

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1681 CS PCB TR 05-01 Transportation
SPONSOR(S): Transportation Committee and Rep. Sansom
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 460 & SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	12 Y, 0 N	Pugh	Miller
1) Transportation & Economic Development Appropriations Committee	18 Y, 0 N	McAuliffe	Gordon
2) State Infrastructure Council	10 Y, 0 N, w/CS	Pugh	Havlicak
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1681 w/CS addresses a number of transportation-related issues. The bill:

- Corrects an oversight by giving the Florida Department of Transportation (FDOT) specific rulemaking authority to implement the existing statutory provisions related to public-private partnerships.
- Establishes a percentage cap on the repayment amounts of State Infrastructure Bank loans FDOT has loaned itself for Work Program projects.
- Amends provisions related to environmental mitigation accounts for FDOT projects to update the process to reflect actual practice and to delete obsolete language.
- Adds a military base commander to the Strategic Intermodal Transportation Advisory Council and requires more coordination when planning transportation projects that impact military installations.
- Gives FDOT discretion to fund planning or education projects performed by not-for-profit organizations that represent a majority of the state's public airports, such as the Florida Airports Council.
- Clarifies current law to conform with FDOT practice on work-order changes and supplemental agreements, and their impacts on surety bonds.
- Limits the civil liability of FDOT's contractors and design engineering consultants when they are in compliance with contract documents. Additionally, in civil lawsuits against FDOT or its agents in cases involving impaired or speeding drivers in transportation construction zones, the presumption is that the impaired or speeding driver's actions are the "sole proximate cause" of any deaths, injuries, or property damage resulting from the accident.
- Creates the Northwest Florida Corridor Authority and the Osceola County Expressway Authority.
- Reduces the membership of the Miami-Dade County Expressway Authority from 13 to 7, and imposes new notification requirements for proposed projects and tolls.
- Exempts from paying tolls those persons participating in a funeral procession for a law enforcement officer or firefighter killed in the line of duty.
- Requires Metropolitan Planning Organizations (MPO's) to have recorded, roll-call votes when adopting transportation plans. Modifications affecting the first three years of projects in those plans require passage by a super- majority, recorded roll-call vote of the MPO.
- Clarifies that no banners can be placed along limited access state highways.
- Directs FDOT to conduct a study of bicycle facilities on or connected to the State Highway System.
- Creates a matching-fund program for channel-dredging projects for ports in small counties.

HB 1681 w/CS has an indeterminate, but likely minimal, impact on FDOT's budget and on state funds in general. The legislation raises no apparent constitutional or legal concerns. It takes effect July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- Several provisions in HB 1681 w/CS implicate this principle, in varying ways. The bill reduces the responsibilities of the Florida Department of Environmental Protection by removing the agency from the environmental mitigation plan approval process used for transportation projects, and it reduces both the membership of and imposes new requirements on the Miami-Dade County Expressway Authority. The bill also creates two new regional transportation authorities with the authority to issue revenue bonds and to impose tolls, as well as a new matching grant program to help small-county ports pay for dredging projects.

B. EFFECT OF PROPOSED CHANGES:

Funding for eligible aviation planning and educational programs

Present Situation

FDOT funds as part of its Five-Year Work Program aviation-related projects at the 20 commercial airports and 111 public-use general aviation airports. In fiscal year 2004-2005, FDOT's aviation budget is \$92.24 million. The state excise tax on aviation fuel is 6.9 cents per gallon, and generates about \$50 million annually. General transportation revenues, such as motor fuel taxes and vehicle registration fees, deposited into the State Transportation Trust Fund, comprise the rest of the annual funding.

In addition to funding capital projects, FDOT also provides staffing assistance and pays some administrative costs of the Secure Airports for Florida's Economy (SAFE) Council, a 27-member group representing aviation-related businesses and state agencies that was created in 2003 by the Legislature. The SAFE Council's primary responsibility is to prepare a five-year SAFE Master Plan, which recommends specific projects to acquire and construct transportation facilities that link airports to other transportation modes, or which protect the safety and security of passengers and cargo, or enhance international trade and other economic benefits. Since its creation, the SAFE Council has received funding from FDOT at the direction of proviso language in the annual General Appropriations Act.

In fiscal year 2003-2004, the SAFE Council received \$140,000 from FDOT, and this fiscal year is receiving \$411,717, according to FDOT staff.

Effect of Proposed Changes

HB 1681 codifies in statute FDOT's discretion to fund research and educational activities of the SAFE Council and any other group that represents the majority of Florida's public airports.

FDOT Work-Order Issues

Present Situation

Section 337.11, F.S., establishes the basic requirements for FDOT to enter into contracts with road builders, design professionals, product vendors, and others doing transportation-related business with the state. By rule and practice, FDOT has expanded upon these requirements.

FDOT by practice issues "work orders" for a wide range of activities. Its contract accounting systems also designates certain types of work orders as "contingency pay items" and "contingency supplemental agreements." FDOT treats these types of agreements similarly as it does supplemental agreements; however, these terms are not mentioned in statute. This has caused some confusion for contractors doing business with FDOT.

