s. 70.20, F.S., to establish a process by which local governments and sign owners are encouraged to enter into relocation and reconstruction agreements that balance the public policy interests of both groups. "Relocation and reconstruction agreement" is defined as a "consensual, contractual agreement between a sign owner and municipality, county, or other governmental entity for either the reconstruction of an existing sign or removal of a sign and the construction of a new sign to substitute for the sign removed."

The new section of law specifies that no local governmental entity may remove, cause to be removed, or alter any lawfully erected sign along any portion of the interstate, federal-aid primary or other highway system, or any other road, without first paying just compensation as determined by the agreement, or through eminent domain proceedings.

Local governmental entities must give sign owners notice of a public project or goal that would impact such signs. Both parties then have 30 days to meet, negotiate and try to execute a relocation and reconstruction agreement. If that fails, within 120 days, either party may request mandatory nonbonding arbitration to try and resolve their differences. Each party will select one member of the arbitration panel, and those two shall select a third. The parties will share the costs of arbitration if an agreement is reached; if not, the party that rejects the arbitration has to bear the full costs. If no agreement is reached, and the local governmental entity decides to move forward with its project, then it must pay the sign owner just compensation.

The new s. 70.20, F.S., also establishes other conditions whereby just compensation must be paid to a sign owner whose sign is either relocated, removed, or altered. It is applicable only to lawfully erected, off-premise signs.

Excluded from the provisions of s. 70.20, F.S., are: counties and cities that have existing agreements with sign companies; local ordinances that sign owners have by written agreement waived all rights to challenge; a situation where local governments and sign companies have been engaged in judicial proceedings on or before May 1, 1997; and a local ordinance that has created "view corridors" to effectuate a consensual agreement between a local government and at least two sign owners. Based on the above exclusions, Jacksonville, Lakeland, Tallahassee, Largo, Tampa, Orlando, Pompano Beach, Hillsborough County, Martin County, and Clearwater (partially) are exempt from the provisions of this act.

In addition, the provisions of this section do not apply until July 1, 2002, to any dispute between a local government and sign owners, where the amortization period has expired and judicial proceedings are pending. This covers Pinellas County, parts of Clearwater, and Fort Walton Beach.

Also, DOT is exempt form the provisions of this section because it follows federal requirements.

The bill also amends s. 479.15, F.S., to include a definition of "federal-aid primary highway system."

Section 62: Addressing impacts of noise barriers or similar obstructions on billboards
Current situation:
Chapter 479, F.S., does address ways to accommodate billboard owners whose signs are affected by highway beautification projects, such as planting of vegetation. However, the chapter does not address the issue of other types of obstructions, such as concrete sound barriers along highways and roads, intended to reduce the noise level in nearby neighborhoods.

Effect of Proposed Changes:
Section 479.25, F.S., would be created, to specify that governmental entities may enter into agreements with sign owners allowing a lawfully erected billboard to be raised when a sound barrier, visibility screen, or other highway improvement blocks the billboard from being seen. The increase in height shall only be sufficient to achieve the same degree of visibility the billboard enjoyed prior to construction of the blocking object. The agreement must be approved by the Federal Highway Administration if the billboard in question is located on a federal-aid primary or interstate highway.

Sections 64 and 65: Solicitation of funds at certain public transportation facilities
Current situation:
Chapter 496, F.S., regulates solicitation of funds by charitable and other organizations. Section 496.425, F.S., contains specific regulations on solicitation of funds within airports, railroad and bus stations, ports, rest areas, and similar facilities. For example, a soliciting organization must obtain a permit from the entity responsible for the transportation facility.

Once common, fund-raisers and fund soliciting at highway rest areas and welcome stations have declined in recent years. This can be attributed to a number of reasons; among them security concerns and competition from the variety of soda and snack machines now on site.

Effect of Proposed Changes:
Section 496.425(1), F.S., is amended to delete highway rest areas, roadside welcome centers and highway service plazas from the types of transportation facilities where fund solicitation can occur .

