

# 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/CS/SB 2658

SPONSOR: Governmental Oversight and Productivity Committee, Transportation Committee and Senator Sebesta

SUBJECT: Transportation Department/Reorganization

DATE: April 22, 2003                      REVISED: \_\_\_\_\_

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

**I. Summary:**

The committee substitute (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 255.20, F.S., is amended to provide any contractor who is prequalified by the FDOT and eligible to bid on FDOT projects to perform certain work also will be prequalified to obtain bid documents and to submit a bid on those same types of projects for any municipality or other local government.

The CS amends s. 316.302, F.S., to authorize the FDOT to conduct compliance reviews; to require the display of certain information on the side of the power unit of certain commercial vehicles; to clarify commercial trucks are required to comply with federal and state hazardous material requirements only when carrying such materials in amounts that require placarding pursuant to federal law. Section 316.3025, F.S., is amended throughout to accommodate a name change from the North American Uniform Out-of-Service Criteria to the North American Standard Out-of-Service Criteria. The section is amended to retain a penalty for violations of identification requirements by intrastate commercial motor vehicles transporting agricultural products.

The section is amended to clarify the applicability of a \$500 penalty, pursuant to 49 C.F.R. 390.19, for failure to register and obtain a motor carrier identification number from the U.S. Department of Transportation; and to provide for the same penalty for failure of an interstate motor carrier to obtain operating authority and for operating beyond the scope of its operating authority. The section is amended to change a reference from “terminal audits” to “compliance

reviews,” and to provide an increase in penalties and sanctions for failure to correct violations detected in follow-up compliance reviews.

Section 316.3026, F.S., is amended to allow the Motor Carrier Compliance Office (MCCO) to issue out-of-service orders to motor carriers prohibited to operate in other states or by federal order. The CS further amends s. 316.515(3)(b)2.a., F.S., to allow vehicles used exclusively or primarily to transport vehicles in connection with motorsports competition events to have a measurement not to exceed 46 feet between the kingpin and the center of the rear axle. The CS amends s. 316.545(10), F.S., allowing the MCCO’s non-sworn weight-station personnel to detain a commercial motor vehicle with obvious safety defects critical to the continued safe operation of the vehicle, or which is operating in violation of an out-of-service order reported on the Safer System database, until an MCCO officer arrives.

Section 316.1001, F.S., is amended to provide a uniform traffic citation may be issued by certified mail or first class mail for a toll payment violation, and mailing such citation to the address of the registered owner of the vehicle constitutes notification. The section is further amended to provide any person who is cited for one or more outstanding toll violations may not register any vehicle until the fine is paid.

This CS amends ss. 330.27, 330.29, 330.30, 330.35, and 330.36, F.S., providing for numerous changes to the FDOT Aviation program. The CS provides that FDOT is the lead agency and point of contact for implementation and coordination of all 511 phone services in the state. Section 336.467, F.S., is amended to authorize counties or other governmental entities to contract with the FDOT to acquire rights of way for a county or other governmental entities and eliminates the narrow circumstances under which counties are currently authorized to contract with the FDOT.

CS for CS/SB 2658 alters the appointments to and the powers and duties of the Florida Space Research Institute and renames the Florida Commercial Space Financing Corporation as the Florida Aerospace Finance Corporation.

The CS amends s. 337.14 (7), F.S., removing the potential for a conflict of interest that exists as a result of having material lab testing services performed by the same or affiliate entity that performs the construction contract. Material labs owned by or affiliated with qualified construction companies will be prohibited from acting as material testing labs on FDOT projects. The CS amends s. 337.18, F.S., to clarify the provisions of s. 255.05, F.S., are not applicable to the road construction and maintenance contract bonds specifically addressed in s. 337.18, F.S.

Section 338.165, F.S., is amended to clarify that the FDOT has specific authority to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Beeline-East Expressway, Sunshine Skyway Bridge, and Pinellas Bayway toll facilities to provide funding for needed transportation projects on the State Highway System in the counties in which they are located, which are Brevard, Orange, Pinellas, Manatee and Hillsborough Counties.

