

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7077 CS PCB TR 06-04 Transportation

**SPONSOR(S):** Transportation Committee

**TIED BILLS:**

**IDEN./SIM. BILLS:** HB 1315 CS, CS/SB 1350, CS/SB 1766,

CS/SB 952 , CS/SB 2300

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	14 Y, 1 N	Pugh	Miller
1) Transportation & Economic Development Appropriations Committee	15 Y, 1 N, w/CS	McAuliffe	Gordon
2) State Infrastructure Council	5 Y, 2 N, w/CS	Pugh	Havlicak
3)			
4)			
5)			

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### SUMMARY ANALYSIS

HB 7077 w/CS is an omnibus bill that addresses a variety of transportation financing, planning, and administrative issues. Among its key provisions, the proposed legislation:

- Raises the Turnpike Enterprise's revenue bond cap from \$4.5 billion in bonds issued to \$6 billion in bonds outstanding. This change gives the Turnpike Enterprise more immediate bond capacity, and creates a line of credit, so to speak, to issue more bonds as the Turnpike pays down its balance.
- Makes numerous administrative and organizational changes to the metropolitan planning organizations.
- Stiffens penalties for motorists who speed through toll plazas without paying tolls and those who purposely obscure their vehicles' license plates.
- Creates the Osceola County Expressway Authority and transforms the Tampa Bay Commuter Transit Authority into the "Tampa Bay Regional Transportation Authority."
- Authorizes counties to impose by referendum a \$2-a-day local-option rental-car surcharge on certain vehicle rentals and leases.
- Modifies the Charter County Transit System Surtax to allow all counties the option of imposing the tax by referendum; broadens the surtax's uses; and provides a formula for counties to share the surtax proceeds with municipalities.
- Allows the Orlando-Orange County Expressway Authority to set a performance bond waiver cap of \$500,000 for public projects, up from the \$200,000 contract cap currently in law, to promote its small-business contractor program.
- Modifies the funding for the South Florida Regional Transportation Authority.
- Authorizes a new bond funding program for the Florida Seaport Transportation and Economic Development projects, with the annual debt service paid by a \$5 million earmark in vehicle registration fees.
- Allows the Florida Department of Transportation's State Infrastructure Bank to issue short-term loans for emergency repairs to transportation infrastructure damaged by natural disasters.
- Deletes once-a-year limit on local governments issuing bonds backed by local-option fuel and sales taxes.

A discussion of the fiscal impacts of HB 7077 w/CS is in "**Section II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**" below. Also, the bill appears to raise a mandates issue, and thus will need to include a statement of important state interest and pass the House and Senate by two-thirds vote. For a discussion, see "**III. A. 1. Applicability of Municipality/County Mandates Provisions**" below.

The legislation takes effect July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/23/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: At least two provisions in HB 7077 w/CS implicate this principle. Section 63 creates the Osceola County Expressway Authority, which has the power to issue revenue bonds and to impose tolls, and Sections 39-55 broadens the responsibilities of the Tampa Bay Commuter Rail Authority by changing it to a regional transportation authority.

Ensure Lower Taxes: HB 7077 w/CS potentially could implicate this principle because it provides counties with the authority to impose a local-option rental-car surcharge through a referendum. Counties also would have the ability to levy a transportation sales surtax of ½ cent to 1 cent, if approved by referendum. The bill also authorizes the Division of Bond Finance to issue new revenue bonds for seaport projects, with \$5 million in annual debt service paid from motor vehicle license fees. On the other hand, the bill eliminates the statutorily authorized \$2 fee on initial and renewal registrations of vehicles, which has not been implemented, in Broward, Miami-Dade, and Palm Beach counties for the use of the South Florida Regional Transportation Authority.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Florida Turnpike Bond Cap**

###### Current Situation

A part of the Florida Department of Transportation (FDOT), the Florida Turnpike Enterprise is a 450-mile system of limited-access toll highways. The turnpike's 2006-2010 Work Program is funded largely through revenue bonds, backed by toll revenues. According to FDOT staff, every \$1 in recurring toll revenues from the Turnpike can be leveraged to generate \$14 to pay for project costs.

Section 338.227, F.S., authorizes FDOT to issue bonds to pay all or a part of legislatively approved turnpike projects, and section 338.2275, F.S., limits the total amount of bonds that may be issued to \$4.5 billion. According to FDOT, nearly \$2.336 billion in Turnpike bonds have been issued over the years, leaving \$2.164 billion within the statutory cap to be authorized. However, the Turnpike's long-range project plan through FY 2010-2011 indicates that the estimated costs of the projects exceed the statutory bond cap by approximately \$950 million.

Section 339.135(3), F.S., requires FDOT to base its Five-Year Work Program on a "complete, balanced financial plan." To comply with the law, the Turnpike will have to either eliminate or scale back proposed projects, adopt a "pay-as-you go" approach to financing future projects, or seek a change in law to raise the bond cap.

Current Turnpike projects include completion of the Western Beltway, Part C; adding 150 lane miles through widening of the Turnpike System at a cost of nearly \$1 billion; adding four new interchanges and improving three other interchanges at a cost of \$200 million to improve access to the Turnpike System; and converting the Sawgrass Expressway to a fully electronic, open-road tolling facility and adding SunPass Express lanes at other locations.

Projects proposed for the Turnpike's 2007-2011 Work Program – if the bond cap is increased – include nearly \$370 million for additional lanes on various sections of the Homestead Extension-Florida Turnpike (HEFT) and \$467 million for additional lanes along the Turnpike Mainline and the Veterans Expressway.

Potential future projects under review by Turnpike staff include another phase of the Suncoast Parkway; extensions of the Polk Parkway, State Road 417 in Volusia County, and the Sawgrass Expressway in Broward County to link with I-95; express lanes on the HEFT and the interstates; and the Port of Miami tunnel.

### Effect of Proposed Changes

FDOT proposes raising the cap on Turnpike bonds from \$4.5 billion to \$6 billion, and changing the limitation to a maximum amount outstanding, thereby providing for a "line of credit" that the Turnpike can utilize for long-term planning.

According to FDOT staff, this cap increase will allow the Turnpike to complete currently planned projects and to continue an aggressive approach to building tolled facilities to handle future transportation needs.

Any increase in the bond cap will not impact the state of Florida's debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

### **Florida Turnpike/Expressway Authority Traffic Enforcement Issues**

#### Current Situation

Section 316.1001, F.S., specifies that persons who use a toll facility without paying a toll (unless otherwise exempted) are guilty of a noncriminal traffic infraction, punishable as a moving violation. Pursuant to chapter 318, F.S., if the citation is not paid in a timely fashion, then the matter is forwarded to the courts. Violators are subject to points being assessed on their driver's licenses.

Florida's uniform traffic code and motor vehicle registration laws also include requirements for proper placement and appearance of vehicle license plates, to make it easier for law enforcement officers to quickly identify tag numbers of vehicles involved in criminal activity.

The Florida Turnpike and the expressway authorities are reporting an upswing in the numbers of motorists – particularly repeat offenders -- speeding through toll plazas without paying tolls or without transponders. The Turnpike and the Tampa-Hillsborough County Expressway Authority reported at least \$16 million in lost toll revenues in FY 2004-2005, while the Orlando-Orange County Expressway Authority (OOCEA) reported a \$6 million loss.

These agencies also reported spending more money last fiscal year to contact and litigate toll-plaza violators than they collected. The Turnpike reported spending more than \$2.5 million to collect \$721,362 in unpaid toll collections, while the OOCEA spent \$1.41 million to collect about \$412,000.

While most of the toll plazas are equipped with cameras that photograph the license plates of motorists who speed through without paying tolls, more often these photographs are of little use to enforcement personnel because the plates are purposely obscured or mutilated, or are displayed upside down or out of the cameras' view range. The expressway authorities have learned of websites and retailers selling sprays and other materials that when applied to license tags obscure them just enough to prevent clear photographs by the toll cameras.

In December 2005, the Florida Transportation Commission passed a resolution supporting tougher penalties and fines for motorists who fail to pay tolls or obscure their license plates.

### Effect of Proposed Changes

HB 7077 w/CS makes a number of changes to the traffic violation statutes to stiffen penalties and fines for toll-plaza violators and to address loopholes in the current law. For example:

- The bill amends ss. 316.650(3) and 318.14(12), F.S., to clarify that violators must pay the amount of the unpaid toll and a fine of \$25 or any other amount imposed by the expressway authority to the governmental entity that issued the citation within 30 days in order to avoid a court hearing and points assessed against their licenses. A motorist who fails to do this has an additional 45 days to request a court hearing or pay the civil penalty and other charges.
- The bill also amends s. 318.18(7), F.S., to specify that a toll violator found guilty by a judge must pay a \$100 fine plus the amount of the unpaid toll to the court, which will

forward \$25 and the amount of the unpaid toll to the appropriate expressway authority. The remaining \$100 would be distributed to the General Revenue Fund, local governments, and various trust funds, as provided in s. 318.21, F.S.

- A violator who pleads out before the case goes to court must pay a mandatory fine of no less than \$50 and no more than \$100, plus the amount of the unpaid toll. *The court will* forward \$25 and the amount of the unpaid toll to the appropriate expressway authority, with the remaining funds distributed as provided in s. 318.21, F.S. The court has the authority to consolidate multiple citations for the same defendant for the purpose of sentencing and aggregate jurisdiction.
- The driver's license of any person who receives 10 convictions of s. 316.1001, F.S., within a 36-month period must be suspended for 60 days.

The bill also amends s. 320.061, F.S., to make it illegal to obscure license plates with any substance or coating that restricts their visibility or prevents a legible electronic image recording from being made. Under the legislation, the registration of plates so obscured would be revoked. Also, the Florida Attorney General may file suit against any individual or entity selling or marketing products advertised as being able to obscure license plates. These lawsuits may seek injunctive and monetary relief, punitive damages, and attorney's fees. Any lawsuit also must seek records of all sales of the product to Floridians or other entities within Florida.

