

1                                   A bill to be entitled  
2       An act relating to the Department of Transportation;  
3       amending s. 20.23, F.S.; providing for the salary and  
4       benefits of the executive director of the Florida  
5       Transportation Commission to be set in accordance with the  
6       Senior Management Service; amending s. 125.42, F.S.;  
7       providing for counties to incur certain costs related to  
8       relocation or removal of certain utility facilities under  
9       specified circumstances; amending s. 163.3177, F.S.;  
10      revising requirements for comprehensive plans; providing a  
11      timeframe for submission of certain information to the  
12      state land planning agency; providing for airports, land  
13      adjacent to airports, and certain interlocal agreements  
14      relating thereto in certain elements of the plan; amending  
15      s. 163.3178, F.S.; providing that certain port-related  
16      facilities are not developments of regional impact under  
17      certain circumstances; amending s. 163.3182, F.S.,  
18      relating to transportation concurrency backlog  
19      authorities; providing legislative findings and  
20      declarations; expanding the power of authorities to borrow  
21      money to include issuing certain debt obligations;  
22      providing a maximum maturity date for certain debt  
23      incurred to finance or refinance certain transportation  
24      concurrency backlog projects; authorizing authorities to  
25      continue operations and administer certain trust funds for  
26      the period of the remaining outstanding debt; requiring  
27      local transportation concurrency backlog trust funds to  
28      continue to be funded for certain purposes; providing for

29 increased ad valorem tax increment funding for such trust  
30 funds under certain circumstances; revising provisions for  
31 dissolution of an authority; amending s. 287.055, F.S.;  
32 conforming a cross-reference; amending s. 316.0741, F.S.;  
33 redefining the term "hybrid vehicle"; authorizing the  
34 driving of a hybrid, low-emission, or energy-efficient  
35 vehicle in a high-occupancy-vehicle lane regardless of  
36 occupancy; requiring certain vehicles to comply with  
37 specified federal standards to be driven in an HOV lane  
38 regardless of occupancy; revising provisions for issuance  
39 of a decal and certificate; providing for the Department  
40 of Highway Safety and Motor Vehicles to limit or  
41 discontinue issuance of decals for the use of HOV  
42 facilities by hybrid and low-emission and energy-efficient  
43 vehicles under certain circumstances; directing the  
44 department to review a specified federal rule and make a  
45 report to the Legislature; exempting certain vehicles from  
46 the payment of certain tolls; amending s. 316.193, F.S.;  
47 revising the prohibition against driving under the  
48 influence of alcohol; revising the blood-alcohol or  
49 breath-alcohol level at which certain penalties apply;  
50 revising requirement for placement of an ignition  
51 interlock device; amending s. 316.2397, F.S.; allowing  
52 county correctional agencies to use blue lights on  
53 vehicles when responding to emergencies; amending s.  
54 316.302, F.S.; revising references to rules, regulations,  
55 and criteria governing commercial motor vehicles engaged  
56 in intrastate commerce; providing that the department

57 performs duties assigned to the Field Administrator of the  
58 Federal Motor Carrier Safety Administration under the  
59 federal rules and may enforce those rules; amending ss.  
60 316.613 and 316.614, F.S.; revising the definition of  
61 "motor vehicle" for purposes of child restraint and safety  
62 belt usage requirements; amending s. 316.656, F.S.;  
63 revising the prohibition against a judge accepting a plea  
64 to a lesser offense from a person charged under certain  
65 DUI provisions; revising the blood-alcohol or breath-  
66 alcohol level at which the prohibition applies; amending  
67 s. 318.18, F.S.; providing that a license may not be  
68 suspended for failure to pay tolls if a SunPass is  
69 registered to the vehicle involved; amending s. 320.02,  
70 F.S.; removing a requirement for a motorcycle endorsement  
71 at the time of original registration of a motorcycle,  
72 motor-driven cycle, or moped; amending s. 322.64, F.S.;  
73 providing that refusal to submit to a breath, urine, or  
74 blood test disqualifies a person from operating a  
75 commercial motor vehicle; providing a period of  
76 disqualification if a person has an unlawful blood-alcohol  
77 or breath-alcohol level; providing for issuance of a  
78 notice of disqualification; revising the requirements for  
79 a formal review hearing following a person's  
80 disqualification from operating a commercial motor  
81 vehicle; amending s. 334.044, F.S.; revising powers and  
82 duties of the department; requiring the department to  
83 maintain certain training programs; authorizing such  
84 programs to provide for incremental increases to base

85 salary for employees successfully completing training  
86 phases; providing that a county, municipality, or special  
87 district may not own or operate an asphalt plant or a  
88 portable or stationary concrete batch plant having an  
89 independent mixer; provides exemptions; amending s.  
90 337.0261, F.S.; providing legislative intent; revising the  
91 sunset date for the Strategic Aggregate Review Task Force;  
92 providing for an assessment of aggregate construction  
93 materials in the state; providing duties of the Department  
94 of Transportation, the Department of Environmental  
95 Protection, the Department of Community Affairs, and the  
96 Florida Geological Survey; providing for measures of the  
97 assessment; directing the Strategic Aggregate Review Task  
98 Force to prepare findings and make reports to the  
99 Governor, the Legislature, and the department; authorizing  
100 the department to adopt rules; providing an appropriation;  
101 amending s. 337.11, F.S.; providing for the department to  
102 pay a portion of certain proposal development costs;  
103 requiring the department to advertise certain contracts as  
104 design-build contracts; directing the department to adopt  
105 rules for certain procedures; amending ss. 337.14 and  
106 337.16, F.S.; conforming cross-references; amending s.  
107 337.18, F.S.; requiring the contractor to maintain a copy  
108 of the required payment and performance bond at certain  
109 locations and provide a copy upon request; providing that  
110 a copy may be obtained directly from the department;  
111 removing a provision requiring a copy be recorded in the  
112 public records of the county; amending s. 337.185, F.S.;

113 providing for the State Arbitration Board to arbitrate  
114 certain claims relating to maintenance contracts;  
115 providing for a member of the board to be elected by  
116 maintenance companies as well as construction companies;  
117 amending s. 337.403, F.S.; providing for the department or  
118 local governmental entity to pay certain costs of removal  
119 or relocation of a utility facility that is found to be  
120 interfering with the use, maintenance, improvement,  
121 extension, or expansion of a public road or publicly owned  
122 rail corridor under described circumstances; amending s.  
123 337.408, F.S.; providing for public pay telephones and  
124 advertising thereon to be installed within the right-of-  
125 way limits of any municipal, county, or state road;  
126 amending s. 338.01, F.S.; requiring new and replacement  
127 electronic toll collection systems to be interoperable  
128 with the department's system; amending s. 338.165, F.S.;  
129 revising provisions for use of certain toll revenue;  
130 providing for application; amending s. 338.2216, F.S.;  
131 directing the Florida Turnpike Enterprise to implement new  
132 technologies and processes in its operations and  
133 collection of tolls and other amounts; providing contract  
134 bid requirements for fuel and food on the turnpike system;  
135 amending s. 338.223, F.S.; conforming a cross-reference;  
136 amending s. 338.231, F.S.; revising provisions for  
137 establishing and collecting tolls; authorizing collection  
138 of amounts to cover costs of toll collection and payment  
139 methods; requiring public notice and hearing; amending s.  
140 339.12, F.S.; revising requirements for aid and

141 contributions by governmental entities for transportation  
142 projects; revising limits under which the department may  
143 enter into an agreement with a county for a project or  
144 project phase not in the adopted work program; authorizing  
145 the department to enter into certain long-term repayment  
146 agreements; amending s. 339.135, F.S.; revising the  
147 department's authority to amend the adopted work program;  
148 providing for a notification and review process for  
149 certain work program amendments; amending s. 339.155,  
150 F.S.; revising provisions for development of the Florida  
151 Transportation Plan; amending s. 339.2816, F.S., relating  
152 to the small county road assistance program; providing for  
153 resumption of certain funding for the program; revising  
154 the criteria for counties eligible to participate in the  
155 program; amending ss. 339.2819 and 339.285, F.S.;  
156 conforming cross-references; amending s. 341.301, F.S.;  
157 providing definitions relating to commuter rail service,  
158 rail corridors, and railroad operation for purposes of the  
159 rail program within the department; amending s. 341.302,  
160 F.S.; authorizing the department to assume certain  
161 liability on a rail corridor; authorizing the department  
162 to indemnify and hold harmless a railroad company when the  
163 department acquires a rail corridor from the company;  
164 providing allocation of risk; providing a specific cap on  
165 the amount of the contractual duty for such  
166 indemnification; authorizing the department to purchase  
167 and provide insurance in relation to rail corridors;  
168 authorizing marketing and promotional expenses; extending

169 provisions to other governmental entities providing  
170 commuter rail service on public right-of-way; creating s.  
171 341.3023, F.S.; requiring the department to review and  
172 study commuter rail programs and intercity rail  
173 transportation systems; requiring a report to the Governor  
174 and the Legislature; repealing part III of ch. 343 F.S.;  
175 abolishing the Tampa Bay Commuter Transit Authority;  
176 amending s. 348.0003, F.S.; providing for financial  
177 disclosure for expressway, transportation, bridge, and  
178 toll authorities; amending s. 348.0004, F.S.; providing  
179 for certain expressway authorities to index toll rate  
180 increases; amending s. 479.01, F.S.; revising provisions  
181 for outdoor advertising; revising the definition of the  
182 term "automatic changeable facing"; amending s. 479.07,  
183 F.S.; revising a prohibition against signs on the State  
184 Highway System; revising requirements for display of the  
185 sign permit tag; directing the department to establish by  
186 rule a fee for furnishing a replacement permit tag;  
187 revising the pilot project for permitted signs to include  
188 Hillsborough County and areas within the boundaries of the  
189 City of Miami; amending s. 479.08, F.S.; revising  
190 provisions for denial or revocation of a sign permit;  
191 amending s. 479.156, F.S.; revising provisions for a  
192 municipality or county to permit and regulate wall murals;  
193 amending s. 479.261, F.S.; revising provisions for the  
194 logo sign program; revising requirements for businesses to  
195 participate in the program; authorizing the department to  
196 adopt rules for removing and adding businesses on a

197 rotating basis; removing a provision for an application  
198 fee; revising the provisions for an annual permit fee;  
199 providing for rules to phase in the fee; creating a  
200 business partnership pilot program; authorizing the Palm  
201 Beach County School District to display names of business  
202 partners on district property; exempting the program from  
203 specified provisions; amending s. 768.28, F.S.; expanding  
204 the list of entities considered agents of the state;  
205 providing for construction in relation to certain federal  
206 laws; requiring the department to ensure certain providers  
207 of railroad related services meet certain requirements;  
208 requiring the department to conduct a study of  
209 transportation alternatives for the Interstate 95  
210 corridor; requiring a report to the Governor and the  
211 Legislature; transferring the Office of Motor Carrier  
212 Compliance to the Division of the Florida Highway Patrol  
213 of the Department of Highway Safety and Motor Vehicles;  
214 providing for assistance to certain legislative  
215 substantive committees by the Division of Statutory  
216 Revision of the Office of Legislative Services for certain  
217 purposes; requiring the Office of Program Policy Analysis  
218 and Government Accountability to review the operations and  
219 efficiencies of the Miami-Dade Expressway Authority and  
220 submit a report on its findings to the Legislature;  
221 reenacting ss. 316.066(3)(a), 316.072(4)(b), 316.1932(3),  
222 316.1933(4), 316.1937(1) and (2)(d), 316.1939(1)(b),  
223 316.656(1), 318.143(4) and (5), 318.17(3), 320.055(1)(c),  
224 322.03(2), 322.0602(2)(a), 322.21(8), 322.25(5),



225 | 322.26(1)(a), 322.2615(14)(a) and (16), 322.2616(15) and  
 226 | (19), 322.264(1)(b), 322.271(2)(a), (c) and (4),  
 227 | 322.2715(2), (3)(a), (c), and (4), 322.28(2),  
 228 | 322.282(2)(a), 322.291(1)(a), 322.34(9)(a), 322.62(3),  
 229 | 322.63(2)(d) and (6), 322.64(1), (2), (7)(a), (8)(b),  
 230 | (14), and (15), 323.001(4)(f), 324.023, 324.131,  
 231 | 327.35(6), 337.195(1), 440.02(17)(c), 440.09(7)(b),  
 232 | 493.6106(1)(d), 627.7275(2)(a), 627.758(4), 790.06(2)(f)  
 233 | and (10)(f), 903.36(2), and 907.041(4)(c), F.S., relating  
 234 | to written reports of crashes, obedience to and effect of  
 235 | traffic laws, tests for alcohol, chemical substances, or  
 236 | controlled substances, implied consent, refusal, blood  
 237 | test for impairment or intoxication in cases of death or  
 238 | serious bodily injury, right to use reasonable force,  
 239 | ignition interlock devices, requiring, unlawful acts,  
 240 | refusal to submit to testing, penalties, mandatory  
 241 | adjudication, prohibition against accepting plea to lesser  
 242 | included offense, sanctions for infractions by minors,  
 243 | offenses excepted, registration periods, renewal periods,  
 244 | drivers must be licensed, penalties, youthful drunk driver  
 245 | visitation program, license fees, procedure for handling  
 246 | and collecting fees, when court to forward license to  
 247 | department and report convictions, temporary reinstatement  
 248 | of driving privileges, mandatory revocation of license by  
 249 | department, suspension of license, right to review,  
 250 | suspension of license, persons under 21 years of age,  
 251 | right to review, "habitual traffic offender" defined,  
 252 | authority to modify revocation, cancellation, or

253 suspension order, ignition interlock device, period of  
 254 suspension or revocation, procedure when court revokes or  
 255 suspends license or driving privilege and orders  
 256 reinstatement, driver improvement schools or dui programs,  
 257 required in certain suspension and revocation cases,  
 258 driving while license suspended, revoked, canceled, or  
 259 disqualified, driving under the influence, commercial  
 260 motor vehicle operators, alcohol or drug testing,  
 261 commercial motor vehicle operators, holder of commercial  
 262 driver's license, driving with unlawful blood-alcohol  
 263 level, refusal to submit to breath, urine, or blood test,  
 264 wrecker operator storage facilities, vehicle holds,  
 265 financial responsibility for bodily injury or death,  
 266 period of suspension, boating under the influence,  
 267 penalties, "designated drivers," limits on liability,  
 268 definitions, coverage, license requirements, posting,  
 269 motor vehicle liability, surety on auto club traffic  
 270 arrest bond, conditions, limit, bail bond, license to  
 271 carry concealed weapon or firearm, guaranteed arrest bond  
 272 certificates as cash bail, and pretrial detention and  
 273 release, to incorporate references in changes made by the  
 274 act; providing effective dates.