Section 338.235(2), F.S., is amended to authorize the Turnpike Enterprise to secure by competitive solicitation products, services, and business opportunities authorized by s. 338.234, F.S., and to establish a mechanism for responding to unsolicited proposals. The bill

creates the Florida Strategic Intermodal System (SIS) and the Strategic Intermodal Transportation Advisory Council (SITAC) to advise and make recommendations to the Legislature, the FDOT, and federal transportation agencies on strategic intermodal transportation policies if authorized by the Legislature, and planning of intermodal transportation projects in this state.

CS for CS/SB 2658 amends s. 95.361, F.S., to provide for the presumptive dedication of any road constructed by a nongovernmental entity to the governmental unit maintaining it after seven years of regular maintenance. Any person may claim an interest in the road by filing a claim one year after the effective date of the statutory change or seven years from the date of initial maintenance.

The Florida Air Museum in Lakeland is designated as the official state aviation museum and education center.

This CS for the CS substantially amends ss. 20.23, 95.361, 110.205, 255.20, 288.075, 316.1001, 316.302, 316.3025, 316.3026, 316.3027, 316.515, 316.545, 316.640, 316.650, 316.70, 318.14, 330.27, 330.29, 330.30, 330.35, 330.36, 331.303, 331.308, 331.367, 331.401, 331.405, 331.407, 331.409, 331.411, 334.01, 334.03, 334.044, 334.14, 336.467, 337.14, 337.18, 338.165, 338.235; creates ss. 334.60, 339.61, 339.62, 339.63, 339.64, 339.65; and, repeals ss. 316.3027 and 316.610 (3), of the Florida Statutes. The CS also repeals s. 83 of ch. 2002-20, Laws of Florida, as amended by s. 58 of ch. 2002-402, Laws of Florida. The CS for the CS also creates an undesignated section of Florida law.

## II. Present Situation:

### *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 FDOT, 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 334.14, F.S., provides lengthy detail regarding FDOT employees who are required to be engineers. Requirements for practicing engineers are currently provided in ch. 471, F.S.

### *Contractor Prequalification*

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. Further, s. 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.

In addition, s. 337.14(1), F.S., requires the FDOT to act upon an application for qualification to bid within 30 days after the application is presented. Frequently, however, the application is incomplete. Current law provides a process for the FDOT to request information necessary to complete the application, involving two written requests for additional information. If the applicant fails to comply with the initial and second requests within a reasonable period of time as specified, current law provides the application must be denied. Although current law implies the 30-day period is suspended for the "reasonable period of time" within which a contractor is asked to respond to FDOT's requests for additional information to complete an application, that is not expressly stated. Also, s. 337.14(4), F.S., currently provides a certificate of qualification is valid for 18 months or "such shorter period as the department prescribes." According to the FDOT, this is creating some confusion about the duration of the certificate of qualification.

### ***Toll Violations***

Section 316.1001, F.S., provides a uniform traffic citation may be issued by certified mail for a toll payment violation, and provides any person who is cited for three or more outstanding toll violations may not register any vehicle until the fine is paid. Section 316.650, F.S., provides for the issuance of traffic citations by law enforcement officers, and the deposit of such citations with the appropriate court. Further s. 318.14, F.S., provides for the payment of fines for noncriminal infractions.

### ***Commercial Vehicle Enforcement***

Pursuant to chapters 207 and 316, F.S., the FDOT's Motor Carrier Compliance Office (MCCO) enforces state and federal laws and rules regulating the safety of commercial motor vehicles and their drivers, and the weight and size of commercial vehicles operating on the state's highways. The MCCO officers perform vehicle safety inspections to determine whether commercial drivers are appropriately licensed, are not under the influence of drugs or alcohol, have maintained required logbooks of their hours of service, and are not operating their vehicles in an unsafe manner. In addition, the MCCO conducts compliance reviews at truck and bus terminals to examine company vehicles and records. In the course of performing these duties, MCCO officers also check to see that other commercial motor vehicle-related laws, such as registration and fuel taxes, are complied with. This program helps to ensure trucks and buses operating in Florida are mechanically sound, are licensed, do not exceed size and weight limits, and vehicle operators are properly qualified, licensed, and driving their vehicles in a safe manner.