Finally, the bill clarifies placement of license plates. Section 316.605(1), F.S., would be amended to specify that:

- License plates must be secured to the main body of a vehicle no higher than 60 inches and no lower than 12 inches from the ground, and
- License plates must be affixed to a vehicle so that its letters and numerals shall be read from left to right, parallel to the ground. This means that license plates can't be attached upside down, vertically, or in reverse position.

## **Osceola Expressway Authority**

### Current Situation

Nine expressway authorities have been created in chapter 348, F.S., by the Florida Legislature. A tenth, the Miami-Dade County Expressway Authority, was created by the Miami-Dade County Commission pursuant to the process in Part I of Chapter 348, F.S. 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 or residents and Governor appointees who decide on projects and expenditure of funds.

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

Osceola County is in one of the fastest-growing regions of the state, and local officials and developers have expressed interest the last two years in partnering to improve transportation infrastructure there. Supporters of creating the expressway authority have mentioned a 6.5-mile-long toll road in the western part of the county as one project. This toll road would link Marigold Avenue in the Poinciana community in Osceola with U.S. 17 and County Road 54 in Polk County.

### Effect of Proposed Changes

HB 7077 w/CS proposes creating the "Osceola County Expressway Authority," 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.

Pursuant to the legislation:

- The expressway authority would have a six-member governing board, of which five would be voting members. The board's voting members would be comprised of three residents of Osceola County appointed by the Osceola County Commission and two Osceola County residents appointed by the Governor. The FDOT District 5 Secretary would serve as an ex-officio, non-voting member. No Authority member may be an officer or employee of Osceola County.
- The members shall serve 4-year terms, except that the Governor's initial appointees shall serve 2-year terms.
- The board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to s. 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 State Bond Act requirements. These bonds' term may not exceed 40 years, and cannot pledge the full faith and 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; and 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.
- Likewise, the Authority may not acquire right-of-way for a project within unincorporated Osceola County until the County Commission has approved the project's route.
- 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.

### **Other Turnpike/Expressway Issues**

HB 7077 w/CS proposes a number of changes to the sections of law related to the Miami-Dade County Expressway Authority (MDX); the Orlando-Orange County Expressway Authority (OOCEA); the expanded use of transponders; and the Florida Turnpike budget. HB 7077 w/CS makes the following changes:

#### MDX:

Currently, an expressway authority in a county defined in s. 125.11(1), F.S., (which applies only to MDX) can have up to 13 voting members: seven appointed by the County Commission; five appointed by the Governor; and the final member being the FDOT District 6 secretary. MDX has powers similar to those of all the other expressway authorities created in law, including the power to levy tolls on its transportation facilities.

HB 7077 w/CS reduces the board to a maximum of seven voting members, with the chair of the Miami-Dade legislative delegation, or designee, and the FDOT District 6 secretary as non-voting members. The new voting membership would be comprised of: one Miami-Dade county commissioner appointed by the commission chair; one member may be a mayor of a municipality within the county and appointed by the Miami-Dade County League of Cities; and five non-elected, citizen appointees, three by the Governor and two by the County Commission.

The legislation also would require MDX, prior to raising tolls, to publish a notice of intent in a newspaper of general circulation, as defined in s. 97.021(16), F.S., specifying the amount of the increase. The notice must be published twice, at least seven days apart, with the first notice published no more than 90 days from the effective date of the toll increase and the second publication not less than 60 days prior to the effective date. These provisions do not apply to toll increases approved by the authority prior to this legislation becoming law.

Finally, MDX would be prohibited from hiring an outside lobbyist, as defined in s. 11.045, F.S. MDX members and staff, however, would be allowed to lobby on behalf of the authority's interests.

### OOCEA

Currently, OOCEA has a program that seeks to encourage Orlando-area small-business owners to bid on components of expressway authority projects. In its eight years' of existence, the so-called "micro-contract" program has attracted more than 100 small companies to perform such tasks as erecting guardrails, installing landscaping, and striping toll roads. One of the benefits of the program to small businesses has been the waiver of a performance bond for project contracts of \$200,000 or less. This waiver is available to all state agencies, pursuant to s. 255.05, F.S. Persons or entities awarded public contracts greater than \$200,000 must post a surety bond to guarantee the work will be performed to the state agency's specifications.

The recent unprecedented increases in transportation construction materials and labor in Florida has increased the bids for these micro-contracts, according to OOCEA staff. As a way to save the popular program, the OOCEA is proposing amending s. 348.754, F.S., which specifies the OOCEA's purposes and powers, to raise to a maximum \$500,000 the contract threshold for a performance-bond waiver for OOCEA contractors only.

The proposal also limits participation in the program to independent businesses principally headquartered in the Orange County Standard Metropolitan Statistical Area and employing a maximum of 25 persons. Eligible businesses also must have gross annual construction sales averaging \$3 million or less over the previous three calendar years; be accepted into OOCEA's economic-development program; and participate in OOCEA technical assistance or other educational programs. Any small business which has been the successful bidder on six micro-contracts is ineligible to continue participating in the program.

### Toll Transponders

Section 338.161, F.S., allows FDOT and the Turnpike to spend funds for marketing its Sun Pass transponders, and to receive funds from advertising placed on its transponders and promotional materials to defray costs. Expressway authorities, which also sell transponders to their customers, do not have similar statutory authority.

Current law does not address potential uses of transponders other than for toll collection, although the Turnpike and the OOCEA have been allowing their customers to pay for parking at the Orlando International Airport from their transponder accounts. According to the OOCEA, about 28 percent of all airport parking lot users there pay with a SunPass or E-Pass transponder. Attorneys for the Turnpike and expressway authorities have said express statutory permission is necessary so that future contracts to expand the use of transponder accounts are on firm legal ground.

HB 7077 w/CS amends s. 338.161, F.S., to extend to expressway authorities the ability to market their transponders. It also would specifically allow expressway authorities and FDOT and the Turnpike to enter into agreements with private or public entities to expand the use of their transponders to pay for parking. These entities will be required to perform feasibility studies on additional transponder uses, and seek legislative approval before implementing them.

### Turnpike Budget

In 2005 the Legislature revised several technical provisions in statute related to state budget requirements and deadlines. One of these revisions changed the roll-forward date of certified undisbursed funds in FDOT's accounts from December 31 of each year to September 30 of each year. Advancing the roll-forward date gives FDOT budget staff more information about these funds as they are preparing the agency's Legislature Budget Request in the fall.

However, the Turnpike's budget process is in a different section of law than is FDOT's, and was overlooked last year.

HB 7077 w/CS amends s. 338.2216, F.S., to correct the oversight and conform the Turnpike's roll-forward budget date to FDOT's budget process.

#### Public-private partnerships

Currently, s. 348.0004(9), F.S., in Part I of the chapter, allows any expressway authority to solicit proposals from private companies wishing to enter into partnership agreements for the purpose of building, financing, operating, or owning toll facilities. No such partnership has been consummated, although the Tampa-Hillsborough Expressway Authority has advertised for proposals from private entities to help finance, design, and build a 3-mile-long, four-lane tolled highway linking the Tampa Palms neighborhood with I-275. The deadline for submitting proposals is May 8, 2006.

The authority's attorneys have questioned whether the existing law is clear that any expressway authority, and not just those created pursuant to Part I of chapter 348, F.S., can participate in the public-private partnerships. To address those concerns, HB 7077 w/CS amends s. 348.0004(9), F.S., to say that "notwithstanding any law to the contrary, any expressway authority, transportation authority, bridge authority, or toll authority established under this part or any other statute" may enter into these partnerships. The bill also amends s. 348.0012, F.S., to clarify that Part I of chapter 348, F.S., does not apply to expressway authorities created elsewhere in the chapter, "except where expressly provided."

#### Northwest Florida Transportation Corridor Authority

The eight-member corridor authority was created in 2005 to develop a comprehensive and cohesive transportation master plan for the region and, if necessary, build, operate and maintain tolled facilities within the U.S. 98 corridor.

HB 7077 w/CS directs that all future appointees to the corridor authority be non-elected residents of their respective counties, and specifies that this requirement does not prevent the lone elected official currently serving from completing his term on the authority. This change was agreed to by the current authority board, who agreed that an all-citizen board would function better.

The bill also amends s. 343.82, F.S., to allow the corridor authority to assume from the Emerald Coast Bridge Authority, the responsibility for planning and studying, and, if determined to be feasible, building, operating and maintaining, a bridge or bridges spanning Santa Rosa Sound and Choctawhatchee Bay.

### **South Florida Regional Transportation Authority (SFRTA)**

#### Current Situation

In an attempt to ease the disruptions created for commuters while six-laning I-95 in the mid-1980s, the Florida Department of Transportation (FDOT) purchased an 81-mile rail corridor from CSX Transportation, Inc., (CSXT) for \$264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintain the tracks, buildings, and signaling; and dispatches all trains using the tracks. In 1989, the Legislature passed the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., creating a commuter railroad to serve Miami-Dade, Broward, and Palm Beach counties.

In 2003, the Legislature amended chapter 343, F.S., to reconfigure the Tri-Rail Commuter Rail Authority as the "South Florida Regional Transportation Authority" (SFRTA). Supporters of the legislation said that a transportation authority, rather than a commuter rail system, would have a better opportunity to draw down federal matching dollars for public transit projects.

The SFRTA has a nine-member board comprised of elected officials, private citizens, and an FDOT district secretary. The board is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous statutory powers and responsibilities, including the power to acquire, sell, and lease property; to exercise the power of eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The 2003 legislation also required each of the three counties served by the SFRTA to dedicate funding of \$2.67 million annually, no later than August 1, 2003. The potential sources of this dedicated funding include:

- Local-option fuel taxes;
- Each county's share of the local ninth-cent fuel tax;
- Proceeds of a \$2 annual fee for registration or renewal of registration of each vehicle licensed in this state and registered in one of the three counties, if approved by a county referendum; or
- Other, non-federal funds.