Further, when a new unit price or other contract item needs to be renegotiated, FDOT and the contractor enter into a "supplemental agreement," which the contractor's surety company must approve. Even changes representing a small percentage or dollar amount of the overall contract must be approved.

Additionally, there can be as much as a two-month delay in closing out the contract while waiting for a surety company's approval of a small-dollar supplemental pay item project. This means the contractor waits on final payment on a job finished weeks earlier, and FDOT is delayed in closing out its project accounting.

Effect of Proposed Changes

Section 337.11, F.S., is amended to add the terms "work order," "contingency pay item," and "contingency supplemental agreement." This is intended to alleviate confusion by including the terms in statute.

In addition, surety companies' approval will only be required on modified contract amounts greater than 25 percent of the original contract amount. Surety companies will remain fully liable for all costs of a modified contract amount up to 25 percent of the original contract price even though they weren't made aware of the work-order change or supplemental agreement.

Strategic Intermodal System

Present Situation

Created by the Legislature in 2003, the Strategic Intermodal System (SIS) is a network of highways, bridges, airports, ports, and other transportation facilities that provides statewide and interregional movement of people and goods, and which is intended to encourage Florida's economic growth and competitiveness. The SIS was identified in 2002 by a statewide task force comprised of transportation stakeholders using specific quantitative criteria. After some minor modifications, the initial recommendation was adopted by FDOT, which periodically will review the current SIS and adjust its components as population and use of the system change.

The SIS is essentially comprised of the Florida Intrastate Highway System, the state's seven busiest airports, its seven largest seaports, Cape Canaveral Spaceport and major rail lines. There also are a number of highways, airports and seaports, and other transportation facilities that are defined as "emerging systems." (More information and maps of the SIS are available at the website <http://www.dot.state.fl.us/planning/sis/default.htm>.)

The 2003 legislation did not dedicate any funding to implementation of the SIS, directing FDOT to instead work within its existing Work Program to focus resources on the strategic system. Many of the system components already are represented in the Work Program. But in 2004, the Legislature gave FDOT statutory authority to reallocate at least 50 percent of its new flexible funding to the SIS. FDOT plans to slowly increase the SIS's share of these new funds to upwards of 62 percent in coming years.

Recently, FDOT has implemented some changes to SIS policy, not specifically authorized by statute. For example, FDOT has created a new category of SIS-related project – the "planned facility," referring to transportation improvements in the planning stages that, after completion, will meet the criteria to be classified as part of the SIS. It also has added to its SIS policy documents a greater recognition of the impact military facilities have on Florida's public transportation system and its economic viability.

Effect of Proposed Changes

HB 1681 makes several changes to the SIS statutes. Many of these changes reflect FDOT's recent changes to SIS policy documents. The bill:

- Adds "economic development and job growth" to the SIS goals.
- Directs the Florida Transportation Commission to annually review the progress of the SIS in meeting its goals.
- Directs FDOT to coordinate with its federal and local partners in planning and implementing transportation improvements on roads and rail corridors linked to military installations.
- Adds to the Strategic Intermodal Transportation Advisory Council (SITAC) a military representative with command responsibilities. This person will be appointed by the Governor.
- Adds definitions and deletes obsolete provisions.

Rulemaking authority for certain public-private partnerships

Present Situation

Section 337.251, F.S., enacted in 1990, allows FDOT to enter into leases with other public agencies and with private entities to use and develop right-of-way along state highways. These proposals must meet a series of public-interest tests, and must be selected through a competitive bidding process. One of the largest and most complex of these project proposals is the Miami Intermodal Center.

When the statute was enacted, no specific rulemaking authority was included, but FDOT promulgated administrative rule Chapter 14-109, Florida Administrative Code (F.A.C.) to provide information to applicants for joint public-private development projects about specifics of how to apply for such a lease. This rule was promulgated pursuant to FDOT's general rulemaking authority. In the mid-1990s, the Legislature mandated that an agency cannot promulgate rules unless there is specific authority granted within the statute. A recent review of FDOT's statutes by its General Counsel's Office revealed that there is no explicit statutory authority for Chapter 14-109, F.A.C., and FDOT has requested specific statutory authority in order to maintain the current rule.

Effect of Proposed Changes

HB 1681 gives FDOT specific statutory authority to draft rules to implement s. 337.251, F.S., related to public-private partnerships to develop right-of-way.

State Infrastructure Bank Loans

Present Situation

Since 1997, FDOT has operated a federally funded "infrastructure bank," a self-sustaining, revolving loan fund that can lend funds and provide credit enhancement assistance to public and private entities. Florida, California, Rhode Island, and Missouri were the four states selected to establish infrastructure banks as pilot projects pursuant to the federal transportation funding program, TEA-21.

The federally funded "bank" was so popular that the Legislature, at FDOT's request, created a State Infrastructure Bank (SIB) in 2000 as part of the Governor's Mobility 2000 initiative. It received \$93.5 million over two years in state general revenue to capitalize the fund. The SIB has a federal sub-account and a state sub-account, in order to keep the funds separate. The federal funds have a more limited use than those contributed by the state.