The MCCO's also employs non-sworn weight inspectors who weigh trucks and check truck registrations at 21 fixed-scale stations located along Florida's major highways. MCCO sworn officers use portable scales to weigh trucks when the trucks do not pass fixed-scale stations or when drivers deliberately avoid weighing at the fixed-scale stations. The MCCO has an

FY 02-03 budget of \$26.5 million and 448 positions. The office is funded through the State Transportation Trust Fund; therefore, the sources of money financing the office's law enforcement activities are a combination of transportation revenues, such as fuel taxes and motor vehicle registration fees. Motor carrier registration fees and compliance penalties are not specifically earmarked for the MCCO's operating budget. According to the FDOT's budget office, in FY 01-02, the MCCO collected \$8.4 million in overweight penalties, \$2.4 million penalties for safety violations, and about \$88,000 for fuel-tax permit violations.

Section 316.3026, F.S., authorizes the MCCO to issue Out-of-Service Orders which prohibit commercial motor vehicles from operating on the highways of Florida if the vehicle or driver are found to be in violation of safety and other motor carrier laws. MCCO has estimated about 20 percent of the vehicles stopped by its officers are placed "out-of-service" until the defects are repaired or the driver is able to continue driving without causing a safety hazard.

Chapter 316, F.S., provides various penalties which may be assessed by MCCO for a variety of motor carrier violations. For example, s. 316.3025, F.S., provides a number of different penalties, including operating a commercial motor vehicle cited for being out of compliance; violations discovered during law enforcement audits at commercial terminals; and failing to have the proper cargo shipping documents. Penalties range between \$50 and \$5,000, depending on the violation. According to the FDOT, as federal regulations have changed, and ch. 316, F.S., has been amended, s. 316.3025, F.S., has become confusing, and the potential exists for MCCO to be legally challenged on some of the penalties it assesses because of this lack of clarity in statute. In addition, the federal government could withhold highway-safety grants received by the MCCO if the penalties are not assessed.

### ***Airport Regulation***

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. 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 19 commercial service airports, a total of 131 public airports, and in excess of 230 privately operated airports, airparks, heliports and seaplane landing areas. The FDOT indicates the statutes relating to the aviation program are outdated and are in need of updating and streamlining. For example, the FDOT advocates eliminating the airport licensing fees, which cost more to collect than is generated in revenue. 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.

### ***Florida Aerospace Finance Corporation; Florida Space Research Institute***

References in ch. 288, F.S. to the Florida Commercial Space Financing Corporations are changed to the renamed Florida Aerospace Finance Corporation. The appointment terms of members of the Florida Space Authority are changed and the powers and duties of the Florida Space Research Institute are expanded to give it greater authority to collaborate with universities and to acquire property.

### ***511 Service***

The USDOT in 1999 petitioned the Federal Communications Commission (FCC) to designate an abbreviated dialing code for traveler information. The FCC in July 2000 designated 511 as the national traveler information phone number. The FCC ruling made the 511 phone number available only to public transportation agencies. However, any public transportation agency can utilize 511 to deliver information on a particular transportation issue. Therefore, under the current situation, agencies could provide differing information via 511 utilizing different service providers. The information a caller accesses could depend on the caller's service provider, or the needed information may not be offered by the caller's service provider. According to the FDOT, a central coordination agency should be designated to avoid confusion, conflicting standards, and qualitative and quantitative differences in 511 service.

### ***Right of Way Acquisition***

Section 336.467, F.S., provides counties may enter into an agreement with the FDOT authorizing the FDOT to acquire rights of way for counties. The FDOT may only enter into such an agreement if the highway project is funded by the counties portion of the constitutional gas tax, and at least 10 parcels of land are being acquired at a cost of over \$100,000. This authorization is expressly limited to counties. According to the FDOT, the Work Program often contains projects that involve the acquisition of rights of way as part of a local road improvement. According to the FDOT, such acquisition could be called into question because the FDOT does not have specific authority to conduct the acquisition outside the statutorily prescribed circumstances.

