

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Environmental Preservation and Conservation Committee

BILL: CS/CS/CS/SB 2804

INTRODUCER: Environmental Preservation and Conservation Committee; Community Affairs Committee; Transportation Committee and Senator Baker

SUBJECT: Transportation

DATE: April 10, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
4.	_____	_____	<u>TA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute for committee substitute for committee substitute (CS) addresses a number of transportation-related issues. The CS:

- Allows the Florida Department of Transportation (FDOT) to fund up to 80 percent of the non-federal share of certain airport and aviation development projects;
- Extends the authorization for FDOT to support public airports and provide grants for security-related projects;
- Revises the matching fund formula for fixed-guideway revenue bonds to allow for various matching scenarios up to a limit of 50 percent on the State's share of the eligible project cost;
- Requires FDOT to expand the advertising of bids;
- Changes the membership status of three members of the Secure Airports for Florida's Economy Council from voting to non-voting;
- Allows FDOT to waive the requirement for contractors to be pre-qualified to bid on jobs when the project is under \$500,000 and noncompliance will not endanger the public health, safety, or property;
- Allows maintenance contractors to bond the amount of work on long-term maintenance contracts incrementally;
- Increases, from \$150,000 to \$250,000, the maximum contract price threshold at which FDOT may waive surety bond requirements;

- Allows FDOT to waive surety bond requirements for contracts greater than \$250 million provided the contractor can provide alternate means of security for the balance of the contract amount;
- Revises the definition of “economic feasibility” for Turnpike projects;
- Raises the current maximum allowable dollar amount of bonds that may be issued for Turnpike projects from \$4.5 billion of bonds issued to \$9 billion of bonds outstanding.
- Clarifies that the Turnpike Enterprise and its vendors are exempt from the “commercial rental tax” on capital improvements made in the turnpike service plazas;
- Creates the Enhanced Bridge Program, allowing FDOT to fund local bridges not on the State Highway System (SHS) to relieve congested corridors;
- Allows for emergency loans from the State Infrastructure Bank (SIB) to public transportation providers in officially-declared disaster areas;
- Requires public transit providers to identify specific enhancements for increasing their profitability;
- Provides for expedited permitting for limerock environmental resource permitting and reclamation applications filed after March 1, 2007;
- Creates the Strategic Aggregates Review Task Force and requires all local governments to consider the effect any land-use zoning change, comprehensive plan amendment, permit, ordinance, or order would have on the availability, transportation, or potential extraction of construction aggregate materials;
- Defines the term “wall mural” for purposes of ch. 479, F.S., which governs outdoor advertising; and
- Provides for local government regulation of wall murals, except for wall murals within 660 feet of the right-of-way for the interstate highway system or the federal-aid primary highway system which would also require the approval of the Department of Transportation and the Federal Highway Administration.
- Provides authority for the FDOT to enter into agreements to obtain interests in known mineral reserves.

This CS substantially amends the following sections of the Florida Statutes: 215.615, 332.007, 332.14, 337.11, 337.14, 337.18, 338.221, 338.2275, 338.234, 339.08, 339.55, 341.071, and 479.01. The CS also creates sections 337.026, 339.282, 479.156 and an unnumbered section of the Florida Statutes.

II. Present Situation:

Fixed-Guideway Revenue Bonds

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, 50/50 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 two percent of all state revenues deposited into the State Transportation Trust Fund (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 employed. FDOT is currently 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.

Airport Funding

Most airport infrastructure funding is provided by the federal government or the applicable local government. FDOT provides matching grants to airports using proceeds of the 6.7-cents-per-gallon state aviation fuel tax. After the September 11, 2001, terrorist attacks, the Legislature amended s. 332.007(8), F.S., allowing FDOT to fund up to 100 percent of the non-federal share of security improvements required by the federal government or to address economic impacts of the attacks. Expenditure plans for these grants require the approval of FDOT. This subsection expires June 30, 2007.

