

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1214

SPONSOR: Transportation Committee and Senator Sebesta

SUBJECT: Transportation

DATE: March 9, 2002                      REVISED: 03/11/02                      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/8 amendments</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

**I. Summary:**

This CS 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 Florida Department of Transportation (FDOT) officers and supervisors, and obsolete references in general.

The CS: creates the “Dori Slosberg Driver Education Act” which authorizes a county to require by ordinance the payment of a \$3 surcharge on each civil traffic penalty to be collected by the clerk of the court; provides it is unlawful to possess any device for the transportation of motor or diesel fuel which does not conform to federal requirements for such fuel transportation devices, provide penalties; removes exemptions for Community Improvement Districts and the Florida Seaport Transportation and Economic Development Council from ss. 287.055 and 206.46(2), F.S., raises the cap on the FDOT’s maximum debt service on right-of-way acquisition and bridge construction bonds; deletes obsolete state requirements for transit planning; provides pre-qualification for certain contractors; and broadens the definition of “airport or aviation development project.”

The CS authorizes, effective July 1, 2003, the FDOT to combine the right-of-way, design and construction phases of a project, and to make “limited access facilities” eligible for design-build contracts. A provision 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 the FDOT or a local government, and all railroad crossing and utility agreements have been executed. Further the CS removes the provision authorizing the FDOT to combine the right-of-way and design and construction phases of a project, effective July 1, 2005.

The CS: creates the “Safe Paths to Schools Program;” allows the FDOT and a utility to execute a utility relocation schedule or relocation agreement in lieu of a permit; allows for the regulation of advertisements on light poles; raises the limit on local -government cash advances from \$100 million to \$150 million; and provides grant preference for certain counties.

The CS authorizes numerous provisions concerning expressway authorities. This CS: gives Miami-Dade County the authority to establish qualifications, terms of office, and the obligations and rights of appointees to the Miami-Dade Expressway Authority; authorizes access to property by expressway authority employees or authorized agents to make necessary examinations for the acquisition of property; authorizes the Orlando Orange County Expressway Authority to issue bonds; authorizes the Tampa-Hillsborough County Expressway Authority to issue bonds and refinance certain projects; and, authorizes expressway authorities to utilize the process developed for the FDOT to pay mitigation funds into escrow accounts.

The CS further: deletes highway rest areas, roadside welcome centers and highway service plazas from the types of transportation facilities where fund solicitation can occur; provides that operators and security providers who are contracted by the Tri-County Commuter Rail Authority are eligible for sovereign immunity protection in liability claims; provides sovereign immunity to local fixed rail historic street car service providers; and redirects any revenue from civil traffic penalties that a municipality or county collects that exceeds 25 percent of its total actual annual revenue for the prior fiscal year.

This CS substantially amends sections 20.23, 110.205, 189.441, 206.46, 215.65, 255.20, 287.055, 311.09, 315.02, 315.03, 332.004, 332.007, 334.044, 336.41, 336.44, 337.11, 337.14, 337.401, 337.408, 339.08, 339.12, 339.2817, 339.55, 341.031, 341.051, 341.053, 341.501, 348.0003, 348.0008, 348.545, 348.565, 373.4137, 496.425, 496.4256, and 768.28. The CS creates sections 335.066 and 768.0701 of the Florida Statutes. The bill further amends chapter 88-418, Laws of Florida.

## II. Present Situation:

### *Sections 1 and 4 -- FDOT reorganization:*

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 FDOT reporting requirements. According to the FDOT staff 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.

### *Section 2 -- “Dori Slosberg Driver Education Act:”*

Pursuant to s. 233.063, F.S., each school district must provide secondary school students with a course of study and instruction in the safe and lawful operation of a motor vehicle. In order to make these programs and instruction available to secondary students, the district school boards may use instructional personnel employed by the board, may contract with a commercial driving school licensed under the provisions of ch. 488, F.S., or may contract with an instructor certified under the provisions of ch. 488, F.S.

School districts earn funds for these programs on full-time equivalent students at the appropriate basic program cost factor, regardless of the method by which such courses are offered. The driver education programs are also funded by a levy of an additional \$.50 per year to the driver's license fees prescribed in s. 322.21, F.S. The additional fee is placed in the General Revenue Fund.