In addition, each county must provide annual funding of at least \$1.565 million for operations. These local funding requirements are repealed if the SFRTA does not obtain federal matching funds by December 31, 2009. A fiscal analysis of the 2003 legislation indicated the \$2 fee for new and renewal registration would generate an estimated \$8 million annually; however, the fees have not been imposed.

Meanwhile, the SFRTA is continuing to improve the existing commuter rail system with its 18 stations. Since 1995, the major project has been the \$451-million "Double Track Corridor Improvement Program," which makes improvements to the existing 72-mile route and builds a second mainline track parallel to the existing track. About \$334 million of the project cost has been funded by the Federal Highway Administration through direct grants; FDOT paid the rest. All but two miles of the double-tracking has been completed, and the Authority recently added additional trains and introduced new schedules that have trains leaving the stations every 20 minutes during morning and evening rush hours.

Last year, the commuter train system was averaging about 8,000 riders a day, but the near-completion of the double-tracking, plus better on-time reliability and more scheduled runs, has boosted daily ridership averages in 2006 to nearly 10,000, according to this bill's supporters.

The SFRTA continues to seek a significant dedicated funding source to complete the commuter train system and to implement its long-range transit plans. Dedicated funding is necessary for the SFRTA to issue revenue bonds in order to obtain federal transit grants that typically require a 50-50 match. Under the state's participation in the federal "New Starts" transit program, a local match of 25 percent is required, while the state provides the 25 percent and the federal government 50 percent.

#### Effect of Proposed Changes

HB 7077 w/CS makes a number of significant changes to the South Florida Regional Transportation Authority Act in ch. 343, F.S.:

- Clarifies that the three counties must dedicate and transfer not less than \$2.67 million annually to the SFRTA for capital expenditures prior to October 31 of each fiscal year.
- Raises from \$1.565 million annually to \$4.2 million annually the amount of money each of the three counties must contribute to the SFRTA to pay its operating expenses. This would generate an additional \$7.9 million annually for the SFRTA in operating funds.
- Deletes the \$2 fee on initial and renewal vehicle registrations within the three-county area. The fee, which must be approved by voter referendum, has not been approved in any of the counties.
- Specifies that at least \$45 million of a state-authorized, local-option, recurring funding source available to Broward, Miami-Dade, and Palm Beach counties must be directed to the SFRTA to fund capital, operating, and maintenance expenses. This funding may be dedicated to the

SFRTA only if all three counties impose it. A potential source of funding is the proposed local-option rental-car surcharge.

- Eliminates the operating and capital funding contributions from the three counties when the proposed \$45 million becomes available, but those local contributions would resume if the new funding ceases.
- Specifies that the state will not limit or alter the rights vested in the SFRTA to sell revenue bonds until all such bonds are paid off and discharged.
- Extends by six years, to December 31, 2015, the date on which the local capital funding for the SFRTA ceases if no federal matching funds have been received. Section 343.58(1), F.S., which specifies the local capital funding sources, is repealed under that circumstance.

## **New Tampa Bay Regional Transportation Authority**

### Current Situation

In 1986 the Legislature created Part III of Chapter 343, F.S., the Tampa Bay Commuter Rail Authority, with the power to issue revenue bonds, in response to perceived interest in the region for commuter or light rail and ferries. The authority did not officially form until 1990. At the time, the authority board was comprised of elected and citizen representatives from Hernando, Hillsborough, Pasco, Pinellas, and Polk counties, as well as the Secretaries of FDOT Districts 1 and 7 and an appointee of the Governor. Representatives from each of the five counties' local transit authorities were appointed to serve as ex-officio members. The authority directed some organizational work and feasibility studies; however, the authority has been dormant for several years due to a lack of consensus among local authorities regarding the funding of a system, routes and design features.

In 2004, the Legislature passed CS/CS/SB 1456 (chapter 2004-366, Laws of Florida) that renamed the entity the "Tampa Bay Commuter Transit Authority" and added Manatee and Sarasota representatives to the board, in an effort to jump-start the authority's activities. Still, the authority remains basically inactive.

Within the jurisdictional area of the Tampa Bay Commuter Transit Authority are two FDOT districts, six M.P.O.'s and the West Florida Chairs Coordinating Committee (of M.P.O. chairpersons), three regional planning councils, two expressway authorities, and the legislatively created Pinellas Suncoast Transit Authority. Yet with all this transportation-related administrative infrastructure, some in the Tampa Bay region believe regional coordination could be improved.

### Effect of Proposed Changes

HB 7077 w/CS renames the Tampa Bay Commuter Transit Authority as the "Tampa Bay Regional Transportation Authority" and significantly broadens its scope and responsibilities to include construction and operation of highways and other transportation facilities other than commuter rail and commuter ferries. Under the bill:

- Citrus County is added to the Authority's jurisdiction, bringing the total member counties to eight.
- The Authority board shall be comprised of 10 citizens as voting members – one appointed by each of the eight county commissions, and one each appointed by the Governor and the Chairs Coordinating Committee. The two FDOT district secretaries or their designees, and persons representing each county's transit authority, shall appoint non-voting ex-officio members.
- The appointees serve 2-year terms, and serve without compensation, but are eligible to receive per diem and other travel expenses pursuant to s. 112.061, F.S. The Authority may hire an executive director and other staff.
- The Authority may build, operate, and maintain commuter rail and ferry systems, highways, bridges, and appurtenant facilities, which may be tolled. The authority must obtain the concurrence of FDOT if any of its facilities are intended to be part of the State Highway System.
- The Authority must develop and adopt a regional transportation master plan by July 1, 2008, that includes a number of goals and objectives tailored to the needs of the Tampa Bay region. The master plan must include the costs of the authority's proposed projects and potential revenue sources.

- 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 State Bond Act requirements. These bonds' term may not exceed 40 years, and cannot pledge the full faith and 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; and enter into contracts, agreements, and partnerships with public and private entities.
- Creation of the Authority does not repeal, rescind, or modify any other law relating to the State Board of Administration, FDOT, the Division of Bond Finance, and the Tampa-Hillsborough Expressway Authority.

## **M.P.O. Issues**

### Current Situation

As established by 23 U.S.C. s. 134, Metropolitan Planning Organizations (M.P.O.'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 projects that serve an important national, state or regional transportation purpose.

Pursuant to s. 339.175, F.S., M.P.O.'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 M.P.O.'s also develop long-range transportation plans ranging over 20 years and an annual "unified planning work program" that lists all the planning tasks each M.P.O. will undertake that fiscal year.

An M.P.O. 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 M.P.O. must be created and operated pursuant to an interlocal agreement entered into pursuant to s. 163.01, F.S. Currently, Florida has 26 M.P.O.'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.

In recent years, as the Legislature has instituted transportation policy directives focusing on regional planning and transportation infrastructure improvements, the section of law governing M.P.O.'s responsibilities in Florida has been criticized as internally inconsistent and unclear as to the entities' precise responsibilities and their degree of independence.

### Effect of Proposed Changes

HB 7077 w/CS amends s. 339.175, F.S., and other sections of law to bring clarity and uniformity to M.P.O.'s administrative structure, powers and duties, and general responsibilities. For example, one criticism has been that some M.P.O.'s cannot fully embrace regional planning approaches because they, or their staffs, are not as independent as they should be from county and city governments.

The bill amends chapters 112 and 121, F.S., to clarify that M.P.O.'s are separate legal entities independent from the local governing body; allow M.P.O. staff to participate in the Florida Retirement System; designate each M.P.O.'s executive director or staff director as a member of the Senior Management Service class; and allow M.P.O.'s to establish per diem and travel reimbursement rates.

It also amends s. 339.175(5), F.S., to clarify that an M.P.O.'s executive director reports directly to his or her M.P.O. Governing Board, and that the executive director and staff are employed by the M.P.O., or through a staff services agreement between the M.P.O. and another governmental entity. In addition,

the legislation makes it clear that M.P.O. staff work for the M.P.O., and not for any of the member cities or counties.

HB 7077 w/CS also amends s. 339.175(1) and (2), F.S., to address a number of membership issues. The bill:

- Directs each M.P.O. to select a chair, vice chair, and clerk;
- Specifies the officers' responsibilities;
- Requires each M.P.O. to provide training on the urbanized transportation planning process to all who serve as members;
- Clarifies that voting members shall exclude constitutional officers;
- Establishes a process by which alternate members are selected;
- Directs M.P.O.'s to appoint nonvoting representatives of various multi-modal organizations, who are not otherwise represented by voting members; and
- Directs M.P.O.'s to appoint representatives of major military installations as non-voting advisors if requested by the bases.

Current law requires roll-call votes of all members present in order to adopt or update certain plans. HB 7077 w/CS amends s. 339.175(12), F.S., to provide for a supermajority roll-call vote, or a hand-counted vote of a majority-plus-one, of the membership present to adopt transportation plan amendments affecting projects in the first three years of such plans. This change is related to the provision in s. 339.135(4)(b)3., F.S., that the first three years of FDOT's adopted work program is the state's commitment to undertake transportation projects that local governments may rely on for planning and concurrency purposes.

Finally, HB 7077 w/CS directs the Florida Transportation Commission to conduct a study and prepare a report on the progress made by the M.P.O.'s to establish coordinated regional transportation processes and plans. The report is due to the Governor and legislative leaders by January 15, 2007.

## **Local Transportation Funding Issues**

### *Transportation Surtax*

#### Current Situation

Local governments have been receiving a share of gas tax revenues since 1971. Today, there are several local fuel taxes, some of them optional and requiring either voter approval or majority vote of the local governing board.

Over the years, the Legislature has created opportunities for county and city governments to levy additional sales taxes or surtaxes, upon voter approval, to pay for large or expensive infrastructure projects. One such funding mechanism is the Charter County Transit System Surtax, created in 1976 by the Legislature to finance development, construction, and operation of fixed guideway, rapid transit systems in charter counties. Imposition of the surtax under current law requires voter approval.