Generally, the SIB provides loans to help fund transportation projects that are on the State Highway System or which provide greater mobility on the state transportation system, and which otherwise may be delayed or not built. The SIB loans typically pay for only a portion of the total cost of the project. Among the project criteria are: consistency with local government comprehensive plans; availability of a dedicated repayment source to ensure the loan is repaid; and indications of economic benefits. FDOT staff review the applications, and make recommendations to the Secretary, based on whether criteria are met. The FDOT Secretary makes the final determination of which applicants receive SIB loans.

Since its creation, the SIB has attracted more than \$120 million in federal capital and \$101.1 million in state capital, plus interest earnings. According to a 2003 chart on FDOT's website, 26 loans using federal funds and 22 loans using state funds have been approved so far, for projects valued in excess of \$4.4 billion. The SIB program is helping fund transportation projects -- mostly road improvements -- in all seven FDOT districts and for the Turnpike Enterprise.

The Legislature in 2003 changed the SIB law to allow FDOT to leverage the existing SIB portfolio of loan repayments by issuing revenue bonds. The bonds will be repaid by the loan payments from the cities, counties and other entities that obtained the loans through the SIB.

As structured, SIB loans to other governmental entities or private entities are repaid from revenues generated by the project, such as tolls or other pledged resources. The repayments are then re-loaned to fund additional transportation projects. That is what makes it a self-sustaining revolving loan fund.

FDOT also makes SIB loans to itself, called "internal loans," which are made to advance FDOT projects and are repaid with future program allocations from the State Transportation Trust Fund. To date there have been no restrictions on the amount or volume of either loan type.

According to FDOT staff, the Division of Bond Finance requested that FDOT limit these internal SIB loans as one way to manage the state's bonded indebtedness.

FDOT has made internal SIB loans of \$142.37 million since 2002; about \$105 million of that amount will be spent to acquire right-of-way and begin construction on improvements to State Road 50 in District 5.

Effect of Proposed Changes

HB 1681 places a cap on the total amount of internal SIB loan repayments over the average terms of the loans. The cap will be set at .75 percent of the revenues deposited in the State Transportation Trust Fund. If this cap were in place today, FDOT's internal SIB loan repayments could not exceed a total of \$34.9 million a year.

Environmental Mitigation

Present Situation

Enacted in 1996, s. 373.4137, F.S., directs FDOT to annually submit for approval to the Department of Environmental Protection (DEP) and the water management districts (WMD's) a plan to mitigate the adverse environmental impacts of transportation projects to wetlands, wildlife, and other aspects of the natural environment. This program was initiated with an advance transfer of \$12 million from FDOT to DEP, to be spent down through the use of "mitigation credits" of \$75,000 per acre mitigated through fiscal year 2005-2006. The ecosystem-based mitigation plan was to be based on an environmental impact inventory reflecting habitats that would be adversely impacted by projects listed in the next three years of the tentative work programs.

Expressway authorities created pursuant to chapters 348 and 349, F.S., also are able to create similar escrow accounts with the WMD's and DEP for their mitigation requirements.

On a quarterly basis, FDOT and the participating expressway authorities are required to transfer to their escrow accounts sufficient funds for the current fiscal year to pay for mitigation of projected acreage impacts resulting from projects identified in the inventory. At the end of each year, the projected acreage impacts are compared to the actual acreage of impact of projects as permitted, including permit modifications. The escrow balances are then adjusted accordingly to reflect any over transfer or under transfer of funds.

DEP and the WMD's, meanwhile, can request a release of funds from the escrow accounts no sooner than 30 days prior to the date the money is needed to pay for a mitigation activity.

According to FDOT staff, the method of escrow accounting required in the statute is time-consuming, and results in constant adjustment to the escrow balance, as the projected adverse environmental impacts are frequently changing as new or revised project conditions and requirements are encountered and modifications occur during the transportation project's construction. The frequent adjustments similarly produce budget instability for the WMD's, as those budgets are prepared based on the projected impacts contained in the annual impact inventory. The timing restrictions on the release of the funds to the WMD's also hamper their ability to plan ecosystem-based mitigation.

These accounting processes are one reason that as of September 2004, FDOT still has \$3.875 million from its original \$12 million advance in escrow.

FDOT and the other agencies involved also have identified obsolete or awkward provisions in s. 373.4137, F.S. For example, DEP has a limited role in mitigation plan review and approval, and the statutory requirement that it approve the plans slows the process.

Effect of Proposed Changes

HB 1681 changes the escrow transfer of funds for federally funded transportation projects from a quarterly basis to an annual basis. These lump-sum amounts would be based on FDOT's (and the expressway authorities') projected impact acreage and would be tracked as excess mitigation to be used at a later date, or adjusted to cover an underestimate of impacts. Because FDOT historically overestimates its impacts, there will typically be unused mitigation available for future use.