District school boards prescribe standards for courses required under s. 233.063, F.S., and for instructional personnel directly employed by the boards. Certified instructors and licensed commercial driving schools are deemed sufficiently qualified, and are not required to meet any standards beyond those prescribed in ch. 488, F.S.

*Section 3 -- Illegal Transportation of Fuel:*

According to the petroleum industry, there has been a recent problem, particularly in Southeast Florida, concerning the illegally obtaining and selling of motor fuel. Persons fraudulently obtain fuel from a gas station, often by using a stolen or duplicate credit card, and convey the gas into an inappropriate container on the vehicle, often hundreds of gallons. The stolen gas is then sold from the vehicle at another location, typically an industrial area.

Chapter 206, F.S., requires persons transporting fuel to be licensed as a carrier and provides for various record keeping requirements. Section 206.20, F.S., provides every person transporting motor fuel over public highways must have in their possession proof of sale and payment of taxes for the fuel on board the vehicle, unless there is less than 5 gallons and it is being transported for emergency purposes. A violation is a misdemeanor of the first degree. Section 206.205, F.S., provides any vehicle found to be transporting fuel for the purpose of illegally evading any fuel tax may be forfeited, and transporting fuel without being licensed as a carrier is a misdemeanor of the first degree.

Chapters 525 and 526, F.S., address requirements for the sale of motor fuel, including the inspection of retail motor fuel storage tanks, ensuring proper labeling of fuels, and addressing deceptive sales practices, and other requirements directed toward ensuring safe operation and fair competition among legitimate businesses.

Sections 817.57-817.685, F.S., are the "State Credit Card Crime Act." This act addresses various forms of credit card fraud and provides penalties. Credit card crimes, which are misdemeanors of the first degree, include theft by credit card, which was lost, buying or selling credit cards, and false statements on credit card applications. Credit card crimes which are a third degree felony include forging a signature on a credit card, use of scanning device or reencoder to defraud, and the illegal possession of credit card making equipment.

49 Code of Federal Regulations Part 173 provides general requirements for commercial truck shipments and packaging. All commercial fuel carriers must meet federal safety requirements, however, fuel containers 8 gallons or less are exempt from federal requirements.

*Section 5, 9 and 10 -- Consultant Competitive Negotiation Act:*

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 re-bid 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 negotiate with 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 ch. 287, F.S. In part, the Legislature's intent was for the CS 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.

*Section 6: Right-of-way bonds:*

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, must 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, the FDOT's 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, FDOT staff recommends raising the cap to \$200 million now because the agency plans its Work Program in five-year increments.

*Sections 7, 29, 30 and 31 -- Obsolete state requirements for transit planning:*

The FDOT's Transit Office administers federal and state transit grants; monitors compliance with transit regulations; and provides planning and technical assistance to Florida's transit agencies and communities. The federal government heavily regulates public bus systems and other public transit, and states must comply with those regulations in order to receive federal funds. However, Florida statutes include requirements, such as for transit investment policies, that have either been superseded by federal law or are unnecessary because of federal changes.

*Sections 8, 18, 19 and 22 -- Contractor bidding on local government/expressway projects:*

The basic process for counties, municipalities, special districts and other political subdivisions of the state to award contracts for construction projects are 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 the FDOT's contractor certification process. All contractors who wish to bid on transportation projects costing in excess of \$250,000 must meet FDOT qualifications and be certified.

*Section 11 and 12 -- Seaport funding:*

Section 315.02, F.S., provides definitions for ch. 315, F.S., relating to port facilities financing. The section provides the term “unit” means any county, port district, port authority or municipality. The term “port facilities” includes harbor, shipping and port facilities, along with other port related facilities, but does not include security measures.

Section 315.03, F.S., provides the powers of Florida's seaports. Among the powers granted is the power for ports to accept loans or grants or money or materials or property at any time from the United States or the State of Florida.

*Section 13 – Airport funding:*

Senate Bill 48B authorized the FDOT to provide operational and maintenance assistance to publicly owned public-use airports for the purpose of complying with enhanced federal security requirements or to address related economic impacts from the events of September 11, 2001. The bill repeals this provision on June 30, 2003. After that date programmed state aviation funds could be used to offset unanticipated airport operational expenses or to address related economic impacts; however, Florida law does not allow the FDOT to provide operational and maintenance assistance

*Section 14 – Crandon Boulevard:*

Chapter 88-418, L.O.F., designated Crandon Boulevard as a state historic highway and provides no public funds may be expended for the alteration of the physical dimensions or location of Crandon Boulevard, the median strip or the land adjacent to the boulevard.