In addition to commercial airports, Florida's airport system has 108 public-use general aviation airports providing a number of aviation-related services to their communities. General aviation airports do not offer scheduled commercial flights. General aviation airports are major employment sites and centers of business and economic activity. According to the FDOT Aviation Office, general aviation airports in Florida provide 23,125 jobs, \$680 million in payroll, and \$2.3 billion in total economic activity. Section 332.007(6), F.S., allows FDOT to provide half of the non-federal share of certain general aviation airport project costs when federal funding is available as a 50 percent federal/50 percent local match. However, many small airports and their local governments are unable to provide even the required 25 percent local match, according to FDOT staff, so the federal grant is rescinded. If the airport project is a priority, FDOT ends up paying the majority of the cost from state aviation funds, since the federal funds have been freed to be spent in another state.

Secure Airports for Florida's Economy (SAFE) Council

The SAFE Council is a 27-member group representing aviation-related businesses and state agencies created in 2003 by the Legislature to prepare a five-year SAFE Master Plan recommending the acquisition and construction of specific transportation facilities linking airports to other transportation modes, protecting the safety and security of passengers and cargo, or enhancing international trade and other economic benefits. The council consists of the directors, or their designees, of 19 commercial service airports; the Secretaries or their designees, of the Department of Community Affairs, the Florida Department of Law Enforcement, and FDOT; the director of the Office of Tourism, Trade, and Economic Development or his or her designee; the executive directors of two general aviation airports, appointed by the Florida Airports Council; a representative of the general aviation industry appointed by the Florida Aviation Trades Association; and a representative of the airline industry appointed by the Air Transport Association.

FDOT Contracts

Section 337.11, F.S., requires FDOT to advertise in a local newspaper of general circulation, the request for bids on all construction projects with a contract price of \$250,000 or less. Contracts

in excess of \$250,000 are advertised by invitations to bid and may only be bid upon by contractors meeting certain prequalification requirements in s. 337.14, F.S.

Surety Bonds

Upon winning a bid for an FDOT contract, a contractor must post a surety or performance bond equal to 100 percent of the contract price. The surety enables FDOT to complete the project should the contractor fail to carry out the terms of the contract. The requirement for a surety bond may be waived by FDOT on projects less than \$150,000 if the project is of a noncritical nature and nonperformance by the contractor will not endanger the public health, safety, or property.

Turnpike Projects

The Florida Turnpike Enterprise funds a significant portion of its work program with revenue bond proceeds. The debt service payments for these bonds are spread out over the life of the project. Revenue bonds do not affect the state debt affordability plan or the state debt cap because the Turnpike revenue bonds are supported by toll revenues. Section 338.2275, F.S., restricts the Florida Turnpike Enterprise from having more than \$4.5 billion in bonds issued, effectively capping the number of projects that can be included in the work program. In order for proposed turnpike projects to be constructed, they must meet certain economic feasibility requirements established in s. 338.221, F.S. The economic feasibility test requires the estimated toll revenues for a proposed turnpike project must be able to pay at least 50 percent of the debt service on bonds issued for the project by the end of the 12th year of operation and at least 100 percent of the debt service by the end of the 22nd year of operation.

Bridge Replacement and Rehabilitation

Section 144(g), 23 United States Code, requires states expend not less than fifteen percent nor more than thirty-five percent of federal bridge replacement and rehabilitation funds on bridges located on local minor collector roads. Section 339.08, F.S., generally limits the expenditure of state funds off the State Highway System (SHS), except to match federal funds. This program notwithstanding, numerous local bridges throughout the state require improvements which are often beyond the financing capabilities of the responsible local governments. As a result, congestion increases on the local corridor due to restrictions or limitations caused by structural deficiencies or capacity constraints of the bridge. This congestion can place stress on adjacent SHS corridors as drivers seek alternative corridors for travel.

State Infrastructure Bank

The State Infrastructure Bank (SIB) is a revolving loan and credit enhancement program providing loans and other assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under state and federal law. Highway and transit projects are eligible for SIB participation. SIB participation from the state-funded SIB account is limited to a transportation facility project on the SHS or that provides for increased mobility on the state's transportation system in accordance with s. 339.55, F.S., or provides for intermodal connectivity with airports, seaports, rail facilities, transportation terminals, and other intermodal options for increased accessibility and movement of people, cargo, and freight.