In addition, the WMD's in many instances will be able to request a lump-sum, one-time payment from the escrow accounts, which should improve their ability to plan and develop large-scale mitigation projects. The WMD's will be able to request the one-time payments for: current projects in the long-term monitoring and maintenance phase; for mitigation projects for all federally funded transportation projects beginning in fiscal year 2005-2006; and for non-federally funded and federally funded transportation projects in fiscal year 2009-2010.

FDOT says the reduction in administrative burden and the cost savings resulting from potential large-scale mitigation activities due to greater WMD budget stability likely would increase FDOT efficiency and potentially reduce transportation project delays. Also, this proposal would allow FDOT to fund mitigation activities for future transportation projects on an ecosystem-wide basis at current prices, thus ensuring suitable mitigation opportunities exist and avoiding project delays, as well as realizing a savings to the taxpayer.

The legislation also removes DEP from the mitigation plan approval process because it currently has, at best, a minimal role in the decision-making. It also deletes obsolete language and reorganizes the statute.

Liability Issues

Current Situation

Sovereign immunity is a legal concept that prohibits suits against the government, unless the government waives the protection. Article X, section 13 of the Florida Constitution recognizes that sovereign immunity applies to the state, although the state may waive its immunity through an enactment of general law. Sovereign immunity extends to all subdivisions of the state, including counties and school boards.

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity allowing individuals to sue state government, subdivisions of the state, and municipalities. The statute imposes a \$100,000 limit on the government's liability to a single person. Furthermore, it imposes a \$200,000 limit on the government's liability for claims arising out of a single incident. These limits do not preclude plaintiffs from obtaining judgments in excess of the recovery cap. Plaintiffs cannot force the government to pay damages that exceed the recovery cap. Plaintiffs can receive additional compensation through passage of a claims bill filed with the Florida Legislature.

Florida also has long provided a limited waiver of its sovereign immunity for ordinary tort liability. Section 728.28, F.S., confers sovereign immunity on a number of entities that perform public service. Among those entities are professional firms that provide monitoring and inspection services of work required for FDOT roadway, bridge, or other transportation facility projects.

FDOT, as well as construction contracting firms that perform work for FDOT, periodically are named as parties to litigation filed by plaintiffs involved in traffic accidents. FDOT has no statistics on the number of lawsuits filed naming it and its contractors as defendants. While the Florida Transportation Builders

Association (FTBA), representing the majority of road contractors in this state, also has no statistics, it has significant anecdotal information about litigation against its members.¹

The FTBA also has noted that lawsuits and claims can impose a financial burden on subcontractors, who often are small businesses or family-owned enterprises and who increasingly cannot afford to obtain the liability insurance required to participate in public construction projects. Besides the obvious costs of litigation and their effect on insurance and project costs, the FTBA says, there is the expense of lost man-hours for depositions, record recovery, and court appearances.

Effect of Proposed Changes

HB 1681 w/CS creates s. 337.195, F.S., limiting the civil liability for contractors and engineering consultants, under specific circumstances.

Under the provisions, an FDOT contractor is not liable to a claimant for personal injury, property damage, or death arising from the performance of their work if at the time of the incident, the contractor was in compliance with FDOT's contract documents or design standards material to the condition or defect that was the proximate cause of the personal injury, property damage, or death.

The limited exemption for design engineer consultants is similar, but not as broad as that for contractors. Under the provisions, a design engineer who contracts with FDOT to prepare or provide engineering plans for construction or repair of a transportation facility – where the death, injury, or property damage occurred -- shall be presumed to have prepared those plans using a “degree of care and skill ordinarily exercised” by engineers, and with “due regard for acceptable engineering standards and principles” in conforming with FDOT's design standards. This presumption can be overcome only upon a showing of the design engineering consultant's gross negligence when preparing the engineering plans. This provision does not prevent FDOT from making a claim against the design engineer consultant.

Additionally, the bill addresses the issue of liability in civil actions against FDOT, its contractors, consultants, or other agents for a death, injury or for property damage that occurred in a transportation construction zone and involved a driver under the influence of alcohol, controlled substances, or chemical substances, or is driving faster than the posted speed limit or, as variously defined in statutes. In such cases, it shall be presumed that the driver is the sole proximate cause of the death, injury, or property damage. The bill specifies that this presumption can be overcome if gross negligence or intentional misconduct on the part of FDOT, the contractor, engineering consultant, or agent was a proximate cause.

Expressway authorities

Current Situation

Nine expressway authorities have been created in chapter 348, F.S., by the Florida Legislature. Their purpose is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include a combination of local-government officials and Governor appointees who decide on projects and expenditure of funds.

There also are three regional transportation authorities created in chapter 343, F.S., and one local transportation authority, the Jacksonville Transportation Authority, created in chapter 349, F.S.

Effect of Proposed Changes

HB 1681 w/CS creates two new regional transportation authorities, modeled in many respects to existing authorities with standard “boiler-plate” language about the process to issue bonds, protection of bondholders, and relationships with FDOT. The bill also makes changes to any expressway authority

¹ March 9, 2005, email from FTBA on file with the House Transportation Committee.

within a county as defined in s. 125.11(1), F.S.; currently, only the Miami-Dade Expressway Authority, MDX, meets that criterion.