*Section 15 – Airport noise mitigation:*

The Federal Aviation Administration is the prime regulator of airports, airlines and aircraft. Chapter 330, F.S., governs the state regulation of public and private airports. The FDOT'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.

*Section 16 and 25 -- FDOT's powers and duties:*

The FDOT'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.

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

In addition, s. 339.08, F.S., details how the FDOT must spend its annual legislative appropriations from the State Transportation Trust Fund, directs the FDOT to implement rules that further elaborate on its spending powers.

*Section 17 -- Safe Paths to Schools Program:*

Section 335.065, F.S., directs the FDOT to establish bicycle and pedestrian pathways in conjunction with its state transportation projects, with special emphasis on projects in or within one mile of an urban area. The FDOT is authorized to set construction standards for these paths, and to implement uniform signage. The current law also directs the FDOT and the DEP to establish a statewide, integrated system of bicycle and pedestrian paths. The statute does list circumstances when bike or pedestrian pathways are not 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 an FDOT-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 2000 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.

*Sections 20 and 21 -- Design-build contracts:*

Chapter 337, F.S., describes the FDOT’s contracting and acquisition processes. In particular, s.337.107, F.S., gives the FDOT 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 the FDOT’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 the FDOT 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. The FDOT 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.

CS/SB 24B passed the Legislature during Special Session 2001B, amending s. 337.107 F.S., to add right-of-way services to those activities that can be included in a design-build contract.

The CS/SB 24B further amended s. 337.11(7)(a), F.S., to make all types of transportation projects, except for resurfacing and minor bridge projects, eligible for a design-build contract at the FDOT’s discretion. Because the FDOT has already committed approximately \$90 million in innovation projects, this was necessary to allow approximately \$400 million of the projects in the transportation portion of the Governor’s Economic Stimulus Plan to be expedited in the next six to eight months. This expansion of eligible design-build contracts also includes intelligent transportation systems. CS/SB 24B repeals the enhanced design-build provisions on June 30, 2003.

*Section 23 -- Utility easements on public right-of-way:*

The FDOT or a local government, where applicable, has 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, the FDOT also enters into utility relocation schedules and relocation agreement, which it treats like a utility permit, but this has raised legal issues.

*Section 24 -- Regulation of light poles:*

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. The FDOT, 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. The FDOT 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.

*Section 26 -- Local government compensation:*

Section 339.12, F.S., guides the FDOT 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 the FDOT 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.

In addition, under s. 339.12(4), F.S., the FDOT may enter into agreements with a city or county, whereby the FDOT accepts up to \$100 million from the local government to perform a transportation improvement project that is a priority for the city or county, but not in the agency's 5-year work program. The local government is reimbursed later through a legislative appropriation.

*Section 27 – County Incentive Grant Program:*

Section 339.2817, F.S., provides for the County Incentive Grant Program. To be eligible for the program, projects must be located on the State Highway System or must relieve congestion on the State Highway System. For projects in the Florida Intrastate Highway System, the FDOT provides 60 percent of project costs. For projects in the State Highway System, the FDOT provides 50 percent of project costs. For local projects, which are demonstrated to relieve traffic congestion on the State Highway System, the FDOT provides 35 percent of project costs.

*Section 28 – State-Funded Infrastructure Bank:*

Section 339.55, F.S., creates a State-Funded Infrastructure Bank to provide loans and credit enhancements to government units and private entities for use in constructing and improving transportation facilities. The section may lend capital costs or credit enhancements for a transportation facility project that is on the State Highway System or that provides for increased mobility on the state's transportation system.

*Section 32 – High-technology transportation systems:*

Section 341.501, F.S., provides that the FDOT may enter into a joint project agreement with, or otherwise assist, private or public entities, or consortia, to facilitate the research, development, and demonstration of high-technology transportation systems, including, but not limited to, systems using magnetic levitation technology. The provisions of the Florida High-Speed Rail Transportation Act, ss. 341.3201-341.386, F.S., do not apply to actions taken under this section, and the FDOT may provide funds to match any available federal aid for effectuating the research, development, and demonstration of high-technology transportation systems.



*Sections 33 and 34 -- Expressway authorities:*

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.