### ***Materials Testing Services***

Section 337.14(7), F.S., prohibits a contractor who is qualified with the FDOT, or the contractor's affiliate, from also qualifying to perform construction, engineering, and inspection (CEI) services on FDOT construction contracts. This prohibition exists in order to eliminate the possibility of a conflict of interest that would arise from having CEI services on a given project performed by the same or affiliate entity that performs the construction contract. The FDOT has raised some conflict of interest concerns regarding some contracting firms which are continuing to broaden their scope and incorporate other construction activities, such as materials testing.

### ***Surety Bonds; Incentive Payments***

Section 337.18, F.S., authorizes the FDOT to require performance and payment bonds on all construction and maintenance contracts of \$150,000 or more. Section 255.05, F.S., a statute overseen by the Department of Management Services, also contains provisions requiring performance and payment bonds applicable to all other types of public construction, primarily public buildings. The FDOT has historically and consistently maintained the provisions of s. 255.05, F.S., are not applicable to the road construction and maintenance contract bonds specifically addressed by s. 337.18, F.S. While certain specific statutory requirements are included in s. 337.18, F.S., for road construction and maintenance contracts, current law does not expressly state such bonds are not subject to the additional surety bond requirements in s. 255.05, F.S.

### ***Toll Bonds***

Section 338.165 (2), F.S., provides for use of toll revenues for improvements to State Highway System roads within the county or counties in which a toll facility is located. Currently, toll revenues from the Beeline-East Expressway are being utilized for four-laning State Road 520. During preparation for the bond sales, FDOT has been advised by the Division of Bond Finance that statutory modification is required to clarify the ability to use bond proceeds for projects other than on the specific facility generating the revenue.

### ***Unsolicited Proposals***

Section 338.235, F.S., authorizes the sale of specified services, products, or business opportunities on the turnpike system that benefit the traveling public or provide additional revenue to the turnpike system. Section 338.235(2), F.S., currently provides contracts for the provision of products and services be secured through the request for proposal process. Other procurement methods included under competitive solicitation are not mentioned, nor is any provision made for unsolicited proposals received by the Turnpike Enterprise.

### ***Strategic Intermodal System***

A greater understanding of the importance of the connections between modes (seaports, airports, rail, and highways) has lead to a more integrated planning process within the FDOT. The gradual evolution from concentration on highways to a more comprehensive realization of the effects of Florida's dynamic trade has prompted a rethinking of the efficiency of the Florida Intrastate Highway System as a stand alone transportation facility. The movement toward more intermodal planning has prompted the consideration of the Strategic Intermodal System (SIS).

The SIS was developed in partnership with representatives of: statewide, regional and metropolitan transportation interests; private industry; shipping, aviation and trucking interests; and environmental and growth management interests. This diverse group of 41 members, the SIS Steering Committee, met for the first time on February 25, 2002, and has approved a final draft report.

The Steering Committee spent a large amount of time building a consensus for the creation of the SIS. A draft map of the SIS was developed from criteria developed by the Steering Committee. The system would include: 1) Hubs, which are defined as ports and terminals that move goods or people within Florida or between Florida and other origin/destination markets in the United States and the rest of the world; 2) Corridors, which are defined as highways, rail lines, waterways, and other exclusive use facilities that connect major origin/destination markets within Florida or between Florida and other states and nations; 3) Connectors, which are defined as highways, rail lines, transit lines, or waterways that connect nodes, corridors and other modes.

The Steering Committee settled on a tiered approach to the SIS. This approach was adopted because of concern that facilities not on the SIS would be under funded. Their would be primary SIS facilities, which meet the criteria for inclusion on the SIS because of current high volume of trade and traffic, and emerging SIS facilities which are in growing markets but do not meet the criteria for the primary SIS.

### ***Local Government Contributions***

Section 83 of ch. 2002-20, Laws of Florida, as amended by s. 58 of ch. 2002-402, Laws of Florida provides preference for FDOT grants for counties which have a population of greater than 50,000, and which levies the full 6 cents of the local option gas tax or dedicates 35 percent or more of a discretionary sales surtax for improvements to the state transportation system.