Transit Productivity and Performance Measures Reports

Public transit providers receiving public transit block grants must establish productivity and performance measures, which must be approved by FDOT. Each provider annually reports to the FDOT the transit system's attainment relative to these measures.

Construction Aggregate Materials

Construction aggregates provide one of the basic materials needed for concrete, asphalt, and road base. In Florida, approximately 143 millions tons of crushed stone, limestone, dolomite, limerock, shell rock, and high-quality sand will be used as construction aggregate in 2007. Most, about 120 million tons, will be mined in Florida; however, about 13 million tons will be imported and 10 million tons of recycled aggregates will be used. Housing and commercial construction account for approximately 86 million tons and roads and other infrastructure will use about 42 million tons. FDOT is the largest single user of construction aggregates, accounting for about 10 percent of the supply.

Aggregate materials are located in various natural deposits around the state with the most economically advantageous deposits located in 79 square miles in Northwest Miami-Dade County known as the Lake Belt. The Lake Belt is distinct in that it has been identified as the highest concentration of the highest quality aggregate indigenous to Florida. Approximately 55 million tons of aggregate will be mined in the Lake Belt this year. Due to a pending lawsuit challenging the legality of the permits used by the mining companies, there is a high probability the Lake Belt will be subject to at least temporary mine closures. According to FDOT, a 30-day stockpile is available; however, a long-term shutdown of the mines could result in the loss of 288,000 jobs statewide, and a \$28.6 billion decrease in the state's economic output. FDOT further estimates the long-term availability of indigenous aggregate, even without closure of the Lake Belt mines, is insufficient to maintain current consumption rates beyond a 5 to 10 year period.

Expedited Permitting

Part IX of ch. 403, F.S., provides an expedited permitting process to encourage and facilitate the location and expansion of economic development projects that offer job creation, high wages, and diversify the state's economy. Projects meeting certain criteria are eligible for expedited review of permit applications and local comprehensive plan amendments.

Wall Murals

Chapter 479, F.S., governs billboards and other outdoor advertising signs. Advertising companies and other owners of outdoor signs must obtain and renew a license from FDOT. This chapter also specifies FDOT's duties and authority as they relate to permitting, removing, and otherwise regulating outdoor advertising signs along the interstate highway system and the federal-aid primary highway system, which includes state roads.

Section 131 of Title 23, United States Code, governs the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate system and the primary system. These provisions of federal law are commonly known as Title I of the Highway Beautification Act of 1965 (as amended). In 1972, the State of Florida and the United States Department of Transportation, acting through the Federal Highway Administrator, entered into an agreement regarding enforcement of regulations regarding outdoor advertising in areas adjacent to the interstate highway system and the federal-aid primary system. The FDOT is

responsible for administering and enforcing the provisions of chapter 479 and the agreement between the state and the United States Department of Transportation relating to the size, lighting, and spacing of signs in accordance with the Highway Beautification Act of 1965. Since federal dollars are used to build and maintain these federal and state roads in Florida, FDOT must adhere to federal laws and regulations concerning outdoor advertising signs.

III. Effect of Proposed Changes:

The CS amends s. 215.615, F.S., to delete the 50/50 state/local matching requirement for fixed-guideway revenue bonds. The proposed changes allow for various matching scenarios with an upward limit on FDOT's share being established at up to 50 percent of the eligible project costs. This would allow local authorities to contribute more local dollars when the State's available match is insufficient to finance 50 percent of the project.

Section 332.007, F.S., is amended to allow FDOT to provide up to 80 percent of the non-federal cost of eligible general aviation airport projects. The remaining percentage would be provided by the local government. This would enable the state to use federal aviation grant funding first before state funds are used, allowing additional federal funds to be drawn down and freeing up state aviation funding for other projects. The CS also extends the June 30, 2007 expiration date in subsection (8), which would allow FDOT to fund security projects at publicly owned public-use airports until June 30, 2012.

Section 332.14, F.S., is revised to change the status of three members of SAFE from voting to non-voting members.