- *The Northwest Florida Corridor Authority* is created to improve mobility, traffic safety, and economic development along the U.S. 98 corridor stretching through Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla counties. Another goal of the Authority is to identify and develop hurricane evaluation routes. Specifically, the bill:
 - Provides that the governing board shall be comprised of a resident from each of the eight counties, to be appointed by the governor to 4-year terms. They can be removed by the Governor for cause. The board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to 112.061, F.S. The board also can hire an executive director and other staff, and consultants, as needed.
 - The FDOT District 3 secretary shall serve as an ex-officio, not-voting member.
 - Directs the Authority to adopt a master plan by July 1, 2007, that identifies areas of the corridor where mobility, traffic safety, and efficient hurricane evacuation needs to be improved; evaluates the economic development potential of the corridor and consider strategies to develop that potential; identifies methods of building partnerships with local governments, other state and federal entities, the private-sector business community, and the public in support of corridor improvements; and to identify projects that will accomplish these goals and objectives. This plan must be updated annually, and presented to the county commissions within the corridor and to the legislative delegation members whose districts lie within the eight-county region within 90 days of adoption.
 - Directs the Authority to build and maintain highways and other transportation facilities within the U.S. 98 corridor that will help meet its statutory goals. These projects may be undertaken in phases, as the projects or segments thereof become feasible and as funding is available.
 - Empowers the Authority to issue revenue bonds, either on its own or through the state Division of Bond Finance. In both cases, the bonds and the issuance process must conform to the State Bond Act requirements. These bonds' term shall not exceed 40 years. The bonds shall not be pledges against the credit of the State of Florida.
 - Allows the Authority to set and collect tolls, fees, and other charges; acquire land by purchase, donation, or eminent domain; borrow money; to sue and be sued; enter into contracts, agreements, and partnerships.
 - Allows the Authority to enter into lease-purchase agreements with FDOT to manage the U.S. 98 Corridor System, which shall be a part of the State Highway System. FDOT also may be appointed by the Authority as its agent to oversee construction of the system's components.
 - Allows the Authority to enter into public-private partnerships to construct, operate, own, or finance transportation facilities that are part of the system.
- *The Osceola County Expressway Authority* is created to help build a 6.5-mile-long toll road in the western part of the county to serve development and population growth there. This expressway will link Marigold Avenue in the Poinciana community in Osceola with U.S. 17 and County Road 54 in Polk County. Under the bill:
 - The five-member governing board shall be comprised of: three residents of Osceola County selected by the County Commission; one person appointed by the Governor; and the FDOT District 5 Secretary. The members shall serve 4-year terms, except that the initial appointee by the Governor shall serve a 2-year term. No Authority member shall be an officer or employee of Osceola County.
 - The board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to 112.061, F.S.
 - The board can hire an executive director and other staff.
 - The Authority can issue revenue bonds, either on its own or through the state Division of Bond Finance. In both cases, the bonds and the issuance process must conform to the State Bond Act requirements. These bonds' term shall not exceed 40 years. The bonds shall not be pledges against the credit of the State of Florida.

- The Authority is allowed to set and collect tolls, fees, and other charges; acquire land by purchase, donation, or eminent domain; borrow money; to sue and be sued; enter into contracts, agreements, and partnerships with public and private entities.
 - The Authority may construct, operate, and maintain roads, bridges, and other transportation facilities outside of Osceola County with the consent of the county within whose jurisdiction these projects are located.
 - If approved by the Osceola County Commission, the Authority may pledge a portion of county gasoline tax revenues to repay the revenue bonds. The Authority must reimburse the county for any gas tax revenues it spends.
 - The Authority may enter into lease-purchase agreements with FDOT to manage the system. FDOT also may be appointed by the Authority as its agent to oversee construction of the system's components.
- o An expressway authority in a county defined in s. 125.11(1), F.S. , which applies only to MDX, also will undergo several changes pursuant to HB 1681 w/CS. Specifically:*
- The Authority board will be reduced from 13 to seven members: four voting members will be Miami-Dade county commissioners appointed by the commission chair; one voting member shall be a mayor of a municipality within the county; the FDOT District 6 Secretary shall an ex-officio, voting member; and the chair of the Miami-Dade legislative delegation or another member of the delegation selected by the chair shall serve as an ex officio, non-voting member.
 - Prior to raising tolls or establishing any new point of toll collection, MDX shall provide, where applicable, the county commission, the city commission, the MPO in the affected area, and legislators whose districts include the affected area, with written justification for the proposal. The local governmental entities and the MPO must agenda the justification report at its next available public meeting, and they have 30 days after that meeting to request a public hearing on the proposal.
 - If requested by a local government or MPO, MDX will hold two public hearings in the affected area within 60 days. The public hearings must be advertised in a newspaper of general circulation in the affected area, and notice of the hearings must be provided to affected legislators.
 - During the public hearings, MDX shall at a minimum present an in-depth cost-benefit analysis of the proposal and an in-depth description of the projects to be funded. MDX also must document all questions, suggestions or other comments offered by the public.
 - No toll increase shall become effective and no new toll-collection point shall become operational until 90 days after the last public hearing.