This section of law has been amended several times since it was created, so that currently only counties that adopted a charter prior to January 1, 1984, may seek to levy a maximum 1 percent sales surtax, after voter approval, to finance a variety of transportation infrastructure as well as operation and maintenance of public bus systems.

Seven counties are eligible to levy the surtax: Broward, Duval, Hillsborough, Miami-Dade, Pinellas, Sarasota and Volusia. Only two have levied the surtax: Duval since 1989 and Miami-Dade since 2003. Each county levies a half-cent sales surtax. According to the state Department of Revenue, in FY 2004 the surtax in those two counties generated \$194.3 million.

Some county and city officials in recent years have expressed an interest in having the surtax eligibility broadened beyond charter counties, commenting that a surtax on sales appears more palatable to taxpayers than raising fuel taxes. They also have cited rising costs of

transportation construction materials and labor, the state's new emphasis on regional transportation solutions, and required local matches for new state transportation funding programs passed in 2005 as part of the Growth Management Act rewrite, as reasons they support broadening the surtax and finding other locally generated revenues.

#### Effect of Proposed Changes

HB 7077 w/CS amends 212.055(1), F.S., to rename the Charter County Transit System Surtax as the "Charter County Transportation System Surtax" and creates a new subsection (8) as the "County Transportation System Surtax" for all other counties in the state. It also expands the surtax revenues' uses to include:

- Funding a regional transportation project identified in regional plans by M.P.O.'s, pursuant to s. 339.155(5), F.S.;
- As the local match for the new Transportation Regional Incentive Program, pursuant to s. 339.2819, F.S., or the New Starts transit program, pursuant to s. 341.051, F.S.;
- Certain capital improvement projects and concurrency projects identified in local comprehensive plans; and
- Funding bicycle and pedestrian paths.

The maximum 1-percent surtax can be levied after the adoption of a local ordinance by the county commission and passage of a referendum. HB 7077 w/CS also includes a distribution formula, per interlocal agreement, so that counties can share the funds with municipalities. The formula takes into account population and centerline miles in the counties and cities.

#### *Local-option rental-car surcharge*

##### Current Situation

In 1989, the Legislature created s. 212.0606, F.S., to impose a 50-cents-per-day statewide rental-car surcharge levied on the lease or rental of for-hire motor vehicles designed to carry fewer than nine passengers. The surcharge was increased to \$2 per day in 1990.

The surcharge was used initially to fund children and adolescent substance abuse programs and law enforcement needs, but has been amended in subsequent years to remove the initial funding uses and replace them with funding the state's transportation needs, the state's tourism promotion and marketing efforts, and the state's international trade and promotion efforts. The actual distribution of the \$2 per day surcharge is: \$1.49 to the State Transportation Trust Fund; 29 cents to the Tourism Promotion Trust Fund; 8 cents to the Florida International Trade & Promotion Trust Fund; about 14 cents to the General Revenue Fund (7.3-percent service charge); and less than 1 cent to the Department of Revenue as an administrative charge.

The statewide rental-car surcharge is levied per day or any part thereof on the lease or rental of a motor vehicle licensed for hire and designed to carry fewer than nine passengers regardless of whether the motor vehicle is licensed in Florida. The surcharge applies only to the first 30 days of the term of any lease or rental. The surcharge does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

The Department of Revenue (DOR) is responsible for collecting and distributing monies collected under the rental car surcharge as well as enforcing its collection. According to DOR, the rental car surcharge is collected from 1,800 rental car dealers, of which 130 operate in more than one county.<sup>1</sup>

The distribution of monies placed in the State Transportation Trust Fund was amended in 2002 to require that beginning in FY 2007-08, the proceeds deposited from the rental-car surcharge would be allocated on an annual basis in FDOT's work program to each of the seven transportation districts,

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<sup>1</sup> Conversation with JoAnn Sapolsky, General Tax Administration- Tax Compliance Coordinator, Department of Revenue

except the Turnpike Enterprise. The amount allocated to each district must be based on the amount of proceeds collected in the counties within each respective district.<sup>2</sup>

The manner in which rental-car dealers reported surcharges was amended by the 2003 Legislature to authorize DOR to require dealers to report rental-car surcharge collections according to the county in which the surcharge was collected, in order to facilitate the allocation of surcharge revenues to each FDOT district. This requirement was authorized to begin January 1, 2004. The change in law was intended to help FDOT meet its statutory requirement that proceeds of the rental-car surcharge be allocated to each FDOT district for projects, based on the amount of proceeds collected in the counties within each respective district.<sup>3</sup>

Finally, prior to January 1, 2004, the majority of the rental-car surcharge collected was reported on consolidated returns by rental car companies with multiple locations and was not broken down by the amount of the surcharge collected on a county-by-county basis. In order to accommodate FDOT's five-year planning cycle, DOR provided an estimate of the rental-car surcharge based on sales tax returns. After January 1, 2004, the law required DOR to collect information on a county-by-county basis. Since that time, information has been collected on a form to accommodate the statutory requirement.

Rental-car surcharges are collected in all counties, with the exception of Glades and Lafayette. The revenues are deposited into the State Transportation Trust Fund. In FY 2005, the counties responsible for the most surcharge revenue being deposited into the Trust Fund were Orange (\$30.9 million) in District 5, Broward (\$19.7 million) in District 4, Dade (\$18.2 million) in District 6, and Hillsborough (\$12.3 million) in District 7.<sup>4</sup>

The March 2006 Transportation Revenue Estimating Conference noted that the rental-car surcharge is showing some rebounding following the terrorist attacks on September 11, 2001. The rental-car surcharge forecast was increased by \$23.1 million, or 3.4 percent higher than in the November 2005 forecast. By FY 2015-2016, the estimated revenue generated by the statewide rental-car surcharge is \$128.8 million.

#### Effect of Proposed Changes

HB 7077 w/CS amends s. 212.0606, F.S., to provide for the imposition of a local-option rental-car surcharge of \$2 per day or any part thereof. The local-option surcharge applies to motor vehicles licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state. The surcharge applies only to the first 30 days of each lease or rental.

Unlike the statewide law, the local-option surcharge will not apply to the lease or rental of a motor vehicle by a person for the period of time required to have a motor vehicle owned by the person undergo maintenance or repair. To be eligible for this exemption the individual must provide a receipt for the cost of the maintenance or repair services and documentation that he or she owns the motor vehicle undergoing maintenance or repair.

The local-option surcharge must be approved by the voters in a countywide referendum and can only take effect on January 1 following the year in which the ordinance was approved. A local-option surcharge may only be terminated on December 31 in a given year.

The proceeds of the local-option surcharge must be deposited in the Local Option Fuel Tax Trust Fund to be used for the acquisition of right-of-way; the construction, reconstruction, operation, maintenance, and repair of transportation facilities, roads, bridges, bicycle paths, and pedestrian pathways in counties; or the reduction of bonded indebtedness incurred to build those aforementioned projects.<sup>5</sup> The proceeds are to be distributed on a monthly basis and shared by the county with municipalities

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<sup>2</sup> See ch. 2002-20, L.O.F.

<sup>3</sup> See ch. 2003-254, L.O.F.

<sup>4</sup> Information provided by the Department of Revenue.

<sup>5</sup> See s. 206.60, F.S.

pursuant to an interlocal agreement or if there is no interlocal agreement, the proceeds are to be distributed based upon a statutorily established formula.<sup>6</sup>

If a dealer who collects the local-option surcharge fails to report the surcharge collections by county, the surcharge proceeds will be deposited into the Solid Waste Management Trust Fund and then transferred to the Local Option Fuel Tax Trust Fund. Under these circumstances, the distribution formula is based on the most current population of each county levying the surcharge multiplied by the amount of funds in the account available for distribution.

The bill requires DOR to collect, administer, enforce and distribute the local-option surcharge, as it similarly does for the statewide surcharge.

## **Seaport Funding**

### Current Situation

Florida's 14 public deepwater ports, as listed in s. 403.021(9)(b) F.S., are: Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West. There are many more privately operated ports and local public ports created by special act of the Legislature.

In 2005, Florida's 14 deepwater ports handled nearly \$63 billion in waterborne international trade and handled 127.4 million tons of cargo.<sup>7</sup> Besides freight, several ports also have thriving cruise ship enterprises; last year, an estimated 14.5 million people sailed out of Florida ports. The cruise industry in 2003 created nearly 131,000 jobs in Florida and accounted for nearly \$4.6 billion in direct spending.<sup>8</sup> By 2008, the economic impact of Florida's seaports is projected to be \$1.3 billion in annual state and local sales tax revenues and more than 348,000 jobs, which is nearly 6 percent of all private-sector jobs in Florida, according to a study by The Washington Economic Group.<sup>9</sup>

Recognizing the economic importance of Florida's ports, the Legislature in 1990 created chapter 311, F.S., establishing the Florida Seaport Transportation and Economic Development (FSTED) Program within FDOT to finance seaport projects that improve the movement of people and goods, and otherwise support the interests, purposes, and requirements of Florida's seaports. To initially fund the program, s. 311.07(2), F.S., directed the transfer from the State Transportation Trust Fund (STTF) of a minimum of \$8 million annually. These funds are used to provide a 50-50 match with any of Florida's designated deepwater ports for project improvements to seaports including the dredging of channels, harbors, and turning basins.

The FSTED program is managed by the FSTED Council, which consists of the 14 deep water port directors, the Executive Director of the Governor's Office of Tourism, Trade, and Economic Development (OTTED), and the secretaries of Transportation and Community Affairs. The council is responsible for preparing a five-year Florida Seaport Mission Plan which defines the goals and objectives of the seaports. Additionally, the FSTED council meets semi-annually to review project applications submitted by each of the individual seaports and recommends which projects should be forwarded to the agencies for further review and possibly recommended for funding with state funds. The list of FSTED recommended projects is reviewed by OTTED, FDOT, and DCA to ensure each project is consistent with state statutes and local master plans.