*Sections 35 and 36 -- Tampa-Hillsborough County Expressway Authority:*

In 1997 the Tampa-Hillsborough Expressway Authority was authorized to issue revenue bonds to finance and refinance certain projects. These revenue bonds are not backed by the full faith and credit of the State of Florida. In addition to existing facilities, the authority was authorized to issue bonds to finance Brandon area feeder roads, capitol improvements to the expressway system including the toll collection equipment, and the widening of the Lee Roy Selmon Crosstown Expressway System.

Specific projects by the Tampa-Hillsborough County Expressway Authority must be approved by the Legislature, by amending s. 348.565, F.S.

*Section 37 -- Wetlands Mitigation Requirements for expressway and bridge authorities:*

Many FDOT 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 the FDOT could pay a per-acre sum of money to the DEP and the water management districts (WMDs) for their staffs to perform basin-wide mitigation to offset the adverse environmental impacts of road projects. Currently, the FDOT, 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, the FDOT makes quarterly deposits in a special escrow account within the State Transportation Trust Fund, and the 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 the FDOT's perspective, this has proven to be a cost-effective and environmentally sound approach.

*Sections 38 and 39 -- Solicitation of funds at certain public transportation facilities:*

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.

*Sections 40 and 41 -- Sovereign Immunity:*

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 CSs.

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

*Section 42 -- Speeding fines:*

Municipalities and counties are authorized to collect certain civil penalties assessed for traffic violations. Section 318.21, F.S., provides that all civil penalties received by a county court for traffic infractions are distributed pursuant to a scheme that divides the revenue as follows:

- \$1 is paid into the Child Welfare Training Trust Fund;
- \$1 is paid into the Juvenile Justice Training Trust Fund.

Of the remaining revenue:

- 5.6 percent is paid into the General Revenue Fund of the State;
- 7.2 percent is deposited into the Emergency Medical Services Trust Fund;
- 5.1 percent is deposited into the Additional Court Cost Clearing Trust Fund;
- 8.2 percent is deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund;
- 2 percent is deposited into the endowment fund of the Florida Endowment Foundation;
- .5 percent is paid to the clerk of the court to for administrative costs;

- 56.4 percent shall be paid to the municipality or the county where the violation occurs, and
- 15 percent is deposited into the County Article V Trust Fund.

The revenue received by the county or municipality (the 56.4 percent) shall be used to fund local criminal justice training; to fund school crossing guards, and for any other lawful purpose.

For most local governments, the revenue they receive from the collection of civil traffic fines is a very small percentage of their total revenue. However, four local governments generate revenue from fine collections that exceed 10 percent of their total revenue. According to information provided by the Legislative Committee on Intergovernmental Relations based on the Uniform Chart of Accounts, the local governments whose fine revenue exceeds 10 percent of their total revenue include:

- Lawtey--53 percent;
- Waldo--35 percent;
- Melbourne Beach--16 percent; and
- Midway--11 percent.

These figures are based on 1998 fiscal year data.

The AAA Auto Club South has designated the municipalities of Lawtey and Waldo as speed traps and contends that the frequency of speed ticketing in these two municipalities has discouraged tourism both to the area and to Florida in general.

*Section 43 – Airport loan extension:*

The Orlando-Samford Airport currently has a \$1.5 million loan due to FDOT in August of 2002.

### **III. Effect of Proposed Changes:**

*Sections 1 and 4 -- FDOT reorganization:*

The CS 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 FDOT officers and supervisors, and obsolete references in general.

Section 6 of the CS corrects cross-references in s. 110.205, F.S., necessary because of the changes in s. 20.23, F.S.

*Section 2 -- "Dori Slosberg Driver Education Act:"*

The CS creates the "Dori Slosberg Driver Education Act" which authorizes a county to require by ordinance the payment of a \$3 surcharge on each civil traffic penalty to be collected by the clerk of the court. The CS specifies that the \$3 surcharge may be collected at the direction of the county commission despite that s. 318.121, F.S., preempts to the state the addition of fees, fines, surcharges, or non-court costs to certain traffic penalties. All proceeds from the surcharge shall

be used to fund driver education programs in public and non-public schools. The ordinance must provide that the board of county commissioners will administer the funds. In addition, the CS requires that the funds must be used for direct educational expenses, and not for administration.