Also, s. 496.4256, F.S., is created, specifying that any governmental entity or authority that owns or operates welcome centers, wayside parks, service plazas, or rest areas on the state highway system are not required to issue a solicitation permit.

Section 66: Regulation of light poles
Current Situation:
Section 337.408, F.S., regulates the placement, size and advertisers' use of bus benches, bus transit shelters, and trash barrels and other "waste receptacles" situated on public rights-of-way. DOT, the cities and the counties are empowered to regulate these structures on their particular rights-of-way. In addition, local governments have the discretion whether to seek competitive bids from companies wishing to place these structures. DOT rules establish the size limits on benches, transit shelter and waste disposal receptacles along state right-of-way. The statute does not address street light poles.

Effect of Proposed Changes:
Section 337.408, F.S. is amended to add street light poles to those roadside structures that are regulated by DOT and local governments. Public service messages and advertising may be attached to these poles, as specified by local ordinance if the poles are on county or city right-of-way, or by DOT rules if along the State Highway System. No advertising on street light poles may be erected along the Interstate Highway System or National Highway System.

The changes also include specific authority, as of July 1, 2001, for local governments and DOT to order the removal of any bench, transit shelter, or waste receptacle that is structurally unsound or in visible disrepair.

Finally, the law clarifies that a city or county may authorize the installation, *with or* without public bid, bus benches or transit shelters.

Section 67: Sovereign Immunity

Current Situation:

Chapter 728, F.S., includes a number of provisions on negligence, sovereign immunity, and release of liability.

Sovereign immunity means neither the state, its agencies, nor subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of $200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $100,000 or $200,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, which considers requests for additional amounts as claims bills.

Section 728.28, F.S., lists a number of entities or circumstances where sovereign immunity is applicable.

Effect of Proposed Changes:

Section 768.28, F.S., is amended to add that operators and security providers who are contracted by the Tri-County Commuter Rail Authority shall be considered agents of the state while acting within the scope of their contracted duties. As agents of the state, they are eligible for sovereign immunity protection in liability claims.

Section 85: Provides this act shall take effect July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Eliminating the airport license fees, as proposed in Section 22 of the bill, will have a minimal fiscal impact. The airport license fee generates an estimated $90,000 a year, but DOT has estimated it costs the agency at least $100,000 annually to administer the collection program. The annual license fees currently are: $100 for public airports; $70 for private airports; $50 for a limited use airport; and $25 for a temporary airport.

DHSMV is likely to see an indeterminate revenue increase if the motorists ordered by the courts to attend a driver improvement school pay the $2.50 fee, as proposed in Section 16 of the bill.

2. Expenditures:

DOT expects the expense of developing an on-line registration system for private airports, as proposed in Section 22 of the bill, and periodically reviewing the data to be minimal.

The DHSMV may incur costs estimated at $13,000 for printing sufficient copies of the Traffic School Reference Guide, as proposed in Section 14 of the bill. The agency has estimated it would need to print 3.2 million copies of the guide. In addition, DHSMV has estimated it will cost $72,900 to modify the Driver License Software System to allow it to screen for certain violations to determine which motorists must attend traffic school.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

It is possible the "just compensation" standard, as proposed in Section 63 of the bill, will be more expensive for cities and counties who require the removal or relocation of outdoor advertising signs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Elimination of the airport registration/inspection fee should have a positive economic impact on private airports.

The ability of outdoor advertisers to receive "just compensation" rather than accept an amortized value, should have a positive economic impact on sign owners required to remove their billboards.

Owners of driver improvement schools likely will see a significant increase in students, and thus revenues, if the provisions in Sections 15-19 of the bill become law. The fee that traffic schools charge varies considerably across the state, with prices starting in the $25 to $30 range.