Over the years, the FSTED Program has been amended from its original \$8 million to provide as much as \$15 million annually in grants and a guaranteed \$25 million annually from motor vehicle registration fees, pursuant to s. 320.20, F.S., as debt service to support two bond issues. The bonds, totaling \$375.4 million, were issued in 1996 and in 1999 by the Florida Ports Financing Commission, created

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<sup>6</sup> See s. 336.025(3)(a)1. or (4)(a), F.S.

<sup>7</sup> *A Five-year Plan to Achieve the Mission of Florida's Seaports: 2005/2006-2009/2010*. Prepared by WilsonJones for the Florida Seaport Transportation and Economic Development Council. Published February 2006. Copy on file the House Transportation Committee.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

pursuant to interlocal agreement among the ports and their local governments pursuant to chapter 163, F.S., and s. 320.20, F.S. to help fund the capital projects in the five-year mission plan. The bond proceeds are “secured” by loans made by the financing commission, comprised of port representatives, to the ports for their approved projects in the mission plan. The “loans” are repaid by the \$25 million annually deposited in escrow accounts by FDOT.

In 2000, after a critical Florida Auditor General’s report on the financing commission’s operations, the Legislature amended s. 320.20, F.S., to specify that the state Division of Bond Finance would be responsible for issuing future FSTED bonds. Further, the existing \$25 million revenue stream cannot be used to pay debt service on any FSTED bonds other than the 1996 and 1999 issuances or refunding of those original bonds.

Port projects in the mission plan must meet several requirements. State funding cannot exceed 50 percent of the total cost of a project, although 75 percent of the cost of certain waterside dredging improvements can be paid by the state. In order to be approved, a proposed project must be found consistent with the seaport’s comprehensive master plan and the local government’s comprehensive plan; be of demonstrable economic benefit to the State and be found consistent with the FDOT’s adopted five-year work program. Candidate projects to be financed through bondable funding must also meet statutory eligibility and consistency requirements.

In 2005, the Legislature created in s. 311.22, F.S., an additional ports funding program to help finance dredging improvements at small ports in counties with a population of less than 300,000 persons based on the last official U.S. Census and which met other criteria, but which could not access the existing FSTED funding. The FSTED Council was directed to develop by rule procedures and criteria for evaluating project applications submitted for funding under the new program; the process is similar to that currently in place for the 14 deepwater ports. Funding for the program in FY 2005-2006 was in the General Appropriations Act proviso language, at \$2.5 million, to provide the 50-percent state match. However, FSTED staff said officials with the eligible small ports have had difficulty coming up with their share because of rising project costs.

#### Effect of Proposed Changes

HB 7077 w/CS amends s. 320.20, F.S., to earmark \$5 million annually in motor vehicle registration fees to finance a third FSTED revenue bond issue, which is expected to raise about \$80 million. Under the bill:

- The new bonds would be issued by the Division of Bond Finance at FDOT’s request. These bonds would not be considered a general obligation of the state.
- FSTED would submit to FDOT a list of the requested projects for its review and approval. FDOT-approved projects will be incorporated into the agency’s five-year work program.
- The bond proceeds could be used to fund seaport intermodal access projects identified in FDOT’s 2006/2007-2010-2011 Work Program; for fixed guideway systems that provide intermodal access pursuant to s. 341.053, F.S., and which are in the FSTED mission plan; general port improvement projects, such a rehabilitation of wharves and piers, as listed in s. 311.07(3)(b), F.S.; and for seaport intermodal projects that involve dredging or other activities.
- Different matches are specified, depending on the activity, but the bill provides the local match may come from other port funds or from federal, local, or private contributions.
- These bond proceeds are exempted from the limit in s. 311.07 (4), which specifies no port shall receive more than \$8 million a year in certain FSTED funds and no more than \$30 million over a five-year period.

Additionally, the bill deletes the prohibition against the existing bonds being refinanced or refunded to a date later than their current 30-year maturity date, which means the existing bonds could be refinanced and the new bond proceeds used for new port projects. According to documents supplied by FSTED, if the bonds were refinanced to another seven to 10 years to the maturity, an estimated \$60 million could be generated.

Finally, the bill also amends s. 311.22, F.S., to allow the small ports to match a “minimum 25 percent” of the costs for new channels or turning basins; the local match remains at 50 percent for dredging or deepening existing channels, turning basins, and harbors.

## **FDOT Contracting Issues**

### Current Situation

Pursuant to s. 337.18, F.S., for transportation contracts and s. 255.05, F.S. for, all other state or local governmental projects, any person or entity entering into a contract for the construction or repair of a public building or public works, must execute, deliver to the owner, and record a payment and performance bond purchased from a surety company. A payment bond guarantees that the contractor will pay certain subcontractors, laborers, and material suppliers associated with the project. A performance bond protects the owner from financial loss should the contractor fail to perform the contract in accordance with its terms and conditions.

A surety bond is equal to 100 percent of the contract price, to enable FDOT to complete the project should the contractor fail to complete the project according to the terms of the contract.

Certain contracts may be exempted from the bond requirement, depending on the amount of the contract and whether the governmental entity agrees. For example, s. 337.18, F.S., allows FDOT to waive all or a portion of surety bond requirements for contracts of no more than \$150,000 if the project is noncritical and if nonperformance of the contract will not endanger the public health, safety, or property. Also, FDOT may accept other types of financial guarantees (such as certified checks or postal money orders) for contracts valued at no more than \$25,000. Also, s. 337.11, F.S., requires FDOT to advertise in a local newspaper of general circulation a solicitation for bids on all construction projects with a contract price of no more than \$250,000.

However, rising material and labor costs of transportation projects are resulting in project bids coming in much higher than FDOT has projected. Contractors for so-called “mega projects” costing more than \$500 million are discovering that few surety bond companies worldwide are writing coverage in excess of that amount. Also, FDOT is awarding more multi-year contracts than it used to, but surety bonds typically are an upfront, and not phased-in, cost based on the entire amount of the contract. For these reasons, the agency believes it is time to adjust its surety bond requirements.

### Effect of Proposed Changes

HB 7077 w/CS makes a number of changes to FDOT’s contracting procedures specified in chapter 337, F.S.:

- Amends s. 337.11(3), F.S., to specify that the newspaper advertising requirement doesn’t apply to construction contracts valued at less than \$500,000 for which FDOT has waived prequalification requirements.
- Amends s. 337.14(1), F.S., to waive pre-qualification requirements for construction contracts of no more than \$500,000 if FDOT determines the project is noncritical in nature and failure to complete the project as agreed does not endanger the public health, safety, or property.
- Amends s. 337.18, F.S., to allow FDOT to waive, at its discretion, incremental annual surety bonds for multi-year maintenance contracts. The bill also amends this section of law to increase from \$150,000 to \$250,000 to minimum threshold for a contract to need a surety bond.
- Additionally amends this section to give the agency the discretion to reduce surety bond requirements or require alternative financial security for contracts valued at a minimum \$250 million. Alternative security in lieu of a surety bond could include a line-of-credit, parent company guarantees, or cash collateral.

## **Other Transportation Issues**

HB 7077 w/CS includes a number of other transportation-related issues. Briefly:

### Florida Transportation Commission

Currently, the four employees of the Florida Transportation Commission, the governor-appointed board that provides oversight of FDOT and makes transportation policy

recommendations to the Governor and Legislature, are classified as Selected Exempt Service personnel for the purposes of salary and benefits.

HB 7077 w/CS specifies that the salary and benefits of the commission's executive director position shall be based on the Senior Management Service classification, and the rest of the commission's employees shall remain in the Selected Exempt Service classification.

#### Local government bonding restrictions

Currently, s. 212.055(2), F.S., allows counties to levy an infrastructure sales surtax of either one-half percent or 1 percent, after approval by referendum, and that the counties, municipalities, and school boards receiving a share of the surtax revenues to bond them for specified types of public infrastructure. Section 336.025(1) F.S., allows counties to levy a maximum 6-cents-per-gallon local-option fuel tax, and for counties and cities to bond those revenues. In both cases, the local governmental entities are limited to issuing bonds backed by these revenues to once a year. Some local governments are concerned that they are missing opportunities to refinance existing bonds to obtain a lower interest rate, and thus save money that can be better spent on the infrastructure improvements. HB 7077 w/CS deletes the once-a-year bonding limit on these local revenues.

#### FDOT fixed-guideway funding

A "fixed-guideway transportation system" is a public transit system for transporting people by a conveyance, or a series of interconnected conveyances, specifically designed for travel on a stationary rail or other guideway. Section 215.615, F.S. authorizes FDOT or commuter rail authorities and regional transportation authorities to issue revenue bonds to fund fixed guideway projects. Each party is contractually liable for an equal share of the bond debt service. Projects must comply with FDOT's major capital investment policy guidelines, and must be included in the work program. The FDOT's share of debt service is payable from, and is limited to, a maximum of 2 percent of all state revenues deposited into the STTF. These debt service payments are part of the 15-percent of transportation revenues committed to public transportation projects pursuant to s. 206.46, F.S. The local share is payable from any available revenues other than revenues of FDOT.

To date, the fixed-guideway revenue bond financing option has not been used. However, FDOT is negotiating with local governmental entities and a private railroad company in Central Florida to develop a fixed-guideway commuter or light rail system. Bond counsel assisting FDOT with the financing component of the project has suggested changes to the existing s. 215.615, F.S. The proposed changes allow for various matching scenarios with FDOT's share being established per an interlocal agreement at "up to 50 percent" of the eligible project costs, which may include debt service. The changes would clear up terminology issues and allow local authorities to contribute more local dollars when the state's available match is insufficient to finance 50 percent of the project.

#### Safe Routes to Schools

In 2002, the Legislature created the "Safe Paths to Schools" program in s. 335.066, F.S., to encourage FDOT, local governments and the county school districts to work together to identify unsafe pedestrian and bike paths near schools, parks, greenways and trails, and to help fund their improvement.