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

#### ***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. The section is amended to delete the position of Assistant Secretary for District Operations, and creates an Assistant Secretary for Development and Operations, and an Assistant Secretary for Transportation Support. The Offices of Management and Budget; Comptroller; Construction; Maintenance; and Materials are also created within the FDOT. The CS also corrects cross-references in s. 110.205, F.S., necessary because of the changes in s. 20.23, F.S.

The CS further amends s. 334.14, F.S., to provide FDOT employees who are required to be engineers must comply with the requirements of ch. 471, F.S.

#### ***Contractor Prequalification***

Section 255.20, F.S., is amended to provide any contractor who is prequalified by the FDOT and eligible to bid on FDOT projects to perform certain work also will be prequalified to obtain bid documents and to submit a bid on those same types of projects for any municipality or other local government. Any local-government entity will be able to disqualify a prospective bidder who is at least 10 percent behind on another construction project for that same entity. The section is further amended to provide local governments may establish an appeals process to challenge the prequalification of contractors. The local government must publish prequalification criteria and procedures to allow contractors to prequalify locally; and provide for a process for contractors who are found not to prequalify by the local government to appeal such finding.

Section 337.14(1), F.S., is amended to provide the 30-day period the FDOT has to reply to a contractor's application for certification begins once the FDOT determines the application for qualification is complete, thereby giving the FDOT sufficient time to request and receive from the contractor the information necessary to complete the application. It also allows more time for contractors to respond to the FDOT's requests for information. Section 337.14(4), F.S., is amended to clarify submitting an application to renew a certificate of qualification does not affect the expiration of the current certification of qualification.



### ***Toll Violations***

Section 316.1001, F.S., is amended to provide a uniform traffic citation may be issued by certified mail or first class mail for a toll payment violation, and mailing such citation to the address of the registered owner of the vehicle constitutes notification. The section is further amended to provide any person who is cited for one or more outstanding toll violations may not register any vehicle until the fine is paid.

Section 316.650, F.S., is amended to clarify a police officer who has issued a ticket for a toll violation has 45 days, from the date the citation was issued, to submit documentation to the proper agency. Further s. 318.14, F.S., is amended to authorize a person who is issued a citation for a toll violation to pay the fine directly to the governmental entity that issued the citation.

### ***Commercial Motor Vehicle Enforcement***

The CS amends s. 316.302, F.S., to authorize the FDOT to conduct compliance reviews for the purpose of determining compliance of commercial motor vehicles with all safety requirements contained in s. 316.302, F.S. The section is further amended to require the display of certain information on the side of the power unit of certain commercial vehicles. The CS clarifies commercial trucks are required to comply with federal and state hazardous material requirements only when carrying such materials in amounts that require placarding pursuant to federal law.

Section 316.3025, F.S., is amended throughout to accommodate a name change from the North American Uniform Out-of-Service Criteria to the North American Standard Out-of-Service Criteria. The section is amended to retain a penalty for violations of identification requirements by intrastate commercial motor vehicles transporting agricultural products.

The section is amended to clarify the applicability of a \$500 penalty, pursuant to 49 C.F.R. 390.19, for failure to register and obtain a motor carrier identification number from the U.S. Department of Transportation; and to provide for the same penalty for failure of an interstate motor carrier to obtain operating authority and for operating beyond the scope of its operating authority. The section is amended to change a reference from “terminal audits” to “compliance reviews,” and to provide an increase in penalties and sanctions for failure to correct violations detected in follow-up compliance reviews.

Section 316.3025(4), F.S., is created to authorize placing a vehicle out-of-service which is operated by an interstate motor carrier found in violation of 49 C.F.R. 392.9a for the carrier’s failure to obtain operating authority or operating beyond the scope of its operating authority.