*Section 3 -- Illegal Transportation of Fuel:*

This section provides it is unlawful to possess any device for the transportation of motor or diesel fuel that does not conform to federal requirements for such fuel transportation devices. The section provides it is a felony of the third degree, punishable by up to five years in prison and a \$5,000 fine. The section further provides a violation of this section will result in the revocation of the violator's driver's license.

The section further provides if the violator purchases or attempts to purchase fuel by using a fraudulent credit card, credit card account number, or by using unauthorized access to any computer network, the violation is also a felony of the third degree.

The section further provides all conveyances or vehicles, fuel tanks, related fuel, and other equipment used to transport fuel in violation of federal requirements is subject to seizure and forfeiture. The section provides the seizing law enforcement agency must remove and reclaim, recycle, or dispose of all associated fuel, and all fuel tanks and other equipment used in violation of this section must be destroyed, except the conveyance or vehicle.

The section also provides any person convicted of a violation of this law is responsible for all reasonable costs incurred by the investigating law enforcement agency, including the towing and storage of the conveyance or vehicle, the removal and disposal of the fuel, and the storage and destruction of all fuel tanks and other equipment described and used in violation of this act. Any person convicted of a violation of this law is also responsible for restitution to the fuel vendor for any fuel unlawfully obtained. The section exempts containers of 8 gallons or less from the provisions of this act.

*Sections 5, 9 and 10 -- Consultant Competitive Negotiation Act:*

Sections 189.441 and 311.09, F.S., are amended to remove the exemption for Community Improvement Districts and the Florida Seaport Transportation and Economic Development Council from s. 287.055, F.S.

Section 287.055, F.S., is amended to raise the threshold amount that triggers when a continuing contract must be re-bid. Under the CS, 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 6 -- Right-of-way bonds:*

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

*Sections 7, 29, 30 and 31 -- Obsolete state requirements for transit planning:*

Section 30 deletes references in s. 341.051(5), F.S., to the FDOT developing a major capital investment policy and methodology for funding public transit projects that receive federal dollars. The FDOT must use already-established federal guidelines.

Sections 7, 29 and 31 are cross-reference corrections, deleting references to the FDOT's "major capital investment policy" for public transit.

*Sections 8, 18, 19 and 22 -- Contractor bidding on local government/expressway projects:*

Section 255.20 (1)(a), F.S., 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 pre-qualified by the FDOT and eligible to bid on FDOT projects to perform certain work also would be pre-qualified 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, 336.44, and 337.14, F.S., are similarly amended.

*Section 11 and 12 -- Seaport funding:*

Section 315.02, F.S., is amended to include any governmental unit created pursuant to s. 163.01(7)(d), F.S., in the definition of the term "unit," and security measures identified pursuant to s. 311.12, F.S., in the definition of the term "port facilities."

Section 315.03, F.S., is amended to authorize seaports and entities created pursuant to s. 163.01(7) (d), F.S. to participate in loan guarantees or lines of credit provided by the United States.

*Section 13 -- Airport funding:*

Section 332.007, F.S., is amended to authorize the FDOT to provide operational and maintenance assistance to publicly owned public-use airports for the purpose of complying with enhanced federal security requirements or to address related economic impacts from the events of September 11, 2001 until June 30, 2004.

*Section 14 – Crandon Boulevard:*

Chapter 88-418, L.O.F., is amended to provide Crandon Boulevard may be modified to provide for vehicular ingress and egress of public safety vehicles.

*Section 15 – Airport noise mitigation:*

The CS 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.

*Section 16 and 25 -- FDOT’s powers and duties:*

Section 344.044(5), F.S., is amended to include “scenic roads” among the topics for which the FDOT can purchase promotional materials.

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

Finally, s. 339.08, F.S., is amended to delete the requirement that the FDOT promulgate rules on how it should spend its legislative appropriations. The agency contends such a rule is unnecessary, because it has to spend its funds the way the Legislature directs it in the annual General Appropriations Act.

*Section 17 -- Safe Paths to Schools Program:*

The CS creates s. 335.066, F.S., the “Safe Paths to Schools Program.” The FDOT 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. The FDOT is allowed to create a grant program to fund these types of projects, and to adopt rules to administer the new program. However, the FDOT is not specifically directed to allocate funds for the new program.