Section 337.11, F.S., is amended to increase from \$250,000 to \$500,000, the maximum contract price for contracts that require FDOT to advertise invitations to bid in only a local newspaper of general circulation. This would result in more contracts being advertised in general circulation newspapers.

Section 337.14, F.S., is amended to allow FDOT to waive the requirements for contractor prequalification for projects having a contract price of \$500,000 or less, if the project is of a noncritical nature and noncompliance will not endanger public health, safety, or property. In conjunction with the changes made to s. 337.11, F.S., this will presumably increase the number of competitive bids from contractors.

Section 337.18, F.S., is amended to authorize FDOT to allow contractors to post surety bonds incrementally for multiyear maintenance contracts. With this change, a contractor's surety bond may cover one year's contract dollar amount, one year at a time rather than the entire contract amount at project startup. The CS increases the maximum contract price for which FDOT may waive the surety requirements altogether from \$150,000 to \$250,000. It also authorizes FDOT to waive the surety requirements for projects with contract prices of \$250 million or more, provided the contractor posts a partial or incremental surety bond and provides an alternative means of securing the balance of the contract price not covered by the surety bond. Examples of the alternative securities include letters of credit, United States bonds and notes, parent company guaranties, and cash collateral.

The CS amends s. 338.221, F.S., to revise the definition of an “economically feasible” Turnpike project. Under the new definition, a project is economically feasible if it is capable of paying 100 percent of the annual debt service on bonds associated with the project by the end of the 30th year of operation.

Section 338.2275, F.S., is amended to raise the current maximum allowable dollar amount of bonds that may be issued for Turnpike projects from \$4.5 billion of bonds issued to \$9 billion of bonds outstanding. The increased bond cap would allow the Turnpike to continue to expand beyond the current five-year capital plan, and immediately add \$900 million in new projects to the existing five-year plan.

Section 338.234, F.S. is amended to clarify that the Turnpike Enterprise and its vendors are exempt from the “commercial rental tax” on capital improvements made in the turnpike service plazas. (Currently, the State is not collecting this tax.)

The CS creates s. 339.282, F.S., establishing the Enhanced Bridge Program for Sustainable Transportation within FDOT, providing program criteria, and a funding mechanism to improve:

- Local bridges that are not on the SHS, and
- Highly congested roads on the SHS or local roads with high-cost bridges for the purpose of relieving congestion or providing an alternative corridor.

State matching funds may be used to fund up to 50 percent of project costs. The CS stipulates a minimum of 25 percent of funding available for the program shall be allocated for structurally deficient local bridges having a sufficiency rating of 35 or below and average daily traffic of at least 500 vehicles. The remaining percentage of the funding available for the program is to be allocated to reducing congestion on highly congested roads on the SHS or local corridors containing high-cost bridges. Eligible projects on these roads must:

- Improve congestion on constrained or backlogged corridors or provide congestion relief on an alternative corridor, and
- Involve a bridge project having an estimated cost of \$25 million or more.

Bridge projects on corridors connecting to the Strategic Intermodal System (SIS) identified as regionally significant in a regional transportation plan will be given highest preference.

Section 339.08, F.S., is amended to authorize the use of the State Transportation Trust Fund for the Enhanced Bridge Program created in s. 339.282, F.S.

The CS amends s. 339.55, F.S., to provide for emergency loans from the SIB to public ports, airports, and other public transit and intermodal facilities when included in officially-declared disaster areas. The loans are subject to approval of the Legislative Budget Commission and the FDOT Secretary. A loan may not exceed 24 months except in extreme cases when the FDOT Secretary may allow up to 36 months. Applicants must also file claims with the Federal Emergency Management Administration or applicable insurance carrier and must repay the loans upon receipt of funding from these entities for the claims. It revises the criteria considered by

the SIB in making an emergency loan to include the impact that an officially declared disaster has on level of service for certain transportation facilities.

Section 341.071, F.S., is amended to require public transit providers to include in their annual productivity and performance measures report, specific potential enhancements that could increase the transit system's farebox recovery ratio. The report is due by January 31 of each year.