Since that time, the federal government became aware of this issue throughout the nation, and last year included funding in the transportation reauthorization act for a "Safe Routes to School" program. The new federal program includes grants the states can apply for, with one requirement being that the states who obtain the funding must hire a program coordinator. FDOT has received some of the new funding and is in the process of interviewing for the coordinator.

HB 7077 w/CS amends s. 335.066, F.S., to reflect the creation of the federal program and its requirements.

### TRIP Match Issue

In 2005, the Legislature created as part of the rewrite of the state's Growth Management Act, the Transportation Regional Incentive Program (TRIP) in s. 339.2819, F.S., to encourage local governments to develop regional solutions to their transportation problems. Over the next 10 years, an estimated \$1.55 billion in new state funds are projected to be spent as the state match for eligible TRIP projects. The first year's share of state money for TRIP was \$275 million, and FDOT received many more project requests than there were available funds.

However, local governments and the M.P.O.'s continue to express concerns that the 50-percent local-match requirement is too high, especially since the cities and counties may become more financially responsible for state arterial roads that aren't eligible for TRIP. In response, FDOT is proposing deleting the requirement that the state will match up to 50 percent of the non-federal share of eligible project costs for regional public transportation projects. This will allow local governments to count certain federal transit funds as a "local match" for TRIP-eligible projects.

### SIB Loans

Section 339.55, F.S., creates the state-funded infrastructure bank (SIB), which provides loans to help fund transportation projects that otherwise might be delayed or not built. The loans are repaid from revenues generated by the project such as a toll road or other pledged resources. The repayments are then re-loaned to fund new transportation projects. The section authorizes the SIB to lend capital costs or provide credit enhancements for a transportation facility project on the State Highway System or which provides for increased mobility on the state's transportation system, or which provides intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals. Loans from the SIB may bear interest at or below market interest rates, as determined by FDOT. Repayment of any SIB loan must begin no later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later, and must be repaid in 30 years.

In 2004, four hurricanes struck Florida, wreaking havoc to public and privately owned infrastructure. Just as some homeowners and business owners are still awaiting insurance payouts or other compensation, some airports and seaports in Florida have yet to receive funds from their insurers or from the Federal Emergency Management Administration (FEMA).

In early 2005, FDOT, through executive order, made SIB loans totaling \$45 million to four airports and three seaports that suffered significant damage from the winds or storm surge that resulted from a 2004 hurricane, and whose insurance payouts or FEMA assistance was delayed. An attempt by FDOT to make similar loans earlier this year stalled when it was determined that the SIB statute did not authorize this type of loan.

HB 7077 w/CS amends s. 339.55, F.S., to allow FDOT to make emergency loans to repair or replace damaged infrastructure at public-use commercial seaports, airports, other public transportation facilities and intermodal facilities located within an area that is part of an official state declaration of emergency. Such loans shall not be for a duration longer than 24 months typically, although the FDOT Secretary can extend the term to up to 36 months. Applicants must provide documentation that they have filed claims with their insurer or FEMA, and agree to repay the loan upon receipt of such funds. The bill also establishes other eligibility criteria.

### Use of Recycled Materials

Section 336.044, F.S., created in 1988, directs FDOT to expand its usage of rubber tires, ash residue, recycled plastic, construction steel, and glass in construction projects, and to revise its rules and contract and bid specifications to eliminate any barriers to the use of recycled materials in transportation projects, where appropriate. FDOT is complying with the statute.

Under HB 7077 w/CS, the existing section of law is moved to s. 334.70, F.S. Chapter 334, F.S., deals with FDOT administration issues, and is a more appropriate location for this section than Chapter 336, F.S., which deals with the County Road System.

The bill also adds gypsum to the recycled materials that FDOT may use in demonstration projects to determine whether it is suitable for highway construction.

Gypsum is a naturally occurring inorganic compound that has many commercial uses (such as plaster paneling in home construction, as plaster of Paris for art projects and surgical splints, as a thickening agent for tofu and flour, and as a cleaning agent in toothpaste). Gypsum also is a byproduct of the chemical processes that turn phosphate rock into phosphoric acid, which is a key ingredient in fertilizer and other products.

Florida mines about 30 percent of the world's phosphate, 90 percent of which is turned into phosphoric acid. Creating 1 ton of phosphoric acid also creates a byproduct of nearly 5 tons of this phosphogypsum, which under federal regulation is stored in huge stacks near the mining and chemical operations that create it. This phosphogypsum has limited uses in the United States because of concerns of its naturally occurring amount of radiation. Typically, it is used in this country as an agricultural soil additive, but research indicates that it might have acceptable uses as road-bed filler and landfill cover, depending on its level of radiation. The state of Texas is experimenting with a mixture of phosphogypsum and Portland cement as roadbed aggregate. In Europe and Japan, phosphogypsum is recycled for use in building materials.

### Aviation Funding Issues

#### General Aviation Airports

Florida has at least 83 general aviation, or community, airports that provide a number of aviation-related services to their communities, but do not offer scheduled commercial flights.

State law allows FDOT to provide half of the local share of general aviation airport (GAA) project costs when federal funding is available as a 50-percent federal/50-percent local match. But many small GAAs and their local governments can't afford to pay the required 25-percent local match, according to FDOT staff, so the federal grant is rejected. Those funds then are likely spent in another state. If the GAA project is a priority, FDOT pays the majority of the cost from state aviation funds.

HB 7077 w/CS amends s. 332.007, F.S., to allow FDOT to apply federal GAA grant funds to an eligible project, then split the remaining cost on an 80-percent state/20-percent local matching basis. This would enable the state to draw down more federal aviation grant funding, and free up state aviation funding for other projects.

#### State Aviation Capital Grants

The majority of funding for airport funding for infrastructure is provided by the federal and local governments that flow directly to the airports. In the FDOT FY 2005/2006-2010-2011 Work Program, \$172.1 million is dedicated for airport projects. Proceeds of the 6.7-cents-per-gallon state aviation fuel tax fund the grants. Last year the tax generated \$74 million, of which \$56 million remained in the State Transportation Trust Fund.

After the September 11, 2001, terrorist attacks, the Legislature amended s. 332.007, F.S., to give Florida airports the flexibility, with FDOT approval, to spend their state capital grants for security improvements required by the federal government. Since that time, 35 airports have taken advantage of this flexibility, redirecting nearly \$130 million for such security-related expenses as fencing, security cameras, and other access controls, better communication equipment, baggage screening systems, and more security personnel.

HB 7077 w/CS extends the current deadline to use the state grant funds from June 30, 2007, to June 30, 2012.

### Transportation Concurrency Incentive Program

State law already allows FDOT and other transportation entities to enter public-private partnerships for construction, operation, or maintenance of toll roads and other transportation facilities. The public agency benefits from having a new or improved transportation facility at no charge and the private entity earns toll revenues.

HB 7077 w/CS takes that partnership a step further by giving developers an opportunity to earn transportation concurrency credits by voluntarily building roads or other transportation facilities that increase driver safety, add capacity and improve traffic flow. Section 339.282, F.S., establishes the framework of a process by which a local government could enter into a binding agreement with any developer who offers to donate right-of-way and build a local road, in exchange for credits to meet future chapter 163, F.S., transportation concurrency requirements for another development project. If the proposed road or transportation facility is to become part of the State Highway System, then FDOT and the local government in which the facility is to be located would jointly execute the binding agreement with the developer.

### Pasco Heights Road and Bridge District

In 1972, the Legislature created the Road and Bridge District Act in chapter 336, F.S., as a mechanism to provide funding for transportation needs in largely rural areas of the state where home sites were being developed. The districts could levy assessments on property owners within their jurisdictions, and bond those revenues to pay for roads and bridges. Some of the assessment revenues were spent on transportation maintenance. Most of the statutory provisions for road and bridge districts have been repealed, as the districts have disbanded and cities and counties, and other types of special districts, have taken on more responsibility for transportation infrastructure in once-rural areas. The only remaining provision is s. 336.66, F.S., which briefly explains the process for dissolving a road and bridge district. According to the Department of Community Affairs' website, only six of the districts remain active.

HB 7077 w/CS provides a process by which a property owner within a road and bridge district can "opt out" of the district if the property also is within the boundary of an overlapping Community Development District (CDD), which can provide a number of infrastructure services and benefits to property owners. In the particular case addressed by the bill, a property owner within the Pasco Heights Road and Bridge District, created in 1977, wants to leave that district and officially become part of the Meadow Pointe CDD in Pasco County.

Under the bill, a property owner in a road and bridge district can opt out of the district if:

- the property is in an overlapping CDD;
- the property has not received any benefits from the road and bridge district;
- the property is not wholly contained within the road and bridge district, so that an enclave would be created by its inclusion in the CDD;
- the road and bridge district has no outstanding bonded debt that is subject to ad valorem taxation; and
- the road and bridge district board does not object.

Currently, this provision would only affect the Pasco Heights Road and Bridge District.

### Miami-Dade County Roads

Chapter 89-383, Laws of Florida, designated that portion of Red Road between S.W. 8th Street to S.W. 72nd Street in Miami as a state historic highway because it leads into Coral Gables Wayside Park and the Central Miami Subdivision, one of the earliest examples of a planned community noted for its Mediterranean revival architecture.

Development activities and major transportation improvements to Red Road is strictly prohibited, under the chapter law's provisions, in order to preserve its historic and cultural significance. The removal of any healthy tree which is not a safety hazard is prohibited, as are any alteration of the physical dimensions or location of Red Road, the adjacent property, and any part of the original entranceway to the park. The chapter law also specifically prohibits construction on or along Red Road of any new structure, "or any building, clearing, filling, or excavating on or along Red Road except for routine maintenance or work which is essential to the health, safety, or welfare of the environment."

Finally, the chapter law requires that, prior to performing any work claimed to be essential to the health, safety, or welfare of the environment, including the removal of any healthy tree, Dade County must hold an advertised public meeting to present the findings of fact necessitating such work.