Other Issues in HB 1681 w/CS

Bicycling Issues

The Federal Highway Administration, as required by Congress' 1998 passage of the Transportation Equity Act for the 21st Century, directed state transportation agencies to incorporate bike lanes and pedestrian access in the planning, designing and construction of new or improved roadways. Federal policy guidance also lists exceptions to this direction: along controlled access highways; if the cost of providing bike lanes and other non-motorized access would be disproportionately excessive compared to the total project cost; or if there is no documented need.

Florida statutes also address FDOT's responsibilities relating to bike facilities. For example, s. 316.091, F.S., prohibits bicycles on the roadway or on the shoulder of interstate highways and regulates their use along limited-access highways. Section 335.065, F.S., which is based on some of the federal policy language, directs FDOT to give "full consideration" to bicycle and pedestrian ways when planning and developing transportation facilities" and provides that "bicycle facilities may be established as part of or separate from the actual roadway and may utilize existing road rights-of-way or other rights-of-way or easements acquired for public use." But this section also provides that "...bicycle and pedestrian ways are not required to be established:

1. Where their establishment would be contrary to public safety;
2. When the cost would be excessively disproportionate to the need or probable use;

3. Where other available means or factors indicate an absence of need.”

In 2002, the Legislature passed the “Safe Paths to Schools Act.” The program was intended to facilitate the consideration of bicycle paths into the planning and construction of roads in the state, and gave FDOT discretion to create a grant program to assist local governments in the provision of bicycle and pedestrian paths within their communities. The act, however, did not create a dedicated funding source for this grant program, in part because FDOT already has a transportation enhancement grant program that helps finance bike paths, and because a survey indicated that most of the identified bike path needs around schools would have to be built on local roads, not state roads.

HB 1681 w/CS requires FDOT to perform a study by October 1, 2005, of all bicycle facilities that are on or connected to the State Highway System, that must:

- ☐ Review FDOT standards for bike lanes;
- ☐ Identify state highways with existing designated bike lanes;
- ☐ Identify state highways with no designated bike lanes and any constraints to incorporating these facilities;
- ☐ Provide for electronic mapping of these facilities;
- ☐ Identify all bike facility needs on the State Highway System;
- ☐ Review and identify; and
- ☐ Develop an implementation plan to identify the incorporation of bicycle facilities on state highways programmed for rehabilitation or new construction in the Five Year Work Program, including cost data.

MPO voting

As established by chapter 23 U.S. Code Sec. 134, Metropolitan Planning Organizations (MPO's) are directed to develop, in cooperation with state officials, transportation plans and programs for urbanized areas of more than 50,000 persons. The process for developing such plans and programs must provide for the consideration of all modes of transportation and "shall be continuing, cooperative, and comprehensive" to the degree appropriate based on the complexity of the transportation problems. The plans also must emphasize project that serve an important national, state or regional transportation purpose.

Pursuant to s. 339.175, F.S., MPO's in cooperation with the state and public transit operators develop multi-year “transportation improvement plans,” or TIPs, that are the building blocks for FDOT's statewide Five-Year Work Program. Besides the TIPs, the MPO's also develop long-range transportation plans ranging over 20 years and an annual “unified planning work program” that lists all the planning tasks the MPO will undertake that fiscal year.

An MPO must be designated for each urbanized area of the state. Such designation must be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the population of the urbanized area. Each MPO must be created and operated pursuant to an interlocal agreement entered into pursuant to s. 163.01, F.S. Florida has 26 MPO's. These boards consist of local elected officials and appropriate state agencies, and may also include officials of public agencies that administer major modes of transportation within the metropolitan area.

Although the partnership between FDOT and the MPO's creates a sound basis for long-range, efficient transportation planning, on occasion concerns have been raised when an MPO local board adjusts its TIP. These local transportation priorities change because of political, financial, or other reasons. Of particular concern is when an MPO removes or delays a project that is in the first three years of FDOT's Work Program, because such projects are counted on to meet concurrency requirements and because the agency has already spent significant funding designing and planning the project, or purchasing right-of-way.

HB 1681 w/CS amends s. 339.175, F.S., to add more accountability to the MPO process to approve or modify its various plans. Each MPO's 20-year plan, TIP and its annual updates, and annual unified

planning work program must be approved by a recorded, roll-call vote of the MPO membership present. Any modification of a TIP or annual unified planning work program that impacts projects in the first three years of FDOT's Five Year Work Program must be approved by a recorded roll-call super-majority vote of two-thirds of the MPO members present.

Restrictions on usage of FDOT right-of-way

FDOT, drawing upon federal and state law, can restrict or limit the types of activities that occur on the right-of-way of the Florida Intrastate Highway System and other limited-access highways for which it has responsibility. For example, FDOT can prohibit bicycles and other non-motorized transportation modes from use on certain highways; prohibit merchants from parking or otherwise displaying their wares on state rights-of-way; and prohibit advertising on state rights-of-way.