*Sections 20 and 21 -- Design-build contracts:*

Section 20 of the CS amends s. 337.11(7)(a), F.S., to authorize, effective July 1, 2003, the FDOT to combine the right-of-way and design and construction phases of a project, and to make “limited access facilities” eligible for design-build contracts. A provision 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 the FDOT or a local government, and all railroad crossing and utility agreements have been executed.

Section 21 removes the provision authorizing FDOT to combine the right-of-way and design and construction phases of a project, effective July 1, 2005.

*Section 23 -- Utility easements on public right-of-way:*

Section 337.401(2), F.S., is amended to allow the FDOT 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 24 -- Regulation of light poles:*

Section 337.408, F.S., is amended to add street light poles to those roadside structures that are regulated by the FDOT 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 FDOT 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.

*Section 26 -- Local government compensation:*

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, subsection (4) of s. 339.12, F.S., is amended to raise the limit on local government cash advances from \$100 million to \$150 million.

The section is further amended to provide certain counties with over 50,000 in population that levy the full 6 cents of local option fuel tax and dedicate 35 percent or more of its discretionary sales surtax for improvements to the State Transportation System, or to local projects directly upgrading the State Transportation System within the county’s boundaries, will receive preference for transportation grants.

*Section 27 – County Incentive Grant Program:*

Section 339.2817, F.S., is amended to provide when a municipality approaches a county to apply for a County Incentive Grant Program grant, and the proposed project is determined by the county to meet the requirements of the program, the county will apply to the FDOT on behalf of the municipality. If the proposed project is approved for a grant, the county may retain project oversight authority and responsibility for the project on behalf of the municipality.

*Section 28 – State-Funded Infrastructure Bank:*

Section 339.55, F.S., is amended to provide projects which provide intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals, pursuant to s. 341.053, F.S., for the movement of people and goods are eligible for infrastructure bank loans.

*Section 32 – High-technology transportation systems:*

Section 341.501, F.S., is amended to authorize the FDOT to match aid from other states or jurisdictions.

*Sections 33 and 34 -- Expressway authorities:*

The CS amends s. 348.0003(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.

Further, the CS amends s. 348.0008, F.S., to authorize expressway authority employees or authorized agents to enter any lands, waters, or premises, upon giving reasonable notice to the landowner, for the purpose of making surveys, soundings, drillings, appraisals, environmental and archeological assessments, and other such examinations necessary for the acquisition of property. The CS provides such entry does not constitute a trespass or an entry that would constitute a taking in an eminent domain proceeding. The section further provides the expressway authority must reimburse the property owner for any damage to property as a result of such activities.

*Section 35 and 36 -- Tampa-Hillsborough County Expressway Authority:*

Section 35 creates s. 348.545, F.S., to authorize the Tampa-Hillsborough County Expressway Authority to finance, through bonds, toll collection facilities, interchanges and other facilities on, appurtenant, necessary, or incidental to, the approved expressway system.

This CS further adds the connector highway linking Lee Roy Selmon Crosstown Expressway to Interstate 4 to the list of projects that could be financed through the Tampa-Hillsborough County Expressway bonds. The Expressway Authority plans to sell \$90 million to finance the project.

*Section 37 -- Wetlands Mitigation Requirements for expressway and bridge authorities:*

Section 373.4137, F.S., is amended throughout to allow expressway authorities to utilize the process developed for the FDOT to pay mitigation funds into escrow accounts, managed by DEP, which finance WMD mitigation projects to offset the adverse environmental impacts of expressway projects.

*Sections 38 and 39 -- Solicitation of funds at certain public transportation facilities:*

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.

*Sections 40 and 41 -- Sovereign Immunity:*

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 768.0701, F.S., is created to provide sovereign immunity to local fixed rail historic streetcar service provider.

*Section 42 – Speeding Fines:*

If a local government's collection of civil traffic penalties exceeds 25 percent of its total actual annual revenue for the prior fiscal year, any revenue above the 25 percent must be sent to the Department of Highway Safety and Motor Vehicles to be distributed as follows:

- 50 percent of the excess must be deposited into the Highway Safety Operating Trust Fund.
- 50 percent must be deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund.

*Section 43 – Airport loan extension:*

This section extends the repayment of a \$1.5 million loan from FDOT to the Orlando-Samford Airport from August of 2002 to September 18, 2008.