However, certain sections of Red Road have deteriorated in recent years that even patching the potholes is ineffective and unattractive, and not in keeping with the neighborhood's character.

HB 7077 w/CS amends the chapter law to allow not only routine maintenance of Red Road, but also alterations, modifications, or improvements to it, and to the adjacent right-of-way for the purpose of enhancing motorists' safety and pedestrian use of the road. Increasing the number of lanes is expressly prohibited.

In addition, the bill officially designates that portion of SE 2<sup>nd</sup> Avenue from the Miami River Bridge, north to SE 2<sup>nd</sup> Street as Brickell Avenue. The City of Miami is authorized and directed to erect new street signs and markers, mailing addresses and the 911 emergency telephone system to reflect the street's name change.

#### Trespass on Railroad Property

HB 7077 w/CS provides that a person may be prosecuted for trespass onto railroad property, specifically rail track and roadbed, even if the property is not fenced and is not posted with "No Trespassing" signs. Thus, this bill provides that in order for the state to prove that an individual trespassed upon railroad property, the state does not have to offer proof that notice was given. Trespassing is generally a first-degree misdemeanor, but under certain circumstances (such as trespassing in a dwelling or trespassing while armed) the offense becomes a third-degree felony.

These provisions are in HB 139, which passed the House by a vote of 120-0 on March 16, 2006.

#### **Effective date**

HB 7077 w/CS takes effect July 1, 2006.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 20.23, F.S., to reclassify the Florida Transportation Commission executive director position as Senior Management Service.

**Section 2:** Amends s. 112.061, F.S., to allow M.P.O.'s to set travel, per diem, subsistence, and mileage rates in excess of statutory maximums for non-state travelers.

**Section 3:** Amends s. 121.021, F.S., to add M.P.O.'s to the definitions of "local agency employer" and "regularly established position" for the purpose of ensuring that MPO employees are considered public employees eligible for participation in the Florida Retirement System.

**Section 4:** Amends s. 121.051, F.S., to add M.P.O.'s to the list of local governmental entities that may choose to have its employees participate in the Florida Retirement System.

**Section 5:** Amends s. 121.055, F.S., to add the executive director or staff director of each M.P.O. to the list of public employees included in the "Senior Management Service Class."

**Section 6:** Amends s. 121.061, F.S., to add M.P.O.'s to the list of governmental entities that may deduct from public funds due a non-state employer any unpaid retirement system contributions. Allows M.P.O.'s to file suit to require any employer to remit the required retirement and Social Security contributions.

**Section 7:** Amends s. 121.081, F.S., to allow M.P.O. employees to claim past service credits for the purposes of participating in the Florida Retirement System.

**Section 8:** Amends s. 212.055, F.S., to expand the uses of the current Charter County Transit Surtax to include a broad range of transportation projects, and to create a similar surtax for all other counties. Specifies the surtax may be approved by a referendum. Specifies distribution formula of surtax proceeds to a county and its municipalities. Specifies uses of surtax proceeds. Makes technical corrections. Deletes once-a-year limit on local governments bonding their local-option sales taxes.

**Section 9:** Amends s. 212.0606, F.S., to create a local-option rental-car surcharge that counties can impose by referendum. Specifies process. Creates exemptions. Directs Department of Revenue to perform certain tasks.

**Section 10:** Amends s. 215.615, F.S., to make technical changes to fixed-guideway revenue bonding statute.

**Section 11:** Amends s. 311.22, F.S., to change match for certain small ports' dredging projects from a 50-percent to a minimum 25-percent match.

**Section 12** Amends s. 316.605, F.S., to establish placement and display requirements for vehicle license plates.

**Section 13:** Amends s. 316.650, F.S., to specify that motorists who use tolled highways without paying the required tolls have the option to pay the tolling authority's fine and the unpaid toll, and the traffic citation is dropped and no points are assessed.

**Section 14:** Amends s. 318.14, F.S., to specify that motorists who use tolled highways without paying the required tolls can elect to pay the unpaid toll and the tolling authority's fine, or if not, have 45 days to either request a court hearing or to pay the specified fines.

**Section 15:** Amends s. 318.18, F.S., to raise the fine for motorists who fail to pay required tolls from \$100 to \$125. Specifies distribution of fine proceeds. Specifies 60-day suspension of driver's license for motorists with 10 toll violations in a 36-month period.

**Section 16:** Amends s. 320.061, F.S., to specify illegality of obscuring license plates with certain substances or products. Prohibits advertising, sale, distribution, purchase and use of such substances or products. Specifies law enforcement officers may issue citations to drivers whose plates are obscured and can confiscate the plates. Specifies that the Florida Attorney General may file suit against an entity or person involved in the sale and marketing of obscuring substances and products. Provides for injunctive relief, fines, and other penalties.

**Section 17:** Amends s. 320.20, F.S., to increase seaport funding and make changes to the existing FSTED bond program and financing.

**Section 18:** Amends s. 332.007, F.S., to give FDOT more flexibility to match federal grants for general aviation airports and to extend July 1, 2007 deadline to July 1, 2012, for airports to use their state aviation capital grants for security improvements.

**Section 19:** Renumbers s. 336.044, F.S., as s. 334.70, F.S., related to FDOT's use of recycled materials in transportation construction projects. Adds gypsum to the recycled materials that FDOT may use in demonstration projects to determine their viability.

**Section 20:** Amends s. 355.066, F.S., to rename "Safe Paths to Schools Program" the "Safe Routes to Schools" program and reflect changes in federal law.

**Sections 21-23:** Amends ss. 335.067, 1013.33 and 1013.351, F.S., to correct cross-references to reflect name change to "Safe Routes to Schools."

**Section 24:** Amends s. 336.025, F.S., to delete once-a-year limit on local governments to bond their local-option fuel tax revenues.

**Section 25:** Creates s. 336.68, F.S., to allow owners of property within both a road and bridge district and a Community Development District to "opt out" of the road and bridge district, under certain circumstances.

**Sections 26-28:** Amends ss. 337.11, 337.14, and 337.18, F.S., to make various changes to FDOT's requirements on performance and surety bonds. Raises the minimum contract amount needing a surety bond \$150,000 to \$250,000. Allows multi-year maintenance contracts to obtain annual surety bonds. Allows FDOT to waive surety bond requirement for projects in excess of \$250 million if other less-traditional financial guarantees are available.

**Section 29:** Amends s. 338.161, F.S., to allow the Florida Turnpike and other tolling agencies to market their electronic toll-collection devices and to enter into contracts with private or public entities to allow for parking fees to be deducted from the electronic accounts. Requires feasibility studies and legislative approval for additional transponder uses.

**Section 30:** Amends s. 338.2216, F.S., to change the certified roll-forward date of unexpended Florida Turnpike funds from December 31 to September 30 of each year.

**Section 31:** Amends s. 338.2275, F.S., to change the Florida Turnpike's bond cap to \$6 billion of bonds outstanding.

**Section 32:** Amends s. 339.175, F.S., related to M.P.O.'s. Establishes officers; clarifies eligibility of certain elected officials to serve on M.P.O.'s; directs M.P.O.'s to appoint non-voting members representatives of transportation modes not otherwise serving on their boards; lists M.P.O.'s powers and duties; and makes numerous technical changes.

**Section 33:** Amends s. 339.2819, F.S., to delete provision that FDOT will fund up to 50 percent of the nonfederal share of public transportation projects. In effect, this allows federal transit funds to be counted as the local match for eligible TRIP projects.

**Section 34:** Creates s. 339.282, F.S., the Transportation Concurrency Incentive Program. Allows developers to potentially earn future transportation concurrency credits if they build roads or other transportation facilities. Requires agreement between developer and the local governmental entity for new local roads, and agreement between developer, local governmental entity, and FDOT if new road would be part of the State Highway System.

**Section 35:** Amends s. 335.55, F.S., to allow FDOT to issue short-term, emergency SIB loans under certain criteria to disaster-damaged transportation infrastructure.

**Sections 36-38:** Amends ss. 343.54, 343.55, and 343.58, F.S., related to the South Florida RTA. Clarifies bonding authority. Deletes \$2 local-option vehicle-registration fees. Raises counties' share of contributions to the RTA, but repeals these contributions if a state-authorized and locally adopted new funding source generating at least \$45 million a year takes effect. Makes technical corrections.

**Sections 39-55:** Transforms the Tampa Bay Commuter Transit Authority into the “Tampa Bay Regional Transportation Authority.” Substantially rewrites Part I of Chapter 343, F.S. Adds Citrus County as 8th county within the authority’s jurisdiction of the group. Specifies Authority’s membership as 10 private citizens: one each from the counties, one appointed by the governor, and one appointed by the Chairman’s Coordinating Council. Specifies the Authority’s responsibilities, powers and duties.

**Sections 56-58:** Amends ss. 343.81 and 343.82, F.S., related to the Northwest Florida Transportation Corridor Authority. Provides that future appointees to the authority be non-elected citizens. Grandfathers-in current member who is an elected official. Grants certain responsibilities to the authority related to building a new bridge or bridges across Santa Rosa Sound or Choctawhatchee Bay.

**Section 59:** Amends s. 348.0003, F.S., to reduce membership of the Miami-Dade Expressway Authority from 13 voting members to seven voting members and two non-voting members. Specifies composition of the authority. Prohibits authority from hiring outside lobbyists.

**Section 60:** Amends s. 348.0004, F.S., to create new noticing requirements for the Miami-Dade Expressway Authority for proposed toll increases. Clarifies that expressway authorities not created pursuant to Part I of chapter 348, F.S., and other transportation-related authorities can utilize the public-private partnership provisions in s. 348.0004(9), F.S.

**Section 61:** Amends s. 348.0012, F.S., to further clarify that Part I of chapter 348, F.S., the Florida Expressway Authority Act, does not apply to other expressway authorities except where expressly provided.