Section 316.3026, F.S., is amended to allow the MCCO to issue out-of-service orders to motor carriers prohibited to operate in other states or by federal order. The motor carrier operating illegally will be assessed a \$10,000 civil penalty, in addition to any other applicable penalties. In addition, any person who knowingly drives, operates, or causes to be operated any commercial motor vehicle in violation of the MCCO’s out-of-service order commits a third-degree felony, punishable by up to a five years in prison. The CS also broadens the MCCO’s powers to issue out-of-service orders to include carriers who fail to pay previously assessed fines, who refuse to submit to a compliance review, or who have motor-carrier or insurance violations. Carriers are

able to seek an administrative hearing pursuant to s. 120.569, F.S., to overturn an out-of-service order.

The CS further amends s. 316.515(3)(b)2.a., F.S., to allow vehicles used exclusively or primarily to transport vehicles in connection with motorsports competition events to have a measurement not to exceed 46 feet between the kingpin and the center of the rear axle.

The CS also amends s. 316.545(10), F.S., allowing the MCCO's non-sworn weight-station personnel to detain a commercial motor vehicle with obvious safety defects critical to the continued safe operation of the vehicle, or which is operating in violation of an out-of-service order reported on the Safer System database, until an MCCO officer arrives. The detained vehicle must be released if repairs to the safety defects are made prior to the arrival of an MCCO officer.

### ***Aviation Program***

This CS amends ss. 330.27, 330.29, 330.30, 330.35, and 330.36, F.S., providing for numerous changes to the FDOT Aviation program. The site fee (\$100) and license fees (\$25 - \$100) for all airports are repealed. 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, FDOT may continue to inspect and license private airports with 10 or more planes, at the request of the owners of these private airports. The CS also authorizes the FDOT to establish: the necessary 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 CS further changes numerous aviation related definitions to remove outdated, obsolete, or incorrect language. The CS specifies these provisions do not take effect until October 1, 2003.

### ***Florida Aerospace Finance Corporation***

CS for CS/SB 2658 alters the appointments to and the powers and duties of the Florida Space Research Institute and renames the Florida Commercial Space Financing Corporation as the Florida Aerospace Finance Corporation.

### ***511 Service***

The CS creates s. 334.03(37), F.S., to define "511" or "511 services" as three-digit telecommunications dialing to access interactive voice response telephone traveler information services provided in the state as defined by the Federal Communications Commission in FCC Order #00-256 (July 31, 2000). The CS further creates s. 334.03(38), F.S., to define "interactive voice response" as a software application that accepts a combination of voice telephone input and touch-tone keypad selection and provides appropriate responses in the form of voice, fax, callback, e-mail and other media.

Section 334.044(32), F.S., is amended to include in the FDOT's general powers and duties the oversight of traveler information systems that may include interactive voice response telephone systems accessible via the 511 number as assigned by the FCC for traveler information services.

Section 334.60, F.S., is created to establish the FDOT as the lead agency and point of contact for implementation and coordination of all 511 phone services in the state. The section directs FDOT to develop uniform standards and criteria for collection and dissemination of traveler information using 511 services, and authorizes joint agreements and contracts with other governmental entities and private firms relating to 511 services to offset the costs of implementation and administration of 511 services. The section provides rulemaking authority for the FDOT to implement 511 services.

### ***Right of Way Acquisition***

Section 336.467, F.S., is amended to authorize counties or other governmental entities to contract with the FDOT to acquire rights of way for a county or other governmental entities and eliminates the narrow circumstances under which counties are currently authorized to contract with the FDOT.

### ***Materials Testing Services***

The CS amends s. 337.14 (7), F.S., removing the potential for a conflict of interest that exists as a result of having material lab testing services performed by the same or affiliate entity that performs the construction contract. Material labs owned by or affiliated with qualified construction companies will be prohibited from acting as material testing labs on FDOT projects.

### ***Surety Bonds; Incentive Payments***

The CS amends s. 337.18, F.S., to clarify that the provisions of s. 255.05, F.S., do not apply to the road construction and maintenance contract bonds specifically addressed in s. 337.18, F.S. However, the section is amended to provide upon execution of the contract for a surety bond, and prior to beginning any work under the contract, the contractor must record in the public records of the county where the improvement is located, the payment and performance bond required under this section. A claimant has a right of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract. Such action may not involve the FDOT in any expense.