Section 44 provides the CS will take effect July 1, 2002.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The bill limits revenue otherwise available to a county or municipality through the operation of its own ordinances. Article VII, s.18, State Constitution, places limitations on the legislative branch in such matters. The fiscal impact in aggregate is not believed to rise to the 10-cents per capita standard to assess such mandates.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

The bill provides for the imposition of a \$3 surcharge on civil traffic infraction citations, the proceeds of which will be used by the board of county commissions to fund the direct, non-administrative expenses of traffic education in public and nonpublic schools.

**B. Private Sector Impact:**

The payment of the surcharge would affect only persons cited for violation of the traffic laws of the State.

**C. Government Sector Impact:**

The FDOT advises that there were 3.9 million criminal and civil uniform traffic citations issued by the more than 400 public jurisdictions in the state in 1999. This total includes all categories and a subset of those eligible for the surcharge was not separately identified. The potential fiscal impact would be a percentage of \$11.7 million, proportional to the representation of civil to criminal infractions in each implementing jurisdiction.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The term “direct education expenses” implies of its very nature expenses covered under the formula for the Florida Educational Finance Program. It is unclear what relationship these funds are to have and whether supplementation or supplantation is to occur upon their receipt.

Sections 40 and 41 raise substantial public policy issues on the shielding of liability by railroads and fixed-rail historic streetcar providers and the extension of sovereign immunity coverage to the Tri-County Commuter Rail Authority service providers. It is entirely plausible that the very text chosen in s. 40 may provide that a government agency could be held liable for a punitive damages award, something not now possible under Florida law, while the proprietary entity itself would have its liability capped at \$200 million. This places the public agency at a significant disadvantage in that its service provider would derive a greater benefit through lessened liability than the governmental unit itself.

Section 42 provides that any revenue generated by a county or municipality in excess of 25 percent of its total actual revenue for the prior fiscal year collected from civil traffic violations will be remitted to the Department of Highway Safety and Motor Vehicles. This provision is directed at two governmental units, Lawtey and Waldo, Florida, which have aggressive enforcement of traffic laws. The text chosen for this section does not separate the \$3 surcharge from this limitation, thus rendering a result in which the surcharge itself, to the extent that it is implemented and collected and exceeds the 25 percent threshold, could not be directed to the very purposes articulated in s. 2 of the bill. Moreover, to the extent that these units of local

government have pledged any of these traffic revenues for debt it could place the governmental units at risk of default on any such commitments.

Section 43 extends the repayment date from 2002 to 2008 on a non-interest-bearing loan from the FDOT to the Orlando-Sanford Airport Authority. There are no periodic payments due on the note, other than a final balloon payment. The loan was originally executed in 1992.

## **VIII. Amendments:**

#1 by Governmental Oversight and Productivity:

Amends s. 316.515, F.S., to permit straight trucks and cotton module movers not exceeding 50 feet in length on highways. For cotton module movers between 50 and 55 feet an FDOT overlength permit may be required. (WITH TITLE AMENDMENT)

#2 by Governmental Oversight and Productivity:

Amends s. 334.175, F.S., to permits landscape architects to certify design plans for the FDOT. (WITH TITLE AMENDMENT)

# 3 by Governmental Oversight and Productivity:

Amends s. 380.04, F.S., to exclude electrical utility work from the definition of development under the Florida Environmental Land and Water Management Act. (WITH TITLE AMENDMENT)

# 4 by Governmental Oversight and Productivity:

Amends s. 380.06, F.S., to exclude airports from the definition of a development of Regional Impact if the facility has already been incorporated in the comprehensive plan. (WITH TITLE AMENDMENT)

#5 by Governmental Oversight and Productivity:

Amends s. 380.0651, F.S., to excludes from Development of Regional Impact review facilities that provide parking for greater than 2,500 vehicles as long as the vehicles are within the inventory of the wholesale facility and occupy a site greater than 400 acres. (WITH TITLE AMENDMENT)

#6 by Governmental Oversight and Productivity:

Deletes provisions providing alternative liability coverage for fixed rail passenger carriers serving historic districts. (WITH TITLE AMENDMENT)

# 7 by Governmental Oversight and Productivity:

Deletes a restriction on revenue raised by communities that derive 25% or more of their revenues from the imposition of traffic citations (Lawtey and Waldo, FL). (WITH TITLE AMENDMENT)

#8 by Governmental Oversight and Productivity:

Provides a contingent effective date. (WITH TITLE AMENDMENT)