**Section 62:** Amends s. 348.754, F.S., to allow the Orlando-Orange County Expressway Authority to increase the bond-waiver amount for small businesses meeting certain eligibility requirements for its economic-development program. Requires the Authority to conduct bond-eligibility training for qualifying businesses. Requires the Authority to prepare a report on the program every two years and submit it to the Orange County legislative delegation, beginning December 31, 2008.

**Section 63:** Creates a new Part X of Chapter 348, F.S., for the new Osceola Expressway Authority with specific powers and duties, membership requirements, and bonding authority. Renumbers the existing Part X, the Southwest Florida Expressway Authority, as Part XI.

**Section 64:** Directs the Florida Transportation Commission to study M.P.O.’s various planning efforts and to submit report on its findings and recommendations to the Governor and the Legislature by January 15, 2007.

**Section 65:** Amends s. 810.011, F.S., to add railroad rails or roadbeds to the types of property where no posting is required for the purposes of giving notice about trespassing.

**Section 66:** Re-enacts s. 810.09, F.S., related to trespassing to reflect amendment to s. 810.011, F.S.

**Section 67:** Amends chapter 89-383, L.O.F., to allow certain transportation improvements to Red Road that do not alter the road’s historic and cultural character.

**Section 68:** Designates a portion of SE 2<sup>nd</sup> Avenue in Miami as Brickell Avenue. Directs City of Miami to perform certain tasks.

**Section 69:** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As a state entity, the SFRTA could receive an additional \$7.9 million in operating funds each year because of the proposed increase in the current operating contributions made by the three counties, from \$1.565 million annually to \$4.2 million, as proposed in Section 38 of the bill. If the proposed local-option rental-car surcharge becomes law, and Broward, Miami-Dade, and Palm Beach counties impose it, the SFRTA could receive at least \$45 million a year for all of its expenses, and under those circumstances, the existing dedicated sources of funding the three counties contribute would be repealed.

Section 31 of the bill would raise the Florida Turnpike Enterprise's bond cap from an absolute \$4.5 billion in bonds to a limit of \$6 billion in bonds outstanding. Therefore, as the Turnpike retires outstanding bond issues, the Turnpike may issue more, as long as it does not exceed \$6 billion outstanding at any time.

2. Expenditures:

Section 18 of the bill would give FDOT the flexibility to provide a greater share of the local match required in order to obtain more federal general aviation grant funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Section 8 of the bill gives all 67 counties the opportunity, via referendum, to levy up to 1 percent sales surtax to pay for transportation infrastructure. Additionally, the surtax revenues would be shared with the municipalities within those counties that levied the surtax. The fiscal impact is indeterminate at this time, because it is unknown how many local governments would levy in the surtax. But according to DOR, if every county levied the 1 percent surtax, more than \$2.9 billion would be raised.

The \$2 local-option rental-car surcharge created in Section 9 could generate in excess of \$100 million annually if all 65 counties with rental-car operators received approval from their voters to levy the surcharge.

2. Expenditures:

Section 38 of the bill would require Broward, Miami-Dade and Palm Beach counties to each pay about \$2.7 million more annually to the SFRTA for operations costs. However, if those counties pass the local-option rental car surcharge and forward those revenues to the SFRTA, their statutorily mandated contributions to the authority would be repealed.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the local-option surcharge provisions of HB 7077 w/CS, individuals may be required to pay an additional \$2 per day for renting or leasing certain vehicles in counties where the local-option surcharge is imposed.

The county discretionary sales surtax also would impact residents, businesses, and visitors in those counties where levied, but the trade-off is improved public infrastructure.

D. FISCAL COMMENTS:

The Legislature last raised the Turnpike bond cap in 2003, from \$3 billion to \$4.5 billion.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 7077 w/CS does not reduce the percentage of a state tax shared with counties or municipalities or reduce the authority that municipalities have to raise revenues. However, Section 38 of the bill does require Broward, Miami-Dade and Palm Beach counties to expend more funds than previously required to finance the SFRTA.

Article VII, s. 18(a) of the State Constitution provides that counties and municipalities may not be bound by any general law them to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and, among other options, the law is approved by two-thirds of the membership in each chamber. When the Legislature created the SFRTA in 2003 as ch. 2003-159, Laws of Florida, the legislation included the following statement:

*“Section 11. The Legislature finds that a proper and legitimate state purpose is served in the effective and efficient planning and operation of a regional transportation system. Therefore, the Legislature determines and declares that this act fulfills an important state interest.”*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None of the agencies impacted by the bill appear to need additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 7077 w/CS may need an amendment expressing a legislative finding that the SFRTA still fulfills an important state interest.

Additionally, the Legislature may wish to clearly state within the amended s. 212.0606, F.S. that individuals seeking an exemption from the local-option rental-car surcharge must present to a rental-car agent at the time they are leasing vehicle any receipts or work-orders proving their personal vehicles are being repaired or undergoing other maintenance.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

##### Transportation Committee

At its February 7, 2006, meeting, the House Transportation Committee adopted 10 amendments to this bill in its original form as PCB TR 06-04. A brief description of the amendments follows:

- Amendment #1 specified that the proposed new county surtax could be levied by a supermajority vote of the entire membership of a county commission, rather than by a majority vote.
- Amendment #2 added the New Starts transit program as an eligible use of the county surtax funds.
- Amendments #3 and #4 were technical changes to the provisions related to M.P.O. participation in the Florida Retirement System.
- Amendment #5 corrected a scrivener's error on the voting membership and non-voting membership of the MDX.
- Amendment #6 was a technical amendment inserting inadvertently omitted words related to fines for non-payment of tolls.
- Amendment #7 amended s. 348.0004(9), F.S., to clarify that notwithstanding any law to the contrary, any expressway authority, transportation authority, bridge authority, or toll authority, established either in statute or by local ordinance pursuant to Part I of chapter 348, F.S., could participate in public-private partnerships for transportation infrastructure.

- Amendment #8 clarified that the Transportation Commission's executive director position would be reclassified as Senior Management Service and the remaining employee positions would remain as Selected Exempt Service.
- Amendment #9 added gypsum to the recycled materials that FDOT can use in demonstration projects.
- Amendment #10 changed the \$400 million, one-time expenditure of general revenue for other arterial road projects to a recurring appropriation tied to the CPI.

The committee then voted 14-1 to report PCB TR 06-04 as favorable. After it was reported out of committee, the legislation was filed as HB 7077.

#### Transportation & Economic Development Appropriations Committee

At the April 4, 2006, meeting, the Transportation & Economic Development Appropriations Committee approved HB 7077 with three amendments. The first amendment was a technical amendment which clarified what Turnpike funds may be certified forward. The second amendment removed the provision that authorized the levy of the County Transportation Surtax by supermajority vote of the county commission. The third amendment removed the \$400 million appropriation. The committee then reported the bill as favorable with a committee substitute.

#### State Infrastructure Council

At its April 24, 2006, meeting, the State Infrastructure Council adopted a strike-all amendment and two amendments to the amendment to HB 7077 w/CS.

The new issues addressed in the strike-all were:

- Revisions to Northwest Florida Transportation Corridor Authority membership and to allow the authority to assume responsibility for an Emerald Coast Bridge Authority project.
- Changes to the FDOT performance/surety bonds requirements.
- Rewording of existing FDOT Fixed Guideway funding statute to make FDOT's share of funding "up to 50%" rather than an automatic 50%.
- Extend use of state aviation capital grants for security improvements from 2007 to 2012.
- Tampa Bay Commuter Transit Authority reconfigured as "Tampa Bay Regional Transportation Authority" with additional members and new responsibilities.
- Amends 1987 chapter law limiting improvements to Red Road (in Miami-Dade County) to allow for certain road improvements that won't change Red Road's character.
- Establishes process by which a property owner within a road and bridge district and a community development district can opt out of the road and bridge district.
- Allows federal transit grants to count as the "local match" for a TRIP regional transit project.
- The text of HB 301 w/CS, which creates for a local-option, \$2-a-day "Rental Car Surcharge" if approved by a local referendum. Creates exemption for people who rent cars because their personal vehicles are being repaired.
- The text of HB 1115 w/CS, which makes a number of changes to the South Florida RTA, including deleting the existing local funding source if a state-approved, but locally imposed revenue source (such as the local-option rental car surcharge) is available.
- State Infrastructure Bank statute is amended to allow for emergency, maximum 36-month loans to repair transportation infrastructure, such as airports, damaged during disasters.
- Revises the "Safe Paths to Schools" program to reflect federal requirements.
- Creates authority for local governments and, where applicable, FDOT, to enter into agreements for transportation concurrency credits with developers who build roads or other transportation facilities that likely will serve more than their development project.
- Extends Brickell Avenue designation to north of the Miami River, on SE 2nd Avenue (which is a state road).
- Creates a new seaports bond financing program.
- Allows local governments to issue bonds more than once a year backed by local-option fuel taxes and sales taxes.
- Prohibits MDX from retaining an outside lobbyist, but allows MDX staff to lobby.

The strike-all amendment also revised several provisions that were in the original Committee Substitute:

- Further clarified the expressway authority public-private partnership provisions to conform to the Senate bill.
- Revised the M.P.O. provisions, reflecting consensus with FDOT and MPO Advisory Council, and also to conform to the Senate bill.
- Revised the County Transportation Surtax” provisions to hold-harmless certain charter counties and conform to the Senate bill.
- Revised the transponder provisions to include feasibility studies and Legislative approval if the Turnpike or other toll agency wants to allow additional uses of electronic toll devices.
- Made technical revisions to the Osceola Expressway Authority.

Finally, the strike-all amendment deleted a proposed FDOT study on Indian gaming impacts to roads and changes to certain environmental permitting requirements for FDOT projects.

As for the two amendments to the strike-all amendment, one provided that a person may be prosecuted for trespassing on to certain railroad property, even if the property is not fenced and is not posted, and the other added the Tampa-Hillsborough Expressway Authority to the list of state agencies whose authority is not superseded by creation of the new Tampa Bay Regional Transportation Authority.