275  
 276 Be It Enacted by the Legislature of the State of Florida:

277  
 278 Section 1. Paragraph (h) of subsection (2) of section  
 279 20.23, Florida Statutes, is amended to read:  
 280 20.23 Department of Transportation.--There is created a

281 Department of Transportation which shall be a decentralized  
 282 agency.

283 (2)

284 (h) The commission shall appoint an executive director and  
 285 assistant executive director, who shall serve under the  
 286 direction, supervision, and control of the commission. The  
 287 executive director, with the consent of the commission, shall  
 288 employ such staff as are necessary to perform adequately the  
 289 functions of the commission, within budgetary limitations. All  
 290 employees of the commission are exempt from part II of chapter  
 291 110 and shall serve at the pleasure of the commission. The  
 292 salary and benefits of the executive director shall be set in  
 293 accordance with the Senior Management Service. The salaries and  
 294 benefits of all other employees of the commission shall be set  
 295 in accordance with the Selected Exempt Service; ~~provided,~~  
 296 however, ~~that~~ the commission has ~~shall have~~ complete authority  
 297 for fixing the salary of the executive director and assistant  
 298 executive director.

299 Section 2. Subsection (5) of section 125.42, Florida  
 300 Statutes, is amended to read:

301 125.42 Water, sewage, gas, power, telephone, other  
 302 utility, and television lines along county roads and highways.--

303 (5) In the event of widening, repair, or reconstruction of  
 304 any such road, the licensee shall move or remove such water,  
 305 sewage, gas, power, telephone, and other utility lines and  
 306 television lines at no cost to the county except as provided in  
 307 s. 337.403(1)(e).

308 Section 3. Paragraphs (a), (h), and (j) of subsection (6)

309 of section 163.3177, Florida Statutes, are amended to read:

310 163.3177 Required and optional elements of comprehensive  
311 plan; studies and surveys.--

312 (6) In addition to the requirements of subsections (1)-(5)  
313 and (12), the comprehensive plan shall include the following  
314 elements:

315 (a) A future land use plan element designating proposed  
316 future general distribution, location, and extent of the uses of  
317 land for residential uses, commercial uses, industry,  
318 agriculture, recreation, conservation, education, public  
319 buildings and grounds, other public facilities, and other  
320 categories of the public and private uses of land. Counties are  
321 encouraged to designate rural land stewardship areas, pursuant  
322 to the provisions of paragraph (11)(d), as overlays on the  
323 future land use map. Each future land use category must be  
324 defined in terms of uses included, and must include standards to  
325 be followed in the control and distribution of population  
326 densities and building and structure intensities. The proposed  
327 distribution, location, and extent of the various categories of  
328 land use shall be shown on a land use map or map series which  
329 shall be supplemented by goals, policies, and measurable  
330 objectives. The future land use plan shall be based upon  
331 surveys, studies, and data regarding the area, including the  
332 amount of land required to accommodate anticipated growth; the  
333 projected population of the area; the character of undeveloped  
334 land; the availability of water supplies, public facilities, and  
335 services; the need for redevelopment, including the renewal of  
336 blighted areas and the elimination of nonconforming uses which

337 are inconsistent with the character of the community; the  
338 compatibility of uses on lands adjacent to or closely proximate  
339 to military installations; lands adjacent to an airport as  
340 defined in s. 330.35 and consistent with provisions in s.  
341 333.02; and, in rural communities, the need for job creation,  
342 capital investment, and economic development that will  
343 strengthen and diversify the community's economy. The future  
344 land use plan may designate areas for future planned development  
345 use involving combinations of types of uses for which special  
346 regulations may be necessary to ensure development in accord  
347 with the principles and standards of the comprehensive plan and  
348 this act. The future land use plan element shall include  
349 criteria to be used to achieve the compatibility of adjacent or  
350 closely proximate lands with military installations; lands  
351 adjacent to an airport as defined in s. 330.35 and consistent  
352 with provisions in s. 333.02. In addition, for rural  
353 communities, the amount of land designated for future planned  
354 industrial use shall be based upon surveys and studies that  
355 reflect the need for job creation, capital investment, and the  
356 necessity to strengthen and diversify the local economies, and  
357 shall not be limited solely by the projected population of the  
358 rural community. The future land use plan of a county may also  
359 designate areas for possible future municipal incorporation. The  
360 land use maps or map series shall generally identify and depict  
361 historic district boundaries and shall designate historically  
362 significant properties meriting protection. For coastal  
363 counties, the future land use element must include, without  
364 limitation, regulatory incentives and criteria that encourage

365 the preservation of recreational and commercial working  
366 waterfronts as defined in s. 342.07. The future land use element  
367 must clearly identify the land use categories in which public  
368 schools are an allowable use. When delineating the land use  
369 categories in which public schools are an allowable use, a local  
370 government shall include in the categories sufficient land  
371 proximate to residential development to meet the projected needs  
372 for schools in coordination with public school boards and may  
373 establish differing criteria for schools of different type or  
374 size. Each local government shall include lands contiguous to  
375 existing school sites, to the maximum extent possible, within  
376 the land use categories in which public schools are an allowable  
377 use. The failure by a local government to comply with these  
378 school siting requirements will result in the prohibition of the  
379 local government's ability to amend the local comprehensive  
380 plan, except for plan amendments described in s. 163.3187(1)(b),  
381 until the school siting requirements are met. Amendments  
382 proposed by a local government for purposes of identifying the  
383 land use categories in which public schools are an allowable use  
384 are exempt from the limitation on the frequency of plan  
385 amendments contained in s. 163.3187. The future land use element  
386 shall include criteria that encourage the location of schools  
387 proximate to urban residential areas to the extent possible and  
388 shall require that the local government seek to collocate public  
389 facilities, such as parks, libraries, and community centers,  
390 with schools to the extent possible and to encourage the use of  
391 elementary schools as focal points for neighborhoods. For  
392 schools serving predominantly rural counties, defined as a

CS/CS/HB 1399

2008

393 county with a population of 100,000 or fewer, an agricultural  
394 land use category shall be eligible for the location of public  
395 school facilities if the local comprehensive plan contains  
396 school siting criteria and the location is consistent with such  
397 criteria. Local governments required to update or amend their  
398 comprehensive plan to include criteria and address compatibility  
399 of lands adjacent to an airport as defined in s. 330.35 and  
400 consistent with provisions in s. 333.02 ~~adjacent or closely~~  
401 ~~proximate lands with existing military installations~~ in their  
402 future land use plan element shall transmit the update or  
403 amendment to the state land planning agency ~~department~~ by June  
404 30, 2011 ~~2006~~.

405 (h)1. An intergovernmental coordination element showing  
406 relationships and stating principles and guidelines to be used  
407 in the accomplishment of coordination of the adopted  
408 comprehensive plan with the plans of school boards, regional  
409 water supply authorities, and other units of local government  
410 providing services but not having regulatory authority over the  
411 use of land, with the comprehensive plans of adjacent  
412 municipalities, the county, adjacent counties, or the region,  
413 with the state comprehensive plan and with the applicable  
414 regional water supply plan approved pursuant to s. 373.0361, as  
415 the case may require and as such adopted plans or plans in  
416 preparation may exist. This element of the local comprehensive  
417 plan shall demonstrate consideration of the particular effects  
418 of the local plan, when adopted, upon the development of  
419 adjacent municipalities, the county, adjacent counties, or the  
420 region, or upon the state comprehensive plan, as the case may

421 require.

422 a. The intergovernmental coordination element shall  
 423 provide ~~for~~ procedures to identify and implement joint planning  
 424 areas, especially for the purpose of annexation, municipal  
 425 incorporation, and joint infrastructure service areas.

426 b. The intergovernmental coordination element shall  
 427 provide for recognition of campus master plans prepared pursuant  
 428 to s. 1013.30, and airport master plans pursuant to paragraph  
 429 (k).

430 c. The intergovernmental coordination element may provide  
 431 for a voluntary dispute resolution process as established  
 432 pursuant to s. 186.509 for bringing to closure in a timely  
 433 manner intergovernmental disputes. A local government may  
 434 develop and use an alternative local dispute resolution process  
 435 for this purpose.

436 d. The intergovernmental coordination element shall  
 437 provide for interlocal agreements, as established pursuant to s.  
 438 333.03(1)(b).

439 2. The intergovernmental coordination element shall  
 440 further state principles and guidelines to be used in the  
 441 accomplishment of coordination of the adopted comprehensive plan  
 442 with the plans of school boards and other units of local  
 443 government providing facilities and services but not having  
 444 regulatory authority over the use of land. In addition, the  
 445 intergovernmental coordination element shall describe joint  
 446 processes for collaborative planning and decisionmaking on  
 447 population projections and public school siting, the location  
 448 and extension of public facilities subject to concurrency, and



449 siting facilities with countywide significance, including  
450 locally unwanted land uses whose nature and identity are  
451 established in an agreement. Within 1 year of adopting their  
452 intergovernmental coordination elements, each county, all the  
453 municipalities within that county, the district school board,  
454 and any unit of local government service providers in that  
455 county shall establish by interlocal or other formal agreement  
456 executed by all affected entities, the joint processes described  
457 in this subparagraph consistent with their adopted  
458 intergovernmental coordination elements.

459 3. To foster coordination between special districts and  
460 local general-purpose governments as local general-purpose  
461 governments implement local comprehensive plans, each  
462 independent special district must submit a public facilities  
463 report to the appropriate local government as required by s.  
464 189.415.

465 4.a. Local governments must execute an interlocal  
466 agreement with the district school board, the county, and  
467 nonexempt municipalities pursuant to s. 163.31777. The local  
468 government shall amend the intergovernmental coordination  
469 element to provide that coordination between the local  
470 government and school board is pursuant to the agreement and  
471 shall state the obligations of the local government under the  
472 agreement.

473 b. Plan amendments that comply with this subparagraph are  
474 exempt from the provisions of s. 163.3187(1).

475 5. The state land planning agency shall establish a  
476 schedule for phased completion and transmittal of plan

477 amendments to implement subparagraphs 1., 2., and 3. from all  
478 jurisdictions so as to accomplish their adoption by December 31,  
479 1999. A local government may complete and transmit its plan  
480 amendments to carry out these provisions prior to the scheduled  
481 date established by the state land planning agency. The plan  
482 amendments are exempt from the provisions of s. 163.3187(1).

483 6. By January 1, 2004, any county having a population  
484 greater than 100,000, and the municipalities and special  
485 districts within that county, shall submit a report to the  
486 Department of Community Affairs which:

487 a. Identifies all existing or proposed interlocal service  
488 delivery agreements regarding the following: education; sanitary  
489 sewer; public safety; solid waste; drainage; potable water;  
490 parks and recreation; and transportation facilities.

491 b. Identifies any deficits or duplication in the provision  
492 of services within its jurisdiction, whether capital or  
493 operational. Upon request, the Department of Community Affairs  
494 shall provide technical assistance to the local governments in  
495 identifying deficits or duplication.