Section 337.406, F.S., broadly addresses these prohibitions in reference to the Interstate Highway System, which is defined elsewhere in statute as "the existing, unbuilt, or unopened system of highways or portions thereof designated as the national system of interstate and defense highways by the department." The interstate system comprises only 7,317 lane-miles of the roughly 34 million lane-miles of roads over which the state has responsibility.²

This section also allows municipalities to issue permits for the temporary use of state right-of-way that is not the Interstate Highway System; typically these permits are to place banners announcing a festival, fair, or local cultural event. In addition, with FDOT's permission, a municipality can issue a permit to temporarily close a state road for a special event, such as a parade. In the last year, a few instances of city-approved banners, displays, or decorations along state rights-of-way have created traffic safety concerns or raised other issues, according to FDOT.

HB 1681 w/CS amends s. 337.406, F.S., to replace the phrase "Interstate Highway System" with the broader "limited access highway," which includes many more millions of lane-miles of state-owned right-of-way. A limited access facility means a street or highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement simply because their property abuts this type of highway. Typically, limited access facilities are interstates, turnpikes and expressways.

The result of this change to s. 337.406, F.S., is there will be fewer state-owned roads and rights-of-way that a municipality will be able to close temporarily or use for special events, or along which to display banners.

Small-county port dredging grants

State and federal funds are available to help pay for maintenance dredging of Florida's 14 deep-water ports, which are represented by the Florida Ports Council and its statutorily created sister organization, the Florida Seaport Transportation and Economic Development (FSTED) Council. The FSTED Council annually evaluates project applications and awards these public funds on a 50-50 match basis to these major ports.

But Florida has other communities with harbors and channels, some managed by local port authorities that are not represented by the FSTED Council, and have difficulty obtaining state and federal funds to match for local dollars for dredging projects.

HB 1681 w/CS creates a state matching-grant program and places it under the purview of the FSTED Council. Eligible counties must have a population of less than 300,000 based on the last official U.S. Census; be able to provide a 50-50 match for the funds; and have a port authority as defined in s. 315.02(02), F.S. which is in compliance with financial management and reporting procedures pursuant to Part III of chapter 218, F.S. Eligible port projects also must be in compliance with the environmental permitting provisions in Part IV of chapter 373, F.S.

² State Highway System Report, December 31, 2004.

The grants would be used only to fund projects for dredging or deepening channels, turning basins, or harbors.

The bill also directs the FSTED Council to develop by rule procedures and criteria for evaluating project applications submitted for funding under the new program. Among the criteria will be the project's economic benefit. The application review process shall be similar to that currently in place for the 14 deep-water ports, with FDOT, the Florida Department of Community Affairs, and the Office of Tourism, Trade, and Economic Development assisting FSTED with the review.

There are at least seven legislatively created port authorities in counties with less than 300,000 population: the Calhoun County Port Authority, the Carrabelle Port District, the Hernando County Port Authority, the Levy County Port Authority, the Manatee Port Authority, the Putnam County Port Authority, and the St. Lucie Port and Airport Authority.

Toll exemptions

Section 338.155, F.S., lists several categories of persons and circumstances when a motorist driving on a tolled highway or bridge is exempt from paying the toll. Among the current exemptions are: law enforcement officers and firefighters in their official vehicles and on official business; persons driving vehicles owned by the Department of Military Affairs transporting personnel and property; handicapped persons who meet certain criteria and who have special window stickers on their vehicles issued by FDOT; employees of the toll facility while on official business; and any driver who is using the toll facility as a required detour temporarily, such as during hurricane evacuations.

HB 1681 w/CS adds to that list of exemptions persons who are part of a funeral procession for a law enforcement officer or firefighter who died in the line of duty.

C. SECTION DIRECTORY:

Section 1: Creates a state matching grant program for counties under 300,000 population with statutorily created ports.

Section 2: Amends s. 332.007, F.S., to allow FDOT to fund research and educational activities of not-for-profit organizations representing the majority of Florida's public airports.

Section 3: Amends s. 337.11, F.S., to update certain contracting procedures and contractor surety bond requirements.

Section 4: Creates s. 337.195, F.S. to exempt transportation contractors and design engineering consultants from liability under certain circumstances. Creates presumption for impaired and speeding drivers.

Section 5: Amends s. 337.251, F.S., to give FDOT specific rulemaking authority to implement the provisions of that section, related to public-private transportation partnerships.

Section 6: Amends s. 337.406, F.S., to clarify that local governments can't close limited access state highways, not just the Interstate Highway System, for special events, nor can they erect special banners or signs along such highways.

Section 7: Exempts from paying tolls those persons participating in a funeral procession for a law enforcement officer or firefighter killed in the line of duty.

Section 8: Requires MPO's to have recorded, roll-call votes when adopting transportation plans. Modifications affecting the first three years of projects in those plans requires passage by a super-majority, recorded roll-call vote of the MPO.