D. FISCAL COMMENTS:

DOT estimates that raising the debt service cap, as proposed in Section 4 of the bill, will generate $800 million of net proceeds (bond proceeds less debt service) over the next five years, to acquire right-of-way and repair or build bridges.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of the bill because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

House Bill Drafting had suggested that HB 1053, as filed, contained more than one subject, and may be in violation of the constitutional single-subject rule. No additional written comments were provided by House Bill Drafting for the committee substitute or the committee substitute for the

committee substitute, but since the amendatory process added more transportation-related subjects, the same comment could be applicable to the bill in its current form.

B. RULE-MAKING AUTHORITY:

Section 1 of the bill gives the DOT Secretary authority to promulgate rules that will assist the proposed Turnpike Enterprise in utilizing best business practices.

Section 12 of the bill gives DOT authority to develop an on-line registration of private airports.

Section 39 deletes the requirement that DOT include in rule all of the activities on which it can spend its appropriated funds, because the statute is explicit.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 2001, the Committee on Transportation adopted 18 amendments to the bill. A brief synopsis of these amendments follows:

- **Amendment 1** – Lengthy amendment that deletes unnecessary details about DOT's organizational structure; deletes the position of Assistant Secretary for District Operations; creates the Office Management & Budget and the Office of Comptroller; makes technical changes.
- **Amendment 2** – Clarifying; replaces the word "documents" with "documentation" to allow DOT to accept on-line registration forms from private–airport owners.
- **Amendment 3s --** Adds a provision allowing local government to disqualify a DOT-prequalified contractor from bidding on a new project if the contractor is 10 percent or more behind on completing an existing project for that entity.
- **Amendment 4s** - Deletes provision making the changes in contractor qualification applicable to county and other local-government projects available for contracting after July 1, 2001.
- **Amendment 5** – Technical; adds a cross-reference.
- **Amendment 7** – Officially allows airports to use state aviation funds for off-airport noise mitigation projects.
- **Amendment 8s** - Places in statute the acceptable dimensions of advertising on bus benches, transit shelters and waste barrels on public right-of-way. Directs DOT to adopt rules to implement this section.
- **Amendment 8sa** - Adds a sentence preventing multiple advertising displays on these structures from facing in the same direction, at any one location.
- **Amendment 9s** – Defines "federal aid primary highway system" for the purposes of outdoor sign regulation. Allows local governments and other entities to enter into agreements with outdoor sign owners to elevate those signs which have been blocked by noise walls, visibility screens, etc. Creates in s. 70.20, F.S., a process for sign owners and governmental entities to work out their differences on sign relocation. DOT is not subject to the process elaborated in s. 70.20, F.S.
- **Amendment 12** —Gives a county governing board authority to establish certain membership criteria for members of an expressway authority in its jurisdiction
- **Amendment 13** - Allows the Orlando-Orange County Expressway to sell bonds, rather than the bonds be issued through Division of Bond Finance. Also allows the OOCEA to use its bond

funds to acquire lands or facilities necessary to the expressway, and to equip or refurbish its system.

- **Amendment 14** – Allows expressway authorities to utilize a process developed for DOT where they pay DEP/the WMDs a sum of money to conduct the necessary per-acre wetlands mitigation caused by expressway expansion or other projects.
- **Amendment 15** – Revamps existing statute (s 334.30, F.S.) on private entities building transportation projects that benefit the public system. Specifies that private entities may obtain state resources to build the project, under certain conditions.
- **Amendment 15a** -- Clarifying; makes it clear that private entities that build facilities not on the SHS will reimburse 100% DOT for any services that agency provides.
- **Amendment 16s** —Directs DOT to consider planning and developing a "Safe Paths to School Program." Gives DOT discretion to adopt rules, if necessary.
- **Amendment 17** – Raises minimum funding for seaports program from $8 million to $10 million annually. Allows the funds to be used for seaport security improvements. Exempts seaport security projects from the 50-50 match requirement.
- **Amendment 20** – Counties with at least 50,000 people and at least 15.5% of its property off the tax rolls, and which have passed a 1-cent local-option sales tax for transportation projects, are assured of still receiving at least as much state funding as they have in the past, based on a 10-year rolling average. Amendment apparently affects only Leon and Alachua counties.
- **Amendment 21** -- Basically the same language in the bill now, but adds a provision allowing expressway and bridge authorities to disqualify a DOT-prequalified contractor from bidding on a new project if the contractor is 10 percent or more behind on completing an existing project for that entity.