496 7. Within 6 months after submission of the report, the  
497 Department of Community Affairs shall, through the appropriate  
498 regional planning council, coordinate a meeting of all local  
499 governments within the regional planning area to discuss the  
500 reports and potential strategies to remedy any identified  
501 deficiencies or duplications.

502 8. Each local government shall update its  
503 intergovernmental coordination element based upon the findings  
504 in the report submitted pursuant to subparagraph 6. The report

505 may be used as supporting data and analysis for the  
506 intergovernmental coordination element.

507 (j) For each unit of local government within an urbanized  
508 area designated for purposes of s. 339.175, a transportation  
509 element, which shall be prepared and adopted in lieu of the  
510 requirements of paragraph (b) and paragraphs (7)(a), (b), (c),  
511 and (d) and which shall address the following issues:

512 1. Traffic circulation, including major thoroughfares and  
513 other routes, including bicycle and pedestrian ways.

514 2. All alternative modes of travel, such as public  
515 transportation, pedestrian, and bicycle travel.

516 3. Parking facilities.

517 4. Aviation, rail, seaport facilities, access to those  
518 facilities, and intermodal terminals.

519 5. The availability of facilities and services to serve  
520 existing land uses and the compatibility between future land use  
521 and transportation elements.

522 6. The capability to evacuate the coastal population prior  
523 to an impending natural disaster.

524 7. Airports, projected airport and aviation development,  
525 and land use compatibility around airports that includes areas  
526 defined in ss. 333.01 and 333.02.

527 8. An identification of land use densities, building  
528 intensities, and transportation management programs to promote  
529 public transportation systems in designated public  
530 transportation corridors so as to encourage population densities  
531 sufficient to support such systems.

532 9. May include transportation corridors, as defined in s.

533 334.03, intended for future transportation facilities designated  
 534 pursuant to s. 337.273. If transportation corridors are  
 535 designated, the local government may adopt a transportation  
 536 corridor management ordinance.

537 Section 4. Subsection (3) of section 163.3178, Florida  
 538 Statutes, is amended to read:

539 163.3178 Coastal management.--

540 (3) Expansions to port harbors, spoil disposal sites,  
 541 navigation channels, turning basins, harbor berths, and other  
 542 related inwater harbor facilities of ports listed in s.  
 543 403.021(9); port transportation facilities and projects listed  
 544 in s. 311.07(3)(b); and intermodal transportation facilities  
 545 identified pursuant to s. 311.09(3) and facilities determined by  
 546 the Department of Community Affairs and applicable general  
 547 purpose local government to be port-related industrial or  
 548 commercial projects located within 3 miles of or in a port  
 549 master plan area which rely upon the utilization of port and  
 550 intermodal transportation facilities shall not be developments  
 551 of regional impact where such expansions, projects, or  
 552 facilities are consistent with comprehensive master plans that  
 553 are in compliance with this section.

554 Section 5. Paragraph (c) is added to subsection (2) of  
 555 section 163.3182, Florida Statutes, and paragraph (d) of  
 556 subsection (3), paragraph (a) of subsection (4), and subsections  
 557 (5) and (8) of that section are amended, to read:

558 163.3182 Transportation concurrency backlogs.--

559 (2) CREATION OF TRANSPORTATION CONCURRENCY BACKLOG  
 560 AUTHORITIES.--

561        (c) The Legislature finds and declares that there exists  
562 in many counties and municipalities areas with significant  
563 transportation deficiencies and inadequate transportation  
564 facilities; that many such insufficiencies and inadequacies  
565 severely limit or prohibit the satisfaction of transportation  
566 concurrency standards; that such transportation insufficiencies  
567 and inadequacies affect the health, safety, and welfare of the  
568 residents of such counties and municipalities; that such  
569 transportation insufficiencies and inadequacies adversely affect  
570 economic development and growth of the tax base for the areas in  
571 which such insufficiencies and inadequacies exist; and that the  
572 elimination of transportation deficiencies and inadequacies and  
573 the satisfaction of transportation concurrency standards are  
574 paramount public purposes for the state and its counties and  
575 municipalities.

576        (3) POWERS OF A TRANSPORTATION CONCURRENCY BACKLOG  
577 AUTHORITY.--Each transportation concurrency backlog authority  
578 has the powers necessary or convenient to carry out the purposes  
579 of this section, including the following powers in addition to  
580 others granted in this section:

581        (d) To borrow money, including, but not limited to,  
582 issuing debt obligations, such as, but not limited to, bonds,  
583 notes, certificates, and similar debt instruments; to apply for  
584 and accept advances, loans, grants, contributions, and any other  
585 forms of financial assistance from the Federal Government or the  
586 state, county, or any other public body or from any sources,  
587 public or private, for the purposes of this part; to give such  
588 security as may be required; to enter into and carry out

589 | contracts or agreements; and to include in any contracts for  
 590 | financial assistance with the Federal Government for or with  
 591 | respect to a transportation concurrency backlog project and  
 592 | related activities such conditions imposed pursuant to federal  
 593 | laws as the transportation concurrency backlog authority  
 594 | considers reasonable and appropriate and which are not  
 595 | inconsistent with the purposes of this section.

596 | (4) TRANSPORTATION CONCURRENCY BACKLOG PLANS.--

597 | (a) Each transportation concurrency backlog authority  
 598 | shall adopt a transportation concurrency backlog plan as a part  
 599 | of the local government comprehensive plan within 6 months after  
 600 | the creation of the authority. The plan shall:

601 | 1. Identify all transportation facilities that have been  
 602 | designated as deficient and require the expenditure of moneys to  
 603 | upgrade, modify, or mitigate the deficiency.

604 | 2. Include a priority listing of all transportation  
 605 | facilities that have been designated as deficient and do not  
 606 | satisfy concurrency requirements pursuant to s. 163.3180, and  
 607 | the applicable local government comprehensive plan.

608 | 3. Establish a schedule for financing and construction of  
 609 | transportation concurrency backlog projects that will eliminate  
 610 | transportation concurrency backlogs within the jurisdiction of  
 611 | the authority within 10 years after the transportation  
 612 | concurrency backlog plan adoption. The schedule shall be adopted  
 613 | as part of the local government comprehensive plan.

614 | Notwithstanding such schedule requirements, as long as the  
 615 | schedule provides for the elimination of all transportation  
 616 | concurrency backlogs within 10 years after the adoption of the

617 concurrency backlog plan, the final maturity date of any debt  
 618 incurred to finance or refinance the related projects may be no  
 619 later than 40 years after the date such debt is incurred and the  
 620 authority may continue operations and administer the trust fund  
 621 established as provided in subsection (5) for as long as such  
 622 debt remains outstanding.

623 (5) ESTABLISHMENT OF LOCAL TRUST FUND.--The transportation  
 624 concurrency backlog authority shall establish a local  
 625 transportation concurrency backlog trust fund upon creation of  
 626 the authority. Each local trust fund shall be administered by  
 627 the transportation concurrency backlog authority within which a  
 628 transportation concurrency backlog has been identified. Each  
 629 local trust fund shall continue to be funded pursuant to this  
 630 section for as long as the projects set forth in the related  
 631 transportation concurrency backlog plan remain to be completed  
 632 or until any debt incurred to finance or refinance the related  
 633 projects are no longer outstanding, whichever occurs later.  
 634 Beginning in the first fiscal year after the creation of the  
 635 authority, each local trust fund shall be funded by the proceeds  
 636 of an ad valorem tax increment collected within each  
 637 transportation concurrency backlog area to be determined  
 638 annually and shall be a minimum of 25 percent of the difference  
 639 between the amounts set forth in paragraphs (a) and (b), except  
 640 that if all of the affected taxing authorities agree pursuant to  
 641 an interlocal agreement, a particular local trust fund may be  
 642 funded by the proceeds of an ad valorem tax increment greater  
 643 than 25 percent of the difference between the amounts set forth  
 644 in paragraphs (a) and (b):

645 (a) The amount of ad valorem tax levied each year by each  
 646 taxing authority, exclusive of any amount from any debt service  
 647 millage, on taxable real property contained within the  
 648 jurisdiction of the transportation concurrency backlog authority  
 649 and within the transportation backlog area; and

650 (b) The amount of ad valorem taxes which would have been  
 651 produced by the rate upon which the tax is levied each year by  
 652 or for each taxing authority, exclusive of any debt service  
 653 millage, upon the total of the assessed value of the taxable  
 654 real property within the transportation concurrency backlog area  
 655 as shown on the most recent assessment roll used in connection  
 656 with the taxation of such property of each taxing authority  
 657 prior to the effective date of the ordinance funding the trust  
 658 fund.

659 (8) DISSOLUTION.--Upon completion of all transportation  
 660 concurrency backlog projects and repayment or defeasance of all  
 661 debt issued to finance or refinance such projects, a  
 662 transportation concurrency backlog authority shall be dissolved,  
 663 and its assets and liabilities shall be transferred to the  
 664 county or municipality within which the authority is located.  
 665 All remaining assets of the authority must be used for  
 666 implementation of transportation projects within the  
 667 jurisdiction of the authority. The local government  
 668 comprehensive plan shall be amended to remove the transportation  
 669 concurrency backlog plan.

670 Section 6. Paragraph (c) of subsection (9) of section  
 671 287.055, Florida Statutes, is amended to read:

672 287.055 Acquisition of professional architectural,



673 engineering, landscape architectural, or surveying and mapping  
674 services; definitions; procedures; contingent fees prohibited;  
675 penalties.--

676 (9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.--

677 (c) Except as otherwise provided in s. 337.11~~(8)~~(7), the  
678 Department of Management Services shall adopt rules for the  
679 award of design-build contracts to be followed by state  
680 agencies. Each other agency must adopt rules or ordinances for  
681 the award of design-build contracts. Municipalities, political  
682 subdivisions, school districts, and school boards shall award  
683 design-build contracts by the use of a competitive proposal  
684 selection process as described in this subsection, or by the use  
685 of a qualifications-based selection process pursuant to  
686 subsections (3), (4), and (5) for entering into a contract  
687 whereby the selected firm will, subsequent to competitive  
688 negotiations, establish a guaranteed maximum price and  
689 guaranteed completion date. If the procuring agency elects the  
690 option of qualifications-based selection, during the selection  
691 of the design-build firm the procuring agency shall employ or  
692 retain a licensed design professional appropriate to the project  
693 to serve as the agency's representative. Procedures for the use  
694 of a competitive proposal selection process must include as a  
695 minimum the following:

696 1. The preparation of a design criteria package for the  
697 design and construction of the public construction project.

698 2. The qualification and selection of no fewer than three  
699 design-build firms as the most qualified, based on the  
700 qualifications, availability, and past work of the firms,

701 including the partners or members thereof.

702 3. The criteria, procedures, and standards for the  
 703 evaluation of design-build contract proposals or bids, based on  
 704 price, technical, and design aspects of the public construction  
 705 project, weighted for the project.

706 4. The solicitation of competitive proposals, pursuant to  
 707 a design criteria package, from those qualified design-build  
 708 firms and the evaluation of the responses or bids submitted by  
 709 those firms based on the evaluation criteria and procedures  
 710 established prior to the solicitation of competitive proposals.

711 5. For consultation with the employed or retained design  
 712 criteria professional concerning the evaluation of the responses  
 713 or bids submitted by the design-build firms, the supervision or  
 714 approval by the agency of the detailed working drawings of the  
 715 project; and for evaluation of the compliance of the project  
 716 construction with the design criteria package by the design  
 717 criteria professional.

718 6. In the case of public emergencies, for the agency head  
 719 to declare an emergency and authorize negotiations with the best  
 720 qualified design-build firm available at that time.

721 Section 7. Section 316.0741, Florida Statutes, is amended  
 722 to read:

723 316.0741 High-occupancy-vehicle ~~High-occupancy-vehicle~~  
 724 lanes.--

725 (1) As used in this section, the term:

726 (a) "High-occupancy-vehicle ~~High-occupancy-vehicle~~ lane"  
 727 or "HOV lane" means a lane of a public roadway designated for  
 728 use by vehicles in which there is more than one occupant unless

729 otherwise authorized by federal law.

730 (b) "Hybrid vehicle" means a motor vehicle:

731 1. That draws propulsion energy from onboard sources of  
732 stored energy which are both an internal combustion or heat  
733 engine using combustible fuel and a rechargeable energy-storage  
734 system; and

735 2. That, in the case of a passenger automobile or light  
736 truck, has received a certificate of conformity under the Clean  
737 Air Act, 42 U.S.C. ss. 7401 et seq., and meets or exceeds the  
738 equivalent qualifying California standards for a low-emission  
739 vehicle.

740 (2) The number of persons that must be in a vehicle to  
741 qualify for legal use of the HOV lane and the hours during which  
742 the lane will serve as an HOV lane, if it is not designated as  
743 such on a full-time basis, must also be indicated on a traffic  
744 control device.