Further, a claimant, except a laborer, who is not in privity with the contractor must before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies must deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date the rental equipment was last on the job site available for use. No action by a claimant, except a laborer, who is not in privity with the contractor, for the labor, materials, or supplies may be

instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in any manner provided in s. 713.18, F.S.

The section is further amended to provide an action must be instituted by a claimant, whether in privity with the contractor or not, against the contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond within 365 days after the final acceptance of the contract work by the FDOT. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

When a contractor has furnished a payment bond pursuant to this section, he or she may, when the FDOT makes any payment to the contractor, serve a written demand on any claimant who is not in privity with the contractor for a written statement under oath of his or her account showing the nature of the labor or services performed to date, if any; the materials furnished; the materials to be furnished, if known; the amount paid on account to date; the amount due; and the amount to become due, if known, as of the date of the statement by the claimant. Any such demand to a claimant who is not in privity with the contractor must be served on the claimant at the address and to the attention of any person who is designated to receive the demand in the notice to contractor served by the claimant. The failure or refusal to furnish the statement does not deprive the claimant of his or her rights under the bond if the demand is not served at the address of the claimant or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 60 days after the demand, or the furnishing of a false or fraudulent statement, deprives the claimant who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor serves more than one demand for statement of account on a claimant and none of the information regarding the account has changed since the claimant's last response to a demand, the failure or refusal to furnish such statement does not deprive the claimant of his or her rights under the bond. The negligent inclusion or omission of any information deprives the claimant of his or her rights under the bond to the extent that the contractor can demonstrate prejudice from such act or omission by the claimant. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim on the bond being enforced in a lawsuit filed before the date the demand for statement of account is received by the claimant.

The CS provides the bonds provided for in this section are statutory bonds, and the provisions of s. 255.05 are not applicable to bonds issued pursuant to this section.

### ***Toll Bonds***

Section 338.165, F.S., is amended to clarify that the FDOT has specific authority to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Beeline-East Expressway, Sunshine Skyway Bridge, and Pinellas Bayway toll facilities to provide funding for needed transportation projects on the State Highway System in the counties in which they are located, which are Brevard, Orange, Pinellas, Manatee and Hillsborough Counties.

### ***Unsolicited Proposals***

Section 338.235(2), F.S., is amended to authorize the Turnpike Enterprise to secure by competitive solicitation products, services, and business opportunities authorized by s. 338.234, F.S., and to establish a mechanism for responding to unsolicited proposals. If the FDOT receives an unsolicited proposal for products, services, or business opportunities which it wishes to consider, the FDOT must publish notice in a newspaper of general circulation at least once a week for two weeks, or may broadcast such notice by electronic media for two weeks stating that the FDOT has received the proposal and will accept other proposals for the same project for 30 days after the initial publication.

### ***Strategic Intermodal System***

Sections 339.61 and 339.62, F.S., to provide legislative findings and to provide the SIS must consist of components of:

- The Florida Intrastate Highway System established pursuant to s. 338.001.
- The National Highway System.
- Airport, seaport, and spaceport facilities.
- Rail facilities.
- Selected intermodal facilities; passenger and freight terminals; and appropriate components of the State Highway System, County Road System, City Street System and local public transit systems that serve as connections between other modes.
- Existing or planned corridors which serve a statewide or interregional purpose.

Section 339.63, F.S., is created to provide the initial SIS must include all facilities that meet the criteria recommended by the Strategic Intermodal Steering Committee. Subsequent to the initial designation of the SIS, the Strategic Intermodal Transportation Advisory Council (SITAC) may make recommendations to the FDOT secretary to periodically add facilities to or delete facilities from the SIS based upon adopted criteria.

