

STORAGE NAME: h1053.tr.doc
DATE: March 5, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TRANSPORTATION
ANALYSIS**

BILL #: HB 1053
RELATING TO: the Department of Transportation
SPONSOR(S): Representative(s) Russell
TIED BILL(S):

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

- (1) TRANSPORTATION
 - (2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
-

I. SUMMARY:

HB 1053 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;
- Raising DOT's bond cap and dollar thresholds for amendments to the Five Year Work Program;
- Allowing DOT to include right-of-way services and road enhancement projects in design-build contracts;
- Directing local governments and expressway/bridge authorities to accept bids from transportation contractors who are prequalified by DOT;
- Directing that outdoor advertisers who are compelled by local governments to remove their signs be paid just compensation; and
- Eliminating solicitation of funds at highway rest areas, welcome centers and similar facilities along the State Highway System.

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.

HB 1053 has a minimal fiscal impact on the DOT.

The bill would take effect July 1, 2001.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

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:

Section 1: 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 2, 15, 16 and 19: 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. Sections 336.41 and 337.14, F.S., are similarly amended. These new provisions would apply to local government and expressway authority contracts that are advertised on or after July 1, 2001.

Sections 3, 4, 14, 24, 25, and 30: 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:

HB 1053 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, HB 1053:

- 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 5: 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 6 and 7: 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 8-12: 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, 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. 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.

Section 13: 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 it 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.

Sections 17 and 18: 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 20: 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 21: 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 22: 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.

Section 23: Work Program amendments

Current situation:

As with all state agencies, DOT has to submit a formal request to the Governor's Office of Planning and Budgeting if it wishes to amend its budget during a fiscal year. These budget requests also are reviewed by the House and Senate appropriations chairs. DOT's thresholds for having to submit a budget amendment for its five-year work program are: adding a project estimated to cost more than \$150,000; advancing or deferring to another fiscal year a right-of-way project phase, a construction phase, or a public transportation phase in excess of \$500,000; and advancing or deferring to another fiscal year a preliminary engineering or design phase costing more than \$150,000.

Effect of Proposed Changes:

Section 339.135(7)(c), F.S., is amended to raise the threshold amounts for projects that need to be approved as a budget amendment. The \$150,000 threshold for adding a project, and advancing or deferring to another fiscal year the preliminary engineering phase or design phase, is increased to \$500,000. The current \$500,000 threshold for advancing or deferring to another fiscal year for a right-of-way project phase, the construction phase, or public transportation project phase is increased to \$1 million.

Section 26: 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. 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 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 which 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 amends s. 479.15, F.S., to require local governmental entities to pay just compensation to sign owners whose lawfully erected, but nonconforming, billboards must be removed. This would negate local government ordinances that currently require removal of non-conforming signs after an amortization period.

Section 27: 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 or interstate highway.

Sections 28 and 29: 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 31: Provides this act shall take effect July 1, 2001.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Eliminating the airport license fees, as proposed in Section 10 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.

2. Expenditures:

DOT expects the expense of developing an on-line registration system for private airports, as proposed in Section 10 of the bill, and periodically reviewing the data to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

It is possible the "just compensation" standard, as proposed in Section 26 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.

D. FISCAL COMMENTS:

DOT estimates that raising the debt service cap, as proposed in Section 1 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.

III. 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 HB 1053 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:

HB 1053 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:

HB 1053 does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

House Bill Drafting has suggested that HB 1053 contains more than one subject, and may be in violation of the constitutional single-subject rule.

B. RULE-MAKING AUTHORITY:

Section 9 of the bill gives DOT authority to develop an on-line registration of private airports.

Section 21 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:

Several amendments on a variety of transportation-related topics are expected to be filed for the committee's consideration.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Staff Director:

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