745 (3) Except as provided in subsection (4), a vehicle may  
746 not be driven in an HOV lane if the vehicle is occupied by fewer  
747 than the number of occupants indicated by a traffic control  
748 device. A driver who violates this section shall be cited for a  
749 moving violation, punishable as provided in chapter 318.

750 (4) (a) Notwithstanding any other provision of this  
751 section, an inherently low-emission vehicle (ILEV) that is  
752 certified and labeled in accordance with federal regulations may  
753 be driven in an HOV lane at any time, regardless of its  
754 occupancy. In addition, upon the state's receipt of written  
755 notice from the proper federal regulatory agency authorizing  
756 such use, a vehicle defined as a hybrid vehicle under this

CS/CS/HB 1399

2008

757 section may be driven in an HOV lane at any time, regardless of  
758 its occupancy.

759 (b) All eligible hybrid and all eligible other low-  
760 emission and energy-efficient vehicles driven in an HOV lane  
761 must comply with the minimum fuel economy standards in 23 U.S.C.  
762 s. 166(f)(3)(B).

763 (c) Upon issuance of the applicable Environmental  
764 Protection Agency final rule pursuant to 23 U.S.C. s. 166(e),  
765 relating to the eligibility of hybrid and other low-emission and  
766 energy-efficient vehicles for operation in an HOV lane  
767 regardless of occupancy, the Department of Transportation shall  
768 review the rule and recommend to the Legislature any statutory  
769 changes necessary for compliance with the federal rule. The  
770 department shall provide its recommendations no later than 30  
771 days following issuance of the final rule.

772 (5) The department shall issue a decal and registration  
773 certificate, to be renewed annually, reflecting the HOV lane  
774 designation on ~~such~~ vehicles meeting the criteria in subsection  
775 (4) authorizing driving in an HOV lane at any time ~~such use~~. The  
776 department may charge a fee for a decal, not to exceed the costs  
777 of designing, producing, and distributing each decal, or \$5,  
778 whichever is less. The proceeds from sale of the decals shall be  
779 deposited in the Highway Safety Operating Trust Fund. The  
780 department may, for reasons of operation and management of HOV  
781 facilities, limit or discontinue issuance of decals for the use  
782 of HOV facilities by hybrid and low-emission and energy-  
783 efficient vehicles, regardless of occupancy, if it has been  
784 determined by the Department of Transportation that the

785 facilities are degraded as defined by 23 U.S.C. s. 166(d) (2).

786 (6) Vehicles having decals by virtue of compliance with  
 787 the minimum fuel economy standards under 23 U.S.C. s.  
 788 166(f) (3) (B), and which are registered for use in high-occupancy  
 789 toll lanes or express lanes in accordance with Department of  
 790 Transportation rule, shall be allowed to use any HOV lanes  
 791 redesignated as high-occupancy toll lanes or express lanes  
 792 without payment of a toll.

793 ~~(5) As used in this section, the term "hybrid vehicle"~~  
 794 ~~means a motor vehicle:~~

795 ~~(a) That draws propulsion energy from onboard sources of~~  
 796 ~~stored energy which are both:~~

- 797 ~~1. An internal combustion or heat engine using combustible~~
- 798 ~~fuel; and~~
- 799 ~~2. A rechargeable energy storage system; and~~

800 ~~(b) That, in the case of a passenger automobile or light~~  
 801 ~~truck:~~

- 802 ~~1. Has received a certificate of conformity under the~~
- 803 ~~Clean Air Act, 42 U.S.C. ss. 7401 et seq.; and~~
- 804 ~~2. Meets or exceeds the equivalent qualifying California~~
- 805 ~~standards for a low emission vehicle.~~

806 (7)~~(6)~~ The department may adopt rules necessary to  
 807 administer this section.

808 Section 8. Subsection (4) of section 316.193, Florida  
 809 Statutes, is amended to read:

810 316.193 Driving under the influence; penalties.--

811 (4) (a) Any person who is convicted of a violation of  
 812 subsection (1) and who has a blood-alcohol level or breath-

813 alcohol level of 0.15 ~~0.20~~ or higher, or any person who is  
 814 convicted of a violation of subsection (1) and who at the time  
 815 of the offense was accompanied in the vehicle by a person under  
 816 the age of 18 years, shall be punished:

817 1.~~(a)~~ By a fine of:

818 a.1.~~1.~~ Not less than \$500 or more than \$1,000 for a first  
 819 conviction.

820 b.2.~~2.~~ Not less than \$1,000 or more than \$2,000 for a second  
 821 conviction.

822 c.3.~~3.~~ Not less than \$2,000 for a third or subsequent  
 823 conviction.

824 2.~~(b)~~ By imprisonment for:

825 a.1.~~1.~~ Not more than 9 months for a first conviction.

826 b.2.~~2.~~ Not more than 12 months for a second conviction.

827 (b) For the purposes of this subsection, only the instant  
 828 offense is required to be a violation of subsection (1) by a  
 829 person who has a blood-alcohol level or breath-alcohol level of  
 830 0.15 ~~0.20~~ or higher.

831 (c) In addition to the penalties in subparagraphs (a)1.  
 832 and 2. ~~paragraphs (a) and (b)~~, the court shall order the  
 833 mandatory placement, at the convicted person's sole expense, of  
 834 an ignition interlock device approved by the department in  
 835 accordance with s. 316.1938 upon all vehicles that are  
 836 individually or jointly leased or owned and routinely operated  
 837 by the convicted person for not less than ~~up to~~ 6 continuous  
 838 months for the first offense and for not less than ~~at least~~ 2  
 839 continuous years for a second offense, when the convicted person  
 840 qualifies for a permanent or restricted license. ~~The~~

CS/CS/HB 1399

2008

841 ~~installation of such device may not occur before July 1, 2003.~~

842 Section 9. Subsection (2) of section 316.2397, Florida  
843 Statutes, is amended to read:

844 316.2397 Certain lights prohibited; exceptions.--

845 (2) It is expressly prohibited for any vehicle or  
846 equipment, except police vehicles, to show or display blue  
847 lights. However, vehicles owned, operated, or leased by the  
848 Department of Corrections or any county correctional agency, may  
849 show or display blue lights when responding to emergencies.

850 Section 10. Effective October 1, 2008, paragraph (b) of  
851 subsection (1) and subsections (6) and (8) of section 316.302,  
852 Florida Statutes, are amended to read:

853 316.302 Commercial motor vehicles; safety regulations;  
854 transporters and shippers of hazardous materials; enforcement.--

855 (1)

856 (b) Except as otherwise provided in this section, all  
857 owners or drivers of commercial motor vehicles that are engaged  
858 in intrastate commerce are subject to the rules and regulations  
859 contained in 49 C.F.R. parts 382, 385, and 390-397, with the  
860 exception of 49 C.F.R. s. 390.5 as it relates to the definition  
861 of bus, as such rules and regulations existed on October 1, 2007  
862 2005.

863 (6) The state Department of Transportation shall perform  
864 the duties that are assigned to the Field Administrator, Federal  
865 Motor Carrier Safety Administration ~~Regional Federal Highway~~  
866 ~~Administrator~~ under the federal rules, and an agent of that  
867 department, as described in s. 316.545(9), may enforce those  
868 rules.

869           (8) For the purpose of enforcing this section, any law  
870 enforcement officer of the Department of Transportation or duly  
871 appointed agent who holds a current safety inspector  
872 certification from the Commercial Vehicle Safety Alliance may  
873 require the driver of any commercial vehicle operated on the  
874 highways of this state to stop and submit to an inspection of  
875 the vehicle or the driver's records. If the vehicle or driver is  
876 found to be operating in an unsafe condition, or if any required  
877 part or equipment is not present or is not in proper repair or  
878 adjustment, and the continued operation would present an unduly  
879 hazardous operating condition, the officer may require the  
880 vehicle or the driver to be removed from service pursuant to the  
881 North American Standard ~~Uniform~~ Out-of-Service Criteria, until  
882 corrected. However, if continuous operation would not present an  
883 unduly hazardous operating condition, the officer may give  
884 written notice requiring correction of the condition within 14  
885 days.

886           (a) Any member of the Florida Highway Patrol or any law  
887 enforcement officer employed by a sheriff's office or municipal  
888 police department authorized to enforce the traffic laws of this  
889 state pursuant to s. 316.640 who has reason to believe that a  
890 vehicle or driver is operating in an unsafe condition may, as  
891 provided in subsection (10), enforce the provisions of this  
892 section.

893           (b) Any person who fails to comply with an officer's  
894 request to submit to an inspection under this subsection commits  
895 a violation of s. 843.02 if the person resists the officer  
896 without violence or a violation of s. 843.01 if the person



897 | resists the officer with violence.

898 | Section 11. Subsection (2) of section 316.613, Florida  
899 | Statutes, is amended to read:

900 | 316.613 Child restraint requirements.--

901 | (2) As used in this section, the term "motor vehicle"  
902 | means a motor vehicle as defined in s. 316.003 which ~~that~~ is  
903 | operated on the roadways, streets, and highways of the state.

904 | The term does not include:

905 | (a) A school bus as defined in s. 316.003(45).

906 | (b) A bus used for the transportation of persons for  
907 | compensation, other than a bus regularly used to transport  
908 | children to or from school, as defined in s. 316.615(1) (b), or  
909 | in conjunction with school activities.

910 | (c) A farm tractor or implement of husbandry.

911 | (d) A truck having a gross vehicle weight rating of more  
912 | than 26,000 ~~of net weight of more than 5,000~~ pounds.

913 | (e) A motorcycle, moped, or bicycle.

914 | Section 12. Paragraph (a) of subsection (3) of section  
915 | 316.614, Florida Statutes, is amended to read:

916 | 316.614 Safety belt usage.--

917 | (3) As used in this section:

918 | (a) "Motor vehicle" means a motor vehicle as defined in s.  
919 | 316.003 which ~~that~~ is operated on the roadways, streets, and  
920 | highways of this state. The term does not include:

921 | 1. A school bus.

922 | 2. A bus used for the transportation of persons for  
923 | compensation.

924 | 3. A farm tractor or implement of husbandry.

925 4. A truck having a gross vehicle weight rating of more  
 926 than 26,000 ~~of a net weight of more than 5,000~~ pounds.

927 5. A motorcycle, moped, or bicycle.

928 Section 13. Paragraph (a) of subsection (2) of section  
 929 316.656, Florida Statutes, is amended to read:

930 316.656 Mandatory adjudication; prohibition against  
 931 accepting plea to lesser included offense.--

932 (2)(a) No trial judge may accept a plea of guilty to a  
 933 lesser offense from a person charged under the provisions of  
 934 this act who has been given a breath or blood test to determine  
 935 blood or breath alcohol content, the results of which show a  
 936 blood or breath alcohol content by weight of 0.15 ~~0.20~~ percent  
 937 or more.

938 Section 14. Subsection (7) of section 318.18, Florida  
 939 Statutes, is amended to read:

940 318.18 Amount of penalties.--The penalties required for a  
 941 noncriminal disposition pursuant to s. 318.14 or a criminal  
 942 offense listed in s. 318.17 are as follows:

943 (7) Mandatory \$100 fine for each violation of s. 316.1001  
 944 plus the amount of the unpaid toll shown on the traffic citation  
 945 for each citation issued. The clerk of the court shall forward  
 946 \$25 of the \$100 fine received, plus the amount of the unpaid  
 947 toll that is shown on the citation, to the governmental entity  
 948 that issued the citation, or on whose behalf the citation was  
 949 issued. If a plea arrangement is reached prior to the date set  
 950 for a scheduled evidentiary hearing and adjudication is  
 951 withheld, there shall be a mandatory fine assessed per citation  
 952 of not less than \$50 and not more than \$100, plus the amount of

CS/CS/HB 1399

2008

953 the unpaid toll for each citation issued. The clerk of the court  
954 shall forward \$25 of the fine imposed plus the amount of the  
955 unpaid toll that is shown on the citation to the governmental  
956 entity that issued the citation or on whose behalf the citation  
957 was issued. The court shall have specific authority to  
958 consolidate issued citations for the same defendant for the  
959 purpose of sentencing and aggregate jurisdiction. In addition,  
960 the department shall suspend for 60 days the driver's license of  
961 a person who is convicted of 10 violations of s. 316.1001 within  
962 a 36-month period; however, the department shall not suspend the  
963 driver's license if, at the time of the violations, a valid and  
964 active SunPass account is registered to the vehicle identified  
965 in the citations. Any funds received by a governmental entity  
966 for this violation may be used for any lawful purpose related to  
967 the operation or maintenance of a toll facility.