Section 9: Amends s. 339.55, F.S., to control the amount of SIB loans FDOT can loan itself by capping the repayments on such loans to .75 percent of the State Transportation Trust Fund.

Sections 10-12: Amends ss. 339.61, 339.62, and 339.64, F.S., to make clarifying and technical changes to statutes related to the SIS. Adds to the SITAC a member with command responsibilities at a military installation. Deletes obsolete language.

Section 13: Creates Part IV of chapter 343, F.S. Creates the "Northwest Florida Corridor Authority."

Sections 14-15: Amends ss. 348.0003 and 348.0004, F.S. Revises certain expressway authority provisions in Part I of chapter 348, F.S., related to the Miami-Dade Expressway Authority

Section 16: Creates Part X of chapter 348, F.S. Creates the "Osceola County Expressway Authority."

Section 17: Amends s. 373.4137, F.S., to delete references to DEP. Deletes obsolete language. Clarifies existing language to better reflect actual practice of FDOT and the water management districts in addressing environmental mitigation for state transportation projects.

Section 18: Directs FDOT to complete by October 10, 2005, a study of bicycle facilities on or connected to the State Highway System. Specifies content of study.

Section 19: Specifies an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

FDOT has indicated that it may spend up to \$200,000 in agency funds to complete the bicycle facility study, in section 18 of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Road and bridge contractors and design engineering consultants working on FDOT projects will benefit from the liability-immunity provisions in section 4 of HB 1681 w/CS, due to potential reductions in insurance and legal costs. The financial benefit can not be determined at this time.

Motorists and occupants involved in litigated crashes may be adversely affected by the limited liability and evidentiary presumption provisions.

D. FISCAL COMMENTS:

The liability-immunity provision for FDOT contractors and engineers in section 4 could result in lower future costs, than anticipated, for state road and bridge projects because of these FDOT agents' savings in insurance and legal costs.

Also, some of the changes to s. 373.4137, F.S., in section 17 of the bill, could save FDOT money over the long term. For example, the legislation will allow FDOT to fund anticipated mitigation activities for future transportation projects from current-year funds, thus staving off inflation-fueled increases in land or mitigation services in outer years. The amount of savings is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 1681 w/CS because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 5 of HB 1681 w/CS rectifies an earlier oversight by giving FDOT specific authority to promulgate rules to implement s. 337.251, F.S., related to public-private partnerships for transportation projects. It will validate an existing administrative rule, chapter 14-109, F.A.C.

FDOT has sufficient existing rulemaking authority to implement the bill's other provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its February 22, 2005, meeting, the House Transportation Committee adopted four amendments to the bill, originally PCB TR 05-01. Briefly:

- Amendment #1 makes a number of clarifying and technical changes to the existing SIS statutes to reflect recent policy changes by FDOT concerning the impact of military bases on transportation systems and other issues.
- Amendment #2 clarifies current law to conform to FDOT practice on work-orders and supplemental agreements with transportation contractors, and under what circumstances surety companies must be notified beforehand for their approval.
- Amendment #3 gives FDOT discretion to fund planning and education projects performed by not-for-profit organizations that represent a majority of Florida's public airports.
- Amendment #4 protects from liability contractors doing road and related projects for FDOT if they were in compliance with the terms of their contracts at the time of the personal injury, property damage, or death.

The committee then voted 12-0 to report the PCB as favorable with amendments. The legislation later received the number, HB 1681.

State Infrastructure Council

At its April 12, 2005, meeting, the State Infrastructure Council adopted without objection nine amendments. Briefly:

- Amendment #1: Revises transportation-related liability language already in the bill. Extends to engineers protection from civil liability arising from transportation projects they designed if they are in compliance with FDOT requirements/standards. Specifies when impaired drivers involved in accidents at road construction zones are the “sole proximate cause” of injury, death, or damage resulting from the accidents, and under what circumstances that presumption can be overcome. Specifies nothing in this section should be construed to alter or affect any claim FDOT may bring against a contractor or engineer.
- Amendment #2: Creates the “Northwest Florida Corridor Authority.”
- Amendment #3: Revises certain expressway authority provisions in Part I of chapter 348, F.S., related to the Miami-Dade Expressway Authority.
- Amendment #4: Exempts from paying tolls those persons participating in a funeral procession for a law enforcement officer or firefighter killed in the line of duty.
- Amendment #5: Requires MPO’s to have recorded, roll-call votes when adopting transportation plans. Modifications affecting the first three years of projects in those plans requires passage by a super-majority, recorded roll-call vote of the MPO.
- Amendment #6: Creates the “Osceola County Expressway Authority.”
- Amendment #7: Clarifies that no advertising or special-event banners can be placed on limited access state highways, not just the Interstate Highway System.
- Amendment #8: Directs FDOT to complete by October 10, 2005, a study of bicycle facilities on or connected to the State Highway System.
- Amendment #9: Creates a state matching grant program for counties under 300,000 population with statutorily created ports.

The Council then voted 10-0 to report the bill as favorable with a council substitute.