Section 339.64, F.S., is created to provide that the FDOT must develop, in cooperation with metropolitan planning organizations, regional planning councils, local governments and other transportation providers, a Strategic Intermodal System Plan. The plan must be consistent with the Florida Transportation Plan developed pursuant to s. 339.155, F.S., and updated at least once every 5 years, subsequent to updates of the Florida Transportation Plan. The SIS Plan must include:

- A needs assessment.
- A project prioritization process.
- A map of facilities designated as Strategic Intermodal System facilities, as well as, facilities that are emerging in importance and are likely to be designated as part of the system in the future.
- A finance plan based on projections of revenues that can reasonably be expected. The finance plan must include both 10-year and 20-year cost-feasible components.

The section further provides that the FDOT must submit the Plan to SITAC for review and recommendations.

Section 339.65, F.S., is created to provide definitions, legislative findings, and creates the Strategic Intermodal Transportation Advisory Committee. The members of SITAC will consist of the following members:

1. Four intermodal industry representatives selected by the Governor as follows:
  - a. Two representatives from airports involved in the movement of freight and people from their airport facility to another transportation mode. Such representatives may not be employed by the same entity.
  - b. One representative from a fixed-route, local-government transit system.
  - c. One representative from an intercity bus company providing regularly scheduled bus travel as determined by federal regulations.
2. Three intermodal industry representatives selected by the President of the Senate as follows:
  - a. One representative from major line railroads.
  - b. One representative from seaports listed in s. 311.09(1), F.S., from the Atlantic Coast.
  - c. One representative from intermodal trucking companies.
3. Three intermodal industry representatives selected by the Speaker of the House of Representatives as follows:
  - a. One representative from short line railroads.
  - b. One representative from seaports listed in s. 311.09(1), F.S., from the Gulf Coast.
  - c. One representative from intermodal trucking companies. Such representative may not be employed by the same entity that employs the intermodal trucking company representative selected by the President of the Senate.

The initial appointments made by the President of the Senate and the Speaker of the House of Representatives will serve terms concurrent with those of the respective appointing officer. Beginning January 15, 2005, and for all subsequent appointments, council members appointed by the President of the Senate and the Speaker of the House of Representatives will serve 2-year terms, concurrent with the term of the respective appointing officer. The initial appointees, and all subsequent appointees, appointed by the Governor will serve 2-year terms. Vacancies on the council will be filled in the same manner as the initial appointments.

The section provides the SITAC is created to advise and make recommendations to the Legislature, the FDOT, and federal transportation agencies on strategic intermodal transportation policies if authorized by the Legislature, and planning of intermodal transportation projects in this state. The bill provides SITAC's responsibilities include, but are not be limited to:

1. Advising the FDOT on the policies, planning and implementation of the Strategic Intermodal System.
2. Providing advice and recommendations to the Legislature;

3. Reviewing and providing recommendations to the FDOT on the Strategic Intermodal System Plan.
4. Making, in consultation with FDOT, recommendations to the President of the Senate and Speaker of the House of Representatives by December 1, 2003, on the following:
  - a. The creation, membership and jurisdiction of Regional Strategic Intermodal Transportation Advisory Councils;
  - b. The Strategic Intermodal System project review process which process shall, at a minimum, be performed by Regional Strategic Intermodal Transportation Advisory Councils;
  - c. The Strategic Intermodal System project funding criteria; and
  - d. The source of funding for Strategic Intermodal System projects.

### ***Local Government Contributions***

The CS repeals s. 83 of ch. 2002-20, Laws of Florida, as amended by s. 58 of ch. 2002-402, Laws of Florida.

### ***Road Dedication***

Section 95.361, F.S., is amended to provide that a road is presumed dedicated to the unit of government maintaining it after seven years of maintenance unless a person claims an interest in it within one year of the effective date of the subsection or seven years from the date of initial maintenance.

### ***Florida Air Museum***

The Florida Air Museum in Lakeland is designated as the official state aviation museum and education center.

### ***Effective Date***

This CS takes effect upon becoming law, unless otherwise stated in the CS.

## **IV. Constitutional Issues:**

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

None.

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

None.

### **C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Bonding the Sunshine Skyway toll revenues would provide approximately \$130 million for funding transportation projects in Pinellas, Manatee and Hillsborough Counties. Bonding the Beeline-East toll revenues would provide approximately \$54 million for funding transportation projects in Brevard and Orange Counties.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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