968 Section 15. Effective July 1, 2008, subsection (1) of  
969 section 320.02, Florida Statutes, as amended by section 28 of  
970 chapter 2006-290, Laws of Florida, is amended to read:

971 320.02 Registration required; application for  
972 registration; forms.--

973 (1) Except as otherwise provided in this chapter, every  
974 owner or person in charge of a motor vehicle that is operated or  
975 driven on the roads of this state shall register the vehicle in  
976 this state. The owner or person in charge shall apply to the  
977 department or to its authorized agent for registration of each  
978 such vehicle on a form prescribed by the department. ~~Prior to~~  
979 ~~the original registration of a motorcycle, motor-driven cycle,~~  
980 ~~or moped, the owner, if a natural person, must present proof~~

CS/CS/HB 1399

2008

981 ~~that he or she has a valid motorcycle endorsement as required in~~  
 982 ~~chapter 322.~~ A registration is not required for any motor  
 983 vehicle that is not operated on the roads of this state during  
 984 the registration period.

985 Section 16. Section 322.64, Florida Statutes, is amended  
 986 to read:

987 322.64 Holder of commercial driver's license; persons  
 988 operating a commercial motor vehicle; driving with unlawful  
 989 blood-alcohol level; refusal to submit to breath, urine, or  
 990 blood test.--

991 (1) (a) A law enforcement officer or correctional officer  
 992 shall, on behalf of the department, disqualify from operating  
 993 any commercial motor vehicle a person who while operating or in  
 994 actual physical control of a commercial motor vehicle is  
 995 arrested for a violation of s. 316.193, relating to unlawful  
 996 blood-alcohol level or breath-alcohol level, or a person who has  
 997 refused to submit to a breath, urine, or blood test authorized  
 998 by s. 322.63 arising out of the operation or actual physical  
 999 control of a commercial motor vehicle. A law enforcement officer  
 1000 or correctional officer shall, on behalf of the department,  
 1001 disqualify the holder of a commercial driver's license from  
 1002 operating any commercial motor vehicle if the licenseholder,  
 1003 while operating or in actual physical control of a motor  
 1004 vehicle, is arrested for a violation of s. 316.193, relating to  
 1005 unlawful blood-alcohol level or breath-alcohol level, or refused  
 1006 to submit to a breath, urine, or blood test authorized by s.  
 1007 322.63. Upon disqualification of the person, the officer shall  
 1008 take the person's driver's license and issue the person a 10-day

1009 temporary permit for the operation of noncommercial vehicles  
 1010 only if the person is otherwise eligible for the driving  
 1011 privilege and shall issue the person a notice of  
 1012 disqualification. If the person has been given a blood, breath,  
 1013 or urine test, the results of which are not available to the  
 1014 officer at the time of the arrest, the agency employing the  
 1015 officer shall transmit such results to the department within 5  
 1016 days after receipt of the results. If the department then  
 1017 determines that the person ~~was arrested for a violation of s.~~  
 1018 ~~316.193 and that the person~~ had a blood-alcohol level or breath-  
 1019 alcohol level of 0.08 or higher, the department shall disqualify  
 1020 the person from operating a commercial motor vehicle pursuant to  
 1021 subsection (3).

1022 (b) The disqualification under paragraph (a) shall be  
 1023 pursuant to, and the notice of disqualification shall inform the  
 1024 driver of, the following:

1025 1.a. The driver refused to submit to a lawful breath,  
 1026 blood, or urine test and he or she is disqualified from  
 1027 operating a commercial motor vehicle for a period of 1 year, for  
 1028 a first refusal, or permanently, if he or she has previously  
 1029 been disqualified as a result of a refusal to submit to such a  
 1030 test; or

1031 b. The driver was driving or in actual physical control of  
 1032 a commercial motor vehicle, or any motor vehicle if the driver  
 1033 holds a commercial driver's license, had an unlawful blood-  
 1034 alcohol level or breath-alcohol level of 0.08 or higher, and his  
 1035 or her driving privilege shall be disqualified for a period of 1  
 1036 year for a first offense or permanently disqualified if his or

1037 her driving privilege has been previously disqualified under  
1038 this section. ~~violated s. 316.193 by driving with an unlawful~~  
1039 ~~blood-alcohol level and he or she is disqualified from operating~~  
1040 ~~a commercial motor vehicle for a period of 6 months for a first~~  
1041 ~~offense or for a period of 1 year if he or she has previously~~  
1042 ~~been disqualified, or his or her driving privilege has been~~  
1043 ~~previously suspended, for a violation of s. 316.193.~~

1044 2. The disqualification period for operating commercial  
1045 vehicles shall commence on the date of ~~arrest or~~ issuance of the  
1046 notice of disqualification, ~~whichever is later.~~

1047 3. The driver may request a formal or informal review of  
1048 the disqualification by the department within 10 days after the  
1049 date of ~~arrest or~~ issuance of the notice of disqualification,  
1050 ~~whichever is later.~~

1051 4. The temporary permit issued at the time of ~~arrest or~~  
1052 disqualification expires ~~will expire~~ at midnight of the 10th day  
1053 following the date of disqualification.

1054 5. The driver may submit to the department any materials  
1055 relevant to the disqualification ~~arrest.~~

1056 (2) Except as provided in paragraph (1)(a), the law  
1057 enforcement officer shall forward to the department, within 5  
1058 days after the date of the ~~arrest or the~~ issuance of the notice  
1059 of disqualification, ~~whichever is later,~~ a copy of the notice of  
1060 disqualification, the driver's license of the person  
1061 disqualified ~~arrested,~~ and a ~~report of the arrest, including, if~~  
1062 ~~applicable,~~ an affidavit stating the officer's grounds for  
1063 belief that the person disqualified ~~arrested~~ was operating or in  
1064 actual physical control of a commercial motor vehicle, or holds

1065 a commercial driver's license, and had an unlawful blood-alcohol  
 1066 or breath-alcohol level in violation of s. 316.193; the results  
 1067 of any breath or blood or urine test or an affidavit stating  
 1068 that a breath, blood, or urine test was requested by a law  
 1069 enforcement officer or correctional officer and that the person  
 1070 arrested refused to submit; a copy of the notice of  
 1071 disqualification ~~citation~~ issued to the person ~~arrested~~; and the  
 1072 officer's description of the person's field sobriety test, if  
 1073 any. The failure of the officer to submit materials within the  
 1074 5-day period specified in this subsection or subsection (1) does  
 1075 ~~shall~~ not affect the department's ability to consider any  
 1076 evidence submitted at or prior to the hearing. The officer may  
 1077 also submit a copy of a videotape of the field sobriety test or  
 1078 the attempt to administer such test and a copy of the crash  
 1079 report, if any.

1080 (3) If the department determines that the person arrested  
 1081 should be disqualified from operating a commercial motor vehicle  
 1082 pursuant to this section and if the notice of disqualification  
 1083 has not already been served upon the person by a law enforcement  
 1084 officer or correctional officer as provided in subsection (1),  
 1085 the department shall issue a notice of disqualification and,  
 1086 unless the notice is mailed pursuant to s. 322.251, a temporary  
 1087 permit which expires 10 days after the date of issuance if the  
 1088 driver is otherwise eligible.

1089 (4) If the person disqualified ~~arrested~~ requests an  
 1090 informal review pursuant to subparagraph (1)(b)3., the  
 1091 department shall conduct the informal review by a hearing  
 1092 officer employed by the department. Such informal review hearing

1093 shall consist solely of an examination by the department of the  
1094 materials submitted by a law enforcement officer or correctional  
1095 officer and by the person disqualified ~~arrested~~, and the  
1096 presence of an officer or witness is not required.

1097 (5) After completion of the informal review, notice of the  
1098 department's decision sustaining, amending, or invalidating the  
1099 disqualification must be provided to the person. Such notice  
1100 must be mailed to the person at the last known address shown on  
1101 the department's records, and to the address provided in the law  
1102 enforcement officer's report if such address differs from the  
1103 address of record, within 21 days after the expiration of the  
1104 temporary permit issued pursuant to subsection (1) or subsection  
1105 (3).

1106 (6) (a) If the person disqualified ~~arrested~~ requests a  
1107 formal review, the department must schedule a hearing to be held  
1108 within 30 days after such request is received by the department  
1109 and must notify the person of the date, time, and place of the  
1110 hearing.

1111 (b) Such formal review hearing shall be held before a  
1112 hearing officer employed by the department, and the hearing  
1113 officer shall be authorized to administer oaths, examine  
1114 witnesses and take testimony, receive relevant evidence, issue  
1115 subpoenas for the officers and witnesses identified in documents  
1116 as provided in subsection (2), regulate the course and conduct  
1117 of the hearing, and make a ruling on the disqualification. The  
1118 department and the person disqualified ~~arrested~~ may subpoena  
1119 witnesses, and the party requesting the presence of a witness  
1120 shall be responsible for the payment of any witness fees. If the



1121 person who requests a formal review hearing fails to appear and  
 1122 the hearing officer finds such failure to be without just cause,  
 1123 the right to a formal hearing is waived ~~and the department shall~~  
 1124 ~~conduct an informal review of the disqualification under~~  
 1125 ~~subsection (4).~~

1126 (c) A party may seek enforcement of a subpoena under  
 1127 paragraph (b) by filing a petition for enforcement in the  
 1128 circuit court of the judicial circuit in which the person  
 1129 failing to comply with the subpoena resides. A failure to comply  
 1130 with an order of the court shall result in a finding of contempt  
 1131 of court. However, a person shall not be in contempt while a  
 1132 subpoena is being challenged.

1133 (d) The department must, within 7 days after a formal  
 1134 review hearing, send notice to the person of the hearing  
 1135 officer's decision as to whether sufficient cause exists to  
 1136 sustain, amend, or invalidate the disqualification.

1137 (7) In a formal review hearing under subsection (6) or an  
 1138 informal review hearing under subsection (4), the hearing  
 1139 officer shall determine by a preponderance of the evidence  
 1140 whether sufficient cause exists to sustain, amend, or invalidate  
 1141 the disqualification. The scope of the review shall be limited  
 1142 to the following issues:

1143 (a) If the person was disqualified from operating a  
 1144 commercial motor vehicle for driving with an unlawful blood-  
 1145 alcohol level ~~in violation of s. 316.193:~~

1146 1. Whether the arresting law enforcement officer had  
 1147 probable cause to believe that the person was driving or in  
 1148 actual physical control of a commercial motor vehicle, or any

1149 motor vehicle if the driver holds a commercial driver's license,  
 1150 in this state while he or she had any alcohol, chemical  
 1151 substances, or controlled substances in his or her body.

1152 ~~2. Whether the person was placed under lawful arrest for a~~  
 1153 ~~violation of s. 316.193.~~

1154 ~~2.3.~~ Whether the person had an unlawful blood-alcohol  
 1155 level or breath-alcohol level of 0.08 or higher ~~as provided in~~  
 1156 ~~s. 316.193.~~

1157 (b) If the person was disqualified from operating a  
 1158 commercial motor vehicle for refusal to submit to a breath,  
 1159 blood, or urine test:

1160 1. Whether the law enforcement officer had probable cause  
 1161 to believe that the person was driving or in actual physical  
 1162 control of a commercial motor vehicle, or any motor vehicle if  
 1163 the driver holds a commercial driver's license, in this state  
 1164 while he or she had any alcohol, chemical substances, or  
 1165 controlled substances in his or her body.

1166 2. Whether the person refused to submit to the test after  
 1167 being requested to do so by a law enforcement officer or  
 1168 correctional officer.

1169 3. Whether the person was told that if he or she refused  
 1170 to submit to such test he or she would be disqualified from  
 1171 operating a commercial motor vehicle for a period of 1 year or,  
 1172 in the case of a second refusal, permanently.

1173 (8) Based on the determination of the hearing officer  
 1174 pursuant to subsection (7) for both informal hearings under  
 1175 subsection (4) and formal hearings under subsection (6), the  
 1176 department shall:

CS/CS/HB 1399

2008

1177 (a) Sustain the disqualification for a period of 1 year  
 1178 for a first refusal, or permanently if such person has been  
 1179 previously disqualified from operating a commercial motor  
 1180 vehicle as a result of a refusal to submit to such tests. The  
 1181 disqualification period commences on the date of the arrest or  
 1182 issuance of the notice of disqualification, whichever is later.