Construction Aggregate Materials

The CS creates a new, unnumbered section of Florida Statutes addressing Florida's need for construction aggregate materials which are defined as "crushed stone, limestone, dolomite, limerock, shell rock, sand for use as a component of mortars, concrete, bituminous mixtures, or underdrain filters, and other mined resources providing the basic material for concrete, asphalt, and road base." The CS provides legislative intent. It requires all local governments to consider the effect any land-use zoning change, comprehensive plan amendment, permit, ordinance, or order would have on the availability, transportation, or potential extraction of construction aggregate materials. No moratorium on the mining of aggregate may be imposed by any local government or other agency with a duration of more than 12 months. January 1, 2007, shall serve as the beginning date of the 12-month period for moratoria already in place as of July 1, 2007.

Limerock environmental resource permitting and reclamation applications filed after March 1, 2007, are eligible for expedited permitting under s. 403.973, F.S. If a party to a challenge involving expedited permitting for the establishment of a limerock mine files a motion for a summary proceeding under s. 120.574, F.S., the CS requires the summary hearing to be held within 30 days after the motion is filed regardless of whether the parties agree to the proceeding.

The Strategic Aggregates Review Task Force is created to evaluate the availability and disposition of construction aggregate materials and related mining and land use practices. The Task Force is to identify locations with significant concentrations of the materials and recommend actions ensuring the materials' continued extraction and availability. The Task Force is to report this information to the Legislature and the Governor by February 1, 2008. The Task Force will consist of 19 members, of which 15 members are appointed by the President of the Senate, Speaker of the House, and Governor, with each appointing one representative from each of the following groups:

- The mining industry;
- The construction industry;
- The transportation industries, including seaports, trucking, railroads, or roadbuilders;
- Elected county government (including smaller counties); and
- Environmental advocacy groups.

The Secretaries of Community Affairs, Environmental Protection, and Transportation, or their designees, and an appointee of the Florida League of Cities, Inc. shall also be members of the Task Force. The Task Force is dissolved on July 1, 2008.

Section 479.01, F.S., is amended to define the term "wall mural."

Section 479.156, F.S., is created to provide guidelines for regulating wall murals. Provisions would:

Authorize a municipality or county to permit wall murals within areas designated by such government.

If permitted, any wall mural within 660 feet of the nearest edge of the right-of-way within an area adjacent to the interstate highway system or the federal-aid-primary highway system must be located in an area that is zoned for industrial or commercial use. Additionally, the local government must establish and enforce regulations for such area that, at a minimum, set criteria for size, lighting, and spacing. These criteria must be consistent with the intent of the Highway Beautification Act of 1965.

Any wall mural subject to local government regulation and the Highway Beautification Act of 1965 must be approved by the FDOT and Federal Highway Administration. These murals must not violate the agreement between the state and United States Department of Transportation under s. 479.02(1), F.S.

Section 337.026, F.S., is created to provide authority for the FDOT to enter into agreements for construction aggregate materials. Types of agreements in which the FDOT may enter into include:

Innovative contractual or engineering techniques that will provide reliable and economic supplies of aggregate materials.

Agreements or long-term leases with private or public entities to acquire materials or resources which will advance the state's transportation needs.

The FDOT, to the maximum extent practicable, must use existing processes to award and administer the innovative contracts or engineering techniques provided for in this section. However, the FDOT is not required to adhere to these provisions when they would prevent such innovative contracts or techniques from being used. The agency must in these situations document in writing the need for the exception and specify the benefits to the public.

The CS takes effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The revisions in this CS to ss. 337.11 and 337.14, F.S., will allow additional contractors to bid on certain FDOT projects.

C. Government Sector Impact:

The CS clarifies that the Turnpike Enterprise and its vendors are exempt from the “commercial rental tax” on capital improvements made in the turnpike service plazas. There is no fiscal impact to the state because the tax has not been collected in the past and it is not currently being collected.

The creation of the Strategic Aggregates Review Task Force will result in indeterminate, minimal travel expenses for members of the Task Force to be paid by FDOT. Additionally, the Department of Transportation would incur some undetermined costs associated with providing administrative and technical support to the task force.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