On April 4th, 2001, the Transportation & Economic Development Appropriations Committee adopted four amendments, which did the following:

- Deleted a provision that increased to $10 million from $8 million the amount provided to seaports for their Chapter 311, F.S., economic development grant program.
- Removed language increasing threshold amounts of work program project amount changes, above which a work program budget amendment must be submitted for notice and review by the Legislature and Governor.
- Deleted language that raised the debt service cap for right-of-way and bridge construction bonds issued by the DOT.
- Deleted language that specifies dimensions of advertising on bus benches, transit shelters, and roadside waste receptacles.

These four amendments traveled with the bill to its next stop, the Ready Infrastructure Council.

On April 16, 2001, the Ready Infrastructure Council adopted 24 amendments to CS/HB 1053. A brief description follows:

- Erased the impact of an amendment adopted by the Transportation and Economic Development Appropriations Committee that would have deleted the increased cap in debt service for ROW/bridge replacement bonds.
- Provided sovereign immunity to operators and security personnel of the Tri-County Commuter Rail System.
- Broadened the applicability of traffic school referrals and deleted the limit that a motorist can elect to attend school no more than five times.
- Regulated placement of and advertising on light poles.

- First of two amendments allowing DOT to create a "Turnpike Enterprise," which will allow the Florida Turnpike to operate more like a private business, with DOT oversight.
- Deleted provision that community improvement districts are not required to competitively bid, pursuant to s. 287.055, F.S., for the services of engineers, architects and other design professionals.
- Doubled the threshold amount for continuing contracts. Airports and other entities could enter into "continuing contracts," also called multi-year contracts, without having to re-bid each year, where construction services do not exceed $1 million, and where the cost of a study does not exceed $50,000.
- Reinstates requirement that seaports have to use the chapter 287, F.S., competitive bid process.
- Corrected technical glitch in definition of "temporary airport."
- Deleted inspection and licensing requirements for private airports. This amendment allows DOT to inspect and license private airports with 10 or more aircraft, at the airport's request.
- DOT employees would be able to bid on work proposed to be outsourced. The DOT employees can either bid as a group that will resign from the agency if winning the bid, or can bid as DOT employees, and keep the work in-house. DOT is authorized to revise or draft rules pertaining to employee use of agency equipment, facilities and supplies during business hours.
- Established a process and criteria for counties to use when considering requests from subdivision homeowners' associations requesting abandonment of a road, so that the subdivision can become a gated community.
- Technical, compromise language to replace provisions already in the bill about local governments allowing DOT-prequalified contractors to bid on their projects.
- Companion to previous amendment. Compromise language for provision already in the bill directing expressway and bridge authorities to allow DOT-prequalified contractors to bid.
- Included the text of HB 1905 (PCB TR 01-03), the Transportation Outreach Program rewrite.
- Allowed out-of-state companies or acquisition agents to provide ROW services to DOT, without having a Florida real-estate license.
- Inserted the latest language on billboard compensation proposal.
- Exempted airports and petroleum storage facilities from DRI review. For all other development projects potentially subject to a DRI review, the amendment creates a clear-cut numeric threshold for when a DRI review is triggered. Also, deletes current provision whereby a development in one county, if it is within 2 miles of the border of a less-populous county, can be evaluated under the less-populous county's growth requirements.
- Created the Turnpike Enterprise, and expressed its powers and duties.
- Exempted auto auction yards of a certain size from DRI review.

The Council accepted a motion to incorporate the amendments into the bill as a council substitute for a committee substitute, then approved the legislation by a vote of 16-0.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:	Staff Director:
Joyce Pugh	Phillip B. Miller

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

Prepared by:	Staff Director:
Eliza Hawkins	Eliza Hawkins

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:	Council Director:
Joyce Pugh	Thomas J. Randle