1183 (b) Sustain the disqualification:

1184 1. For a period of 1 year if the person was driving or in  
 1185 actual physical control of a commercial motor vehicle, or any  
 1186 motor vehicle if the driver holds a commercial driver's license,  
 1187 and had an unlawful blood-alcohol level or breath-alcohol level  
 1188 of 0.08 or higher; or ~~6 months for a violation of s. 316.193 or~~  
 1189 ~~for a period of 1 year~~

1190 2. Permanently if the person has been previously  
 1191 disqualified from operating a commercial motor vehicle or his or  
 1192 her driving privilege has been previously suspended for driving  
 1193 or being in actual physical control of a commercial motor  
 1194 vehicle, or any motor vehicle if the driver holds a commercial  
 1195 driver's license, and had an unlawful blood-alcohol level or  
 1196 breath-alcohol level of 0.08 or higher as a result of a  
 1197 violation of s. ~~316.193.~~

1198  
 1199 The disqualification period commences on the date of the arrest  
 1200 or issuance of the notice of disqualification, ~~whichever is~~  
 1201 ~~later.~~

1202 (9) A request for a formal review hearing or an informal  
 1203 review hearing shall not stay the disqualification. If the  
 1204 department fails to schedule the formal review hearing to be

1205 held within 30 days after receipt of the request therefor, the  
 1206 department shall invalidate the disqualification. If the  
 1207 scheduled hearing is continued at the department's initiative,  
 1208 the department shall issue a temporary driving permit limited to  
 1209 noncommercial vehicles which is ~~shall be~~ valid until the hearing  
 1210 is conducted if the person is otherwise eligible for the driving  
 1211 privilege. Such permit shall not be issued to a person who  
 1212 sought and obtained a continuance of the hearing. The permit  
 1213 issued under this subsection shall authorize driving for  
 1214 business purposes ~~or employment~~ use only.

1215 (10) A person who is disqualified from operating a  
 1216 commercial motor vehicle under subsection (1) or subsection (3)  
 1217 is eligible for issuance of a license for business or employment  
 1218 purposes only under s. 322.271 if the person is otherwise  
 1219 eligible for the driving privilege. However, such business or  
 1220 employment purposes license shall not authorize the driver to  
 1221 operate a commercial motor vehicle.

1222 (11) The formal review hearing may be conducted upon a  
 1223 review of the reports of a law enforcement officer or a  
 1224 correctional officer, including documents relating to the  
 1225 administration of a breath test or blood test or the refusal to  
 1226 take either test. However, as provided in subsection (6), the  
 1227 driver may subpoena the officer or any person who administered  
 1228 or analyzed a breath or blood test.

1229 (12) The formal review hearing and the informal review  
 1230 hearing are exempt from the provisions of chapter 120. The  
 1231 department is authorized to adopt rules for the conduct of  
 1232 reviews under this section.

1233 (13) A person may appeal any decision of the department  
 1234 sustaining the disqualification from operating a commercial  
 1235 motor vehicle by a petition for writ of certiorari to the  
 1236 circuit court in the county wherein such person resides or  
 1237 wherein a formal or informal review was conducted pursuant to s.  
 1238 322.31. However, an appeal shall not stay the disqualification.  
 1239 This subsection shall not be construed to provide for a de novo  
 1240 appeal.

1241 (14) The decision of the department under this section  
 1242 shall not be considered in any trial for a violation of s.  
 1243 316.193, s. 322.61, or s. 322.62, nor shall any written  
 1244 statement submitted by a person in his or her request for  
 1245 departmental review under this section be admissible into  
 1246 evidence against him or her in any such trial. The disposition  
 1247 of any related criminal proceedings shall not affect a  
 1248 disqualification imposed pursuant to this section.

1249 (15) This section does not preclude the suspension of the  
 1250 driving privilege pursuant to s. 322.2615. The driving privilege  
 1251 of a person who has been disqualified from operating a  
 1252 commercial motor vehicle also may be suspended for a violation  
 1253 of s. 316.193.

1254 Section 17. Notwithstanding any law to the contrary, a  
 1255 county, municipality, or special district may not own or operate  
 1256 an asphalt plant or a portable or stationary concrete batch  
 1257 plant having an independent mixer; however, this prohibition  
 1258 does not apply to any county that owns or is under contract to  
 1259 purchase an asphalt plant as of April 15, 2008, and that  
 1260 furnishes its plant-generated asphalt solely for use by local

1261 governments or company's under contract with local governments  
 1262 for projects within the boundaries of such county. Sale of plant  
 1263 generated asphalt to private entities or local governments  
 1264 outside the boundaries of such county is prohibited.

1265 Section 18. Subsection (16) of section 344.044, Florida  
 1266 Statutes, is amended, and subsection (34) is added to that  
 1267 section, to read:

1268 334.044 Department; powers and duties.--The department  
 1269 shall have the following general powers and duties:

1270 (16) To plan, acquire, lease, construct, maintain, and  
 1271 operate toll facilities; to authorize the issuance and refunding  
 1272 of bonds; and to establish ~~fix~~ and collect tolls, variable rate  
 1273 tolls, or other charges for travel on any such facilities.

1274 (34) To maintain training programs for department  
 1275 employees and prospective employees who are graduates from an  
 1276 approved engineering curriculum of 4 years or more in a school,  
 1277 college, or university approved by the Board of Professional  
 1278 Engineers to provide broad practical expertise in the field of  
 1279 transportation engineering leading to licensure as a  
 1280 professional engineer. The department shall maintain training  
 1281 programs for department employees to provide broad practical  
 1282 experience and enhanced knowledge in the areas of right-of-way  
 1283 property management, real estate appraisal, and business  
 1284 valuation relating to department right-of-way acquisition  
 1285 activities. These training programs may provide for incremental  
 1286 increases to base salary for all employees enrolled in the  
 1287 programs upon successful completion of training phases.

1288 Section 19. Subsection (2) and paragraph (g) of subsection

1289 (5) of section 337.0261, Florida Statutes, are amended, and  
 1290 subsection (6) is added to that section, to read:

1291 337.0261 Construction aggregate materials.--

1292 (2) LEGISLATIVE INTENT.--The Legislature finds that there  
 1293 is a strategic and critical need for an available supply of  
 1294 construction aggregate materials within the state and that a  
 1295 disruption of the supply would cause a significant detriment to  
 1296 the state's construction industry, transportation system, and  
 1297 overall health, safety, and welfare. The Legislature further  
 1298 finds:

1299 (a) Construction aggregate materials are a finite natural  
 1300 resource.

1301 (b) Construction aggregate materials mining is an industry  
 1302 of critical importance to the state and is therefore in the  
 1303 public interest.

1304 (c) There is a need for a reliable, predictable, and  
 1305 sustainable supply of construction aggregate materials so that  
 1306 public and private construction is maintained without  
 1307 interruption.

1308 (d) There are a limited number of aggregate resource  
 1309 counties within the State where aggregate and sand resources  
 1310 exist.

1311 (5) STRATEGIC AGGREGATES REVIEW TASK FORCE.--

1312 (g) The task force shall be dissolved on March ~~July~~ 1,  
 1313 2010 ~~2008~~.

1314 (6) STRATEGIC AGGREGATE RESOURCE ASSESSMENT (SARA).--

1315 (a) The department shall organize and provide  
 1316 administrative support in the preparation of the strategic

1317 aggregate resource assessment. The department, in consultation  
1318 with the Department of Environmental Protection, the Department  
1319 of Community Affairs, the regional planning councils, shall work  
1320 with local governments in the preparation of the strategic  
1321 aggregate resource assessment.

1322 1. For construction aggregate materials the strategic  
1323 aggregate resource assessment shall:

1324 a. Identify and map areas where construction aggregate  
1325 materials deposits are located in the state.

1326 b. Identify and superimpose on the aggregate map a high to  
1327 low quality grading classification to identify the areas that  
1328 contain the materials needed for road building and repair.

1329 c. Identify and superimpose on the aggregate map the areas  
1330 of natural resources subject to federal or state permitting  
1331 requirements in order to identify any potential conflicts  
1332 between the location of geologically valuable resources and  
1333 natural land and water resources.

1334 d. Identify and superimpose on the aggregate map the areas  
1335 of existing future land use elements of local comprehensive  
1336 plans and local zoning regulations in order to identify with  
1337 natural resources and existing communities and any potential  
1338 conflicts between the areas where growth and development is  
1339 planned or placed adjacent to or over deposits of construction  
1340 aggregate materials.

1341 e. Provide a projection of 5-year, 25-year, and 50-year  
1342 demand for aggregate.

1343 f. Provide an estimate of volume of aggregate available  
1344 from already permitted mines to meet demand projections.



1345 g. Identify the availability and estimate the volume of  
1346 alternative material, including recycled and reused construction  
1347 aggregate, which may substitute for construction aggregate.

1348 h. Identify international and out-of-state construction  
1349 aggregate materials available to meet demand projections.

1350 2. For infrastructure the strategic aggregate resource  
1351 assessment shall:

1352 a. Provide a rating structure assessing the ability to  
1353 mine the deposits in an economic manner, taking into account the  
1354 proximity of the materials to the available markets, the  
1355 thickness of overburden, and the quantity and quality of the  
1356 materials. In assessing the economic viability of a geologic  
1357 deposit the strategic aggregate resource assessment shall take  
1358 into account the proximity to rail and port facilities where  
1359 similar or replacement products can be imported at a lower cost  
1360 than producing them locally.

1361 b. Identify the current and potential capacity of  
1362 construction aggregate material imports into the state utilizing  
1363 current and planned rail, connecting roadways, and port  
1364 infrastructure.

1365 3. In addition to the information gathered in  
1366 subparagraphs 1. and 2., for each of the six "Materials Resource  
1367 Planning Areas" identified in the Department of Transportation  
1368 report titled, "Strategic Aggregates Study: Sources,  
1369 Constraints, and Economic Value of Limestone and Sand in  
1370 Florida," dated February 2007, the strategic aggregate resource  
1371 assessment shall:

1372 a. Provide a summary of all regional and local regulatory

1373 jurisdictions impacting the approval of mining, including, but  
1374 not limited to, county, municipal, and special district  
1375 regulations.

1376 b. Provide a description of federal, state, and local  
1377 environmental regulatory issues impacting access to construction  
1378 aggregate reserves.

1379 c. Identify and map rare, threatened, or endangered  
1380 habitats, water resources, and other natural resources subject  
1381 to federal, state, and local protection or regulation.

1382 d. Identify local transportation infrastructure issues  
1383 impacting the distribution of aggregate materials, including  
1384 level of service and quality of roads, rail access, and, as  
1385 appropriate, port capacity and access.

1386 e. Identify alternatives for when the local construction  
1387 mining aggregate supply is exhausted.

1388 (b) The strategic aggregate resource assessment shall be  
1389 updated every 5 years and be included as part of the Florida  
1390 Transportation Plan.

1391 (c) The Strategic Aggregate Review Task Force shall  
1392 prepare the findings of the strategic aggregate resource  
1393 assessment in an initial report submitted to the Governor, the  
1394 President of the Senate, and the Speaker of the House of  
1395 Representatives no later than February 1, 2010. Subsequent  
1396 reports shall be submitted by department on February 1 following  
1397 each 5-year strategic aggregate resource assessment update.

1398 (d) Information acquired by means of the strategic  
1399 aggregate resource assessment may be submitted by willing land  
1400 owners to the Florida Geological Survey for inclusion in the

1401 state data repository. Proprietary or business information  
 1402 submitted to or acquired by the Florida Geological Survey shall  
 1403 be maintained in an electronic database under the control of the  
 1404 Florida Geological Survey and protected as trade secrets  
 1405 pursuant to s. 815.045.

1406 (e) The department is authorized to adopt rules pursuant  
 1407 to ss. 120.536(1) and 120.54 to administer this section and in  
 1408 the preparation of the strategic aggregate resource assessment.

1409 (f) There is appropriated from the State Transportation  
 1410 Trust Fund, for fiscal year 2008-2009 only, the sum of \$700,000,  
 1411 which shall require a 50-percent nonstate match, to be used for  
 1412 the purposes of this subsection.

1413 Section 20. Subsections (8) through (15) of section  
 1414 337.11, Florida Statutes, are renumbered as subsections (9)  
 1415 through (16), respectively, present subsection (7) is renumbered  
 1416 as subsection (8) and amended, and a new subsection (7) is added  
 1417 to that section, to read:

1418 337.11 Contracting authority of department; bids;  
 1419 emergency repairs, supplemental agreements, and change orders;  
 1420 combined design and construction contracts; progress payments;  
 1421 records; requirements of vehicle registration.--

1422 (7) If the department determines that it is in the best  
 1423 interest of the public, the department may pay a stipend to  
 1424 unsuccessful firms who have submitted responsive proposals for  
 1425 construction or maintenance contracts. The decision and amount  
 1426 of a stipend will be based upon department analysis of the  
 1427 estimated proposal development costs and the anticipated degree  
 1428 of competition during the procurement process. Stipends shall be

1429 used to encourage competition and compensate unsuccessful firms  
 1430 for a portion of their proposal development costs. The  
 1431 department shall retain the right to use ideas from unsuccessful  
 1432 firms that accept a stipend.

1433 ~~(8)(7)~~(a) If ~~the head of~~ the department determines that it  
 1434 is in the best interests of the public, the department may  
 1435 combine the design and construction phases of a building, a  
 1436 major bridge, a limited access facility, or a rail corridor  
 1437 project into a single contract. Such contract is referred to as  
 1438 a design-build contract. The department shall advertise for bid  
 1439 a minimum of 25 percent of the construction contracts which add  
 1440 capacity in the 5-year adopted work program as design-build  
 1441 contracts. Design-build contracts may be advertised and awarded  
 1442 notwithstanding the requirements of paragraph (3)(c). However,  
 1443 construction activities may not begin on any portion of such  
 1444 projects for which the department has not yet obtained title to  
 1445 the necessary rights-of-way and easements for the construction  
 1446 of that portion of the project has vested in the state or a  
 1447 local governmental entity and all railroad crossing and utility  
 1448 agreements have been executed. Title to rights-of-way shall be  
 1449 deemed to have vested in the state when the title has been  
 1450 dedicated to the public or acquired by prescription.

1451 (b) The department shall adopt by rule procedures for  
 1452 administering design-build contracts. Such procedures shall  
 1453 include, but not be limited to:

- 1454 1. Prequalification requirements.
- 1455 2. Public announcement procedures.
- 1456 3. Scope of service requirements.

- 1457 4. Letters of interest requirements.
- 1458 5. Short-listing criteria and procedures.
- 1459 6. Bid proposal requirements.
- 1460 7. Technical review committee.
- 1461 8. Selection and award processes.
- 1462 9. Stipend requirements.

1463 (c) The department must receive at least three letters of  
 1464 interest in order to proceed with a request for proposals. The  
 1465 department shall request proposals from no fewer than three of  
 1466 the design-build firms submitting letters of interest. If a  
 1467 design-build firm withdraws from consideration after the  
 1468 department requests proposals, the department may continue if at  
 1469 least two proposals are received.

1470 Section 21. Subsection (7) of section 337.14, Florida  
 1471 Statutes, is amended to read:

1472 337.14 Application for qualification; certificate of  
 1473 qualification; restrictions; request for hearing.--

1474 (7) No "contractor" as defined in s. 337.165(1)(d) or his  
 1475 or her "affiliate" as defined in s. 337.165(1)(a) qualified with  
 1476 the department under this section may also qualify under s.  
 1477 287.055 or s. 337.105 to provide testing services, construction,  
 1478 engineering, and inspection services to the department. This  
 1479 limitation shall not apply to any design-build prequalification  
 1480 under s. 337.11(8)~~(7)~~.

1481 Section 22. Paragraph (a) of subsection (2) of section  
 1482 337.16, Florida Statutes, is amended to read:

1483 337.16 Disqualification of delinquent contractors from  
 1484 bidding; determination of contractor nonresponsibility; denial,

1485 suspension, and revocation of certificates of qualification;  
 1486 grounds; hearing.--

1487 (2) For reasons other than delinquency in progress, the  
 1488 department, for good cause, may determine any contractor not  
 1489 having a certificate of qualification nonresponsible for a  
 1490 specified period of time or may deny, suspend, or revoke any  
 1491 certificate of qualification. Good cause includes, but is not  
 1492 limited to, circumstances in which a contractor or the  
 1493 contractor's official representative:

1494 (a) Makes or submits to the department false, deceptive,  
 1495 or fraudulent statements or materials in any bid proposal to the  
 1496 department, any application for a certificate of qualification,  
 1497 any certification of payment pursuant to s. 337.11~~(11)~~~~(10)~~, or  
 1498 any administrative or judicial proceeding;

1499 Section 23. Paragraph (b) of subsection (1) of section  
 1500 337.18 is amended to read:

1501 337.18 Surety bonds for construction or maintenance  
 1502 contracts; requirement with respect to contract award; bond  
 1503 requirements; defaults; damage assessments.--

1504 (1)

1505 (b) Prior to beginning any work under the contract, the  
 1506 contractor shall maintain a copy of the payment and performance  
 1507 bond required under this section at its principal place of  
 1508 business and at the jobsite office, if one is established, and  
 1509 the contractor shall provide a copy of the payment and  
 1510 performance bond within 5 days after receipt of any written  
 1511 request therefor. A copy of the payment and performance bond  
 1512 required under this section may also be obtained directly from

1513 the department via a request made pursuant to chapter 119. ~~Upon~~  
 1514 ~~execution of the contract, and prior to beginning any work under~~  
 1515 ~~the contract, the contractor shall record in the public records~~  
 1516 ~~of the county where the improvement is located the payment and~~  
 1517 ~~performance bond required under this section.~~ A claimant shall  
 1518 have a right of action against the contractor and surety for the  
 1519 amount due him or her, including unpaid finance charges due  
 1520 under the claimant's contract. Such action shall not involve the  
 1521 department in any expense.

1522 Section 24. Subsections (1), (2), and (7) of section  
 1523 337.185, Florida Statutes, are amended to read:

1524 337.185 State Arbitration Board.--

1525 (1) To facilitate the prompt settlement of claims for  
 1526 additional compensation arising out of construction and  
 1527 maintenance contracts between the department and the various  
 1528 contractors with whom it transacts business, the Legislature  
 1529 does hereby establish the State Arbitration Board, referred to  
 1530 in this section as the "board." For the purpose of this section,  
 1531 "claim" shall mean the aggregate of all outstanding claims by a  
 1532 party arising out of a construction or maintenance contract.  
 1533 Every contractual claim in an amount up to \$250,000 per contract  
 1534 or, at the claimant's option, up to \$500,000 per contract or,  
 1535 upon agreement of the parties, up to \$1 million per contract  
 1536 that cannot be resolved by negotiation between the department  
 1537 and the contractor shall be arbitrated by the board after  
 1538 acceptance of the project by the department. As an exception,  
 1539 either party to the dispute may request that the claim be  
 1540 submitted to binding private arbitration. A court of law may not

CS/CS/HB 1399

2008

1541 consider the settlement of such a claim until the process  
1542 established by this section has been exhausted.

1543 (2) The board shall be composed of three members. One  
1544 member shall be appointed by the head of the department, and one  
1545 member shall be elected by those construction or maintenance  
1546 companies who are under contract with the department. The third  
1547 member shall be chosen by agreement of the other two members.  
1548 Whenever the third member has a conflict of interest regarding  
1549 affiliation with one of the parties, the other two members shall  
1550 select an alternate member for that hearing. The head of the  
1551 department may select an alternative or substitute to serve as  
1552 the department member for any hearing or term. Each member shall  
1553 serve a 2-year term. The board shall elect a chair, each term,  
1554 who shall be the administrator of the board and custodian of its  
1555 records.

1556 (7) The members of the board may receive compensation for  
1557 the performance of their duties hereunder, from administrative  
1558 fees received by the board, except that no employee of the  
1559 department may receive compensation from the board. The  
1560 compensation amount shall be determined by the board, but shall  
1561 not exceed \$125 per hour, up to a maximum of \$1,000 per day for  
1562 each member authorized to receive compensation. Nothing in this  
1563 section shall prevent the member elected by construction or  
1564 maintenance companies from being an employee of an association  
1565 affiliated with the industry, even if the sole responsibility of  
1566 that member is service on the board. Travel expenses for the  
1567 industry member may be paid by an industry association, if  
1568 necessary. The board may allocate funds annually for clerical



1569 and other administrative services.

1570 Section 25. Subsection (1) of section 337.403, Florida  
 1571 Statutes, is amended to read:

1572 337.403 Relocation of utility; expenses.--

1573 (1) Any utility heretofore or hereafter placed upon,  
 1574 under, over, or along any public road or publicly owned rail  
 1575 corridor that is found by the authority to be unreasonably  
 1576 interfering in any way with the convenient, safe, or continuous  
 1577 use, or the maintenance, improvement, extension, or expansion,  
 1578 of such public road or publicly owned rail corridor shall, upon  
 1579 30 days' written notice to the utility or its agent by the  
 1580 authority, be removed or relocated by such utility at its own  
 1581 expense except as provided in paragraphs (a)-(f) ~~(a), (b), and~~  
 1582 ~~(e)~~.

1583 (a) If the relocation of utility facilities, as referred  
 1584 to in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.  
 1585 627 of the 84th Congress, is necessitated by the construction of  
 1586 a project on the federal-aid interstate system, including  
 1587 extensions thereof within urban areas, and the cost of such  
 1588 project is eligible and approved for reimbursement by the  
 1589 Federal Government to the extent of 90 percent or more under the  
 1590 Federal Aid Highway Act, or any amendment thereof, then in that  
 1591 event the utility owning or operating such facilities shall  
 1592 relocate such facilities upon order of the department, and the  
 1593 state shall pay the entire expense properly attributable to such  
 1594 relocation after deducting therefrom any increase in the value  
 1595 of the new facility and any salvage value derived from the old  
 1596 facility.

1597 (b) When a joint agreement between the department and the  
 1598 utility is executed for utility improvement, relocation, or  
 1599 removal work to be accomplished as part of a contract for  
 1600 construction of a transportation facility, the department may  
 1601 participate in those utility improvement, relocation, or removal  
 1602 costs that exceed the department's official estimate of the cost  
 1603 of such work by more than 10 percent. The amount of such  
 1604 participation shall be limited to the difference between the  
 1605 official estimate of all the work in the joint agreement plus 10  
 1606 percent and the amount awarded for this work in the construction  
 1607 contract for such work. The department may not participate in  
 1608 any utility improvement, relocation, or removal costs that occur  
 1609 as a result of changes or additions during the course of the  
 1610 contract.

1611 (c) When an agreement between the department and utility  
 1612 is executed for utility improvement, relocation, or removal work  
 1613 to be accomplished in advance of a contract for construction of  
 1614 a transportation facility, the department may participate in the  
 1615 cost of clearing and grubbing necessary to perform such work.

1616 (d) If the utility facility being removed or relocated was  
 1617 initially installed to exclusively serve the department, its  
 1618 tenants, or both the department and its tenants, the department  
 1619 shall bear the costs of removal or relocation of that utility  
 1620 facility. The department shall not be responsible, however, for  
 1621 bearing the cost of removal or relocation of any subsequent  
 1622 additions to that facility for the purpose of serving others.

1623 (e) If, pursuant to an agreement between a utility and the  
 1624 authority entered into after the effective date of this

1625 subsection, the utility conveys, subordinates, or relinquishes a  
 1626 compensable property right to the authority for the purpose of  
 1627 accommodating the acquisition or use of the right-of-way by the  
 1628 authority, without the agreement expressly addressing future  
 1629 responsibility for cost of removal or relocation of the utility,  
 1630 then the authority shall bear the cost of such removal or  
 1631 relocation. Nothing in this paragraph is intended to impair or  
 1632 restrict, or be used to interpret, the terms of any such  
 1633 agreement entered into prior to the effective date of this  
 1634 paragraph.

1635 (f) If the utility is an electric facility being relocated  
 1636 underground in order to enhance vehicular, bicycle, and  
 1637 pedestrian safety and in which ownership of the electric  
 1638 facility to be placed underground has been transferred from a  
 1639 private to a public utility within the past 5 years, the  
 1640 department shall incur all costs of the relocation.

1641 Section 26. Subsections (4) and (5) of section 337.408,  
 1642 Florida Statutes, are amended, subsection (7) is renumbered as  
 1643 subsection (8), and a new subsection (7) is added to that  
 1644 section, to read:

1645 337.408 Regulation of benches, transit shelters, street  
 1646 light poles, waste disposal receptacles, and modular news racks  
 1647 within rights-of-way.--

1648 (4) The department has the authority to direct the  
 1649 immediate relocation or removal of any bench, transit shelter,  
 1650 waste disposal receptacle, public pay telephone, or modular news  
 1651 rack which endangers life or property, except that transit bus  
 1652 benches which have been placed in service prior to April 1,

CS/CS/HB 1399

2008

1653 1992, are not required to comply with bench size and advertising  
1654 display size requirements which have been established by the  
1655 department prior to March 1, 1992. Any transit bus bench that  
1656 was in service prior to April 1, 1992, may be replaced with a  
1657 bus bench of the same size or smaller, if the bench is damaged  
1658 or destroyed or otherwise becomes unusable. The department is  
1659 authorized to adopt rules relating to the regulation of bench  
1660 size and advertising display size requirements. If a  
1661 municipality or county within which a bench is to be located has  
1662 adopted an ordinance or other applicable regulation that  
1663 establishes bench size or advertising display sign requirements  
1664 different from requirements specified in department rule, the  
1665 local government requirement shall be applicable within the  
1666 respective municipality or county. Placement of any bench or  
1667 advertising display on the National Highway System under a local  
1668 ordinance or regulation adopted pursuant to this subsection  
1669 shall be subject to approval of the Federal Highway  
1670 Administration.

1671 (5) No bench, transit shelter, waste disposal receptacle,  
1672 public pay telephone, or modular news rack, or advertising  
1673 thereon, shall be erected or so placed on the right-of-way of  
1674 any road which conflicts with the requirements of federal law,  
1675 regulations, or safety standards, thereby causing the state or  
1676 any political subdivision the loss of federal funds. Competition  
1677 among persons seeking to provide bench, transit shelter, waste  
1678 disposal receptacle, or modular news rack services or  
1679 advertising on such benches, shelters, receptacles, or news  
1680 racks may be regulated, restricted, or denied by the appropriate

1681 local government entity consistent with the provisions of this  
 1682 section.

1683 (7) Public pay telephones, including advertising displayed  
 1684 thereon, may be installed within the right-of-way limits of any  
 1685 municipal, county, or state road, except on a limited access  
 1686 highway, provided that such pay telephones are installed by a  
 1687 provider duly authorized and regulated by the Public Service  
 1688 Commission pursuant to s. 364.3375, that such pay telephones are  
 1689 operated in accordance with all applicable state and federal  
 1690 telecommunications regulations, and that written authorization  
 1691 has been given to a public pay telephone provider by the  
 1692 appropriate municipal or county government. Each advertisement  
 1693 shall be limited to a size no greater than 8 square feet and no  
 1694 public pay telephone booth shall display more than 3 such  
 1695 advertisements at any given time. No advertisements shall be  
 1696 allowed on public pay telephones located in rest areas, welcome  
 1697 centers, and other such facilities located on an interstate  
 1698 highway.

1699 Section 27. Subsection (6) is added to section 338.01,  
 1700 Florida Statutes, to read:

1701 338.01 Authority to establish and regulate limited access  
 1702 facilities.--

1703 (6) All new limited access facilities and existing  
 1704 transportation facilities on which new or replacement electronic  
 1705 toll collection systems are installed shall be interoperable  
 1706 with the department's electronic toll collection system.

1707 Section 28. Subsections (7) and (8) of section 338.165,  
 1708 Florida Statutes, are renumbered as subsections (8) and (9),

CS/CS/HB 1399

2008

1709 respectively, subsections (2) and (4) are amended, and a new  
 1710 subsection (7) is added to that section, to read:

1711           338.165 Continuation of tolls.--

1712           (2) If the revenue-producing project is on the State  
 1713 Highway System, any remaining toll revenue shall be used within  
 1714 the county or counties in which the revenue-producing project is  
 1715 located for the construction, maintenance, or improvement of any  
 1716 road on the State Highway System or public transit ~~within the~~  
 1717 ~~county or counties in which the revenue producing project is~~  
 1718 ~~located~~, except as provided in s. 348.0004.

1719           (4) Notwithstanding any other law to the contrary,  
 1720 pursuant to s. 11, Art. VII of the State Constitution, and  
 1721 subject to the requirements of subsection (2), the Department of  
 1722 Transportation may request the Division of Bond Finance to issue  
 1723 bonds secured by toll revenues to be collected ~~on the Alligator~~  
 1724 ~~Alley, the Sunshine Skyway Bridge, the Beeline East Expressway,~~  
 1725 ~~the Navarre Bridge, and the Pinellas Bayway~~ to fund  
 1726 transportation projects located within the county or counties in  
 1727 which the project is located and contained in the adopted work  
 1728 program of the department.

1729           (7) This section does not apply to high-occupancy toll  
 1730 lanes or express lanes.

1731           Section 29. Paragraphs (d) and (e) are added to subsection  
 1732 (1) of section 338.2216, Florida Statutes, to read:

1733           338.2216 Florida Turnpike Enterprise; powers and  
 1734 authority.--

1735           (1)

1736           (d) The Florida Turnpike Enterprise is directed to pursue

CS/CS/HB 1399

2008

1737 and implement new technologies and processes in its operations  
1738 and collection of tolls and the collection of other amounts  
1739 associated with road and infrastructure usage. Such technologies  
1740 and processes shall include, without limitation, video billing  
1741 and variable pricing.

1742 (e)1. The Florida Turnpike Enterprise shall not under any  
1743 circumstances contract with any vendor for the retail sale of  
1744 fuel along the Florida Turnpike if such contract is negotiated  
1745 or bid together with any other contract, including, but not  
1746 limited to, the retail sale of food, maintenance services, or  
1747 construction, with the exception that any contract for the  
1748 retail sale of fuel along the Florida Turnpike shall be bid and  
1749 contracted together with the retail sale of food at any  
1750 convenience store attached to the fuel station.

1751 2. All contracts related to service plazas, including, but  
1752 not limited to, the sale of fuel, the retail sale of food,  
1753 maintenance services, or construction, except for services  
1754 provided as defined in s. 287.055(2)(a), awarded by the Florida  
1755 Turnpike Enterprise shall be procured through individual  
1756 competitive solicitations and awarded to the most cost-effective  
1757 responder. This paragraph does not prohibit the award of more  
1758 than one individual contract to a single vendor if he or she  
1759 submits the most cost-effective response.

1760 Section 30. Paragraph (b) of subsection (1) of section  
1761 338.223, Florida Statutes, is amended to read:

1762 338.223 Proposed turnpike projects.--

1763 (1)

1764 (b) Any proposed turnpike project or improvement shall be

1765 developed in accordance with the Florida Transportation Plan and  
 1766 the work program pursuant to s. 339.135. Turnpike projects that  
 1767 add capacity, alter access, affect feeder roads, or affect the  
 1768 operation of the local transportation system shall be included  
 1769 in the transportation improvement plan of the affected  
 1770 metropolitan planning organization. If such turnpike project  
 1771 does not fall within the jurisdiction of a metropolitan planning  
 1772 organization, the department shall notify the affected county  
 1773 and provide for public hearings in accordance with s.  
 1774 339.155 (5) ~~(6)~~ (c).

1775 Section 31. Section 338.231, Florida Statutes, is amended  
 1776 to read:

1777 338.231 Turnpike tolls, fixing; pledge of tolls and other  
 1778 revenues.--The department shall at all times fix, adjust,  
 1779 charge, and collect such tolls and amounts for the use of the  
 1780 turnpike system as are required in order to provide a fund  
 1781 sufficient with other revenues of the turnpike system to pay the  
 1782 cost of maintaining, improving, repairing, and operating such  
 1783 turnpike system; to pay the principal of and interest on all  
 1784 bonds issued to finance or refinance any portion of the turnpike  
 1785 system as the same become due and payable; and to create  
 1786 reserves for all such purposes.

1787 ~~(1) In the process of effectuating toll rate increases~~  
 1788 ~~over the period 1988 through 1992, the department shall, to the~~  
 1789 ~~maximum extent feasible, equalize the toll structure, within~~  
 1790 ~~each vehicle classification, so that the per mile toll rate will~~  
 1791 ~~be approximately the same throughout the turnpike system. New~~  
 1792 ~~turnpike projects may have toll rates higher than the uniform~~



CS/CS/HB 1399

2008

1793 ~~system rate where such higher toll rates are necessary to~~  
1794 ~~qualify the project in accordance with the financial criteria in~~  
1795 ~~the turnpike law. Such higher rates may be reduced to the~~  
1796 ~~uniform system rate when the project is generating sufficient~~  
1797 ~~revenues to pay the full amount of debt service and operating~~  
1798 ~~and maintenance costs at the uniform system rate. If, after 15~~  
1799 ~~years of opening to traffic, the annual revenue of a turnpike~~  
1800 ~~project does not meet or exceed the annual debt service~~  
1801 ~~requirements and operating and maintenance costs attributable to~~  
1802 ~~such project, the department shall, to the maximum extent~~  
1803 ~~feasible, establish a toll rate for the project which is higher~~  
1804 ~~than the uniform system rate as necessary to meet such annual~~  
1805 ~~debt service requirements and operating and maintenance costs.~~  
1806 ~~The department may, to the extent feasible, establish a~~  
1807 ~~temporary toll rate at less than the uniform system rate for the~~  
1808 ~~purpose of building patronage for the ultimate benefit of the~~  
1809 ~~turnpike system. In no case shall the temporary rate be~~  
1810 ~~established for more than 1 year. The requirements of this~~  
1811 ~~subsection shall not apply when the application of such~~  
1812 ~~requirements would violate any covenant established in a~~  
1813 ~~resolution or trust indenture relating to the issuance of~~  
1814 ~~turnpike bonds.~~

1815 (1)~~(2)~~ Notwithstanding any other provision of law, the  
1816 department may defer the scheduled July 1, 1993, toll rate  
1817 increase on the Homestead Extension of the Florida Turnpike  
1818 until July 1, 1995. The department may also advance funds to the  
1819 Turnpike General Reserve Trust Fund to replace estimated lost  
1820 revenues resulting from this deferral. The amount advanced must

CS/CS/HB 1399

2008

1821 be repaid within 12 years from the date of advance; however, the  
1822 repayment is subordinate to all other debt financing of the  
1823 turnpike system outstanding at the time repayment is due.

1824 (2)~~(3)~~ The department shall publish a proposed change in  
1825 the toll rate for the use of an existing toll facility, in the  
1826 manner provided for in s. 120.54, which will provide for public  
1827 notice and the opportunity for a public hearing before the  
1828 adoption of the proposed rate change. When the department is  
1829 evaluating a proposed turnpike toll project under s. 338.223 and  
1830 has determined that there is a high probability that the project  
1831 will pass the test of economic feasibility predicated on  
1832 proposed toll rates, the toll rate that is proposed to be  
1833 charged after the project is constructed must be adopted during  
1834 the planning and project development phase of the project, in  
1835 the manner provided for in s. 120.54, including public notice  
1836 and the opportunity for a public hearing. For such a new  
1837 project, the toll rate becomes effective upon the opening of the  
1838 project to traffic.

1839 (3) (a)~~(4)~~ For the period July 1, 1998, through June 30,  
1840 2017, the department shall, to the maximum extent feasible,  
1841 program sufficient funds in the tentative work program such that  
1842 the percentage of turnpike toll and bond financed commitments in  
1843 Dade County, Broward County, and Palm Beach County as compared  
1844 to total turnpike toll and bond financed commitments shall be at  
1845 least 90 percent of the share of net toll collections  
1846 attributable to users of the turnpike system in Dade County,  
1847 Broward County, and Palm Beach County as compared to total net  
1848 toll collections attributable to users of the turnpike system.

CS/CS/HB 1399

2008

1849 The requirements of this subsection do not apply when the  
1850 application of such requirements would violate any covenant  
1851 established in a resolution or trust indenture relating to the  
1852 issuance of turnpike bonds. The department at any time for  
1853 economic considerations may establish lower temporary toll rates  
1854 for a new or existing toll facility for a period not to exceed 1  
1855 year, after which the toll rates promulgated under s. 120.54  
1856 shall become effective.

1857 (b) The department shall also fix, adjust, charge, and  
1858 collect such amounts needed to cover the costs of administering  
1859 the different toll collection and payment methods and types of  
1860 accounts being offered and utilized, in the manner provided for  
1861 in s. 120.54, which will provide for public notice and the  
1862 opportunity for a public hearing before adoption. Such amounts  
1863 may stand alone, or be incorporated in a toll rate structure, or  
1864 be a combination thereof.

1865 (4)~~(5)~~ When bonds are outstanding which have been issued  
1866 to finance or refinance any turnpike project, the tolls and all  
1867 other revenues derived from the turnpike system and pledged to  
1868 such bonds shall be set aside as may be provided in the  
1869 resolution authorizing the issuance of such bonds or the trust  
1870 agreement securing the same. The tolls or other revenues or  
1871 other moneys so pledged and thereafter received by the  
1872 department are immediately subject to the lien of such pledge  
1873 without any physical delivery thereof or further act. The lien  
1874 of any such pledge is valid and binding as against all parties  
1875 having claims of any kind in tort or contract or otherwise  
1876 against the department irrespective of whether such parties have

1877 notice thereof. Neither the resolution nor any trust agreement  
 1878 by which a pledge is created need be filed or recorded except in  
 1879 the records of the department.

1880 (5)~~(6)~~ In each fiscal year while any of the bonds of the  
 1881 Broward County Expressway Authority series 1984 and series 1986-  
 1882 A remain outstanding, the department is authorized to pledge  
 1883 revenues from the turnpike system to the payment of principal  
 1884 and interest of such series of bonds and the operation and  
 1885 maintenance expenses of the Sawgrass Expressway, to the extent  
 1886 gross toll revenues of the Sawgrass Expressway are insufficient  
 1887 to make such payments. The terms of an agreement relative to the  
 1888 pledge of turnpike system revenue will be negotiated with the  
 1889 parties of the 1984 and 1986 Broward County Expressway Authority  
 1890 lease-purchase agreements, and subject to the covenants of those  
 1891 agreements. The agreement shall establish that the Sawgrass  
 1892 Expressway shall be subject to the planning, management, and  
 1893 operating control of the department limited only by the terms of  
 1894 the lease-purchase agreements. The department shall provide for  
 1895 the payment of operation and maintenance expenses of the  
 1896 Sawgrass Expressway until such agreement is in effect. This  
 1897 pledge of turnpike system revenues shall be subordinate to the  
 1898 debt service requirements of any future issue of turnpike bonds,  
 1899 the payment of turnpike system operation and maintenance  
 1900 expenses, and subject to provisions of any subsequent resolution  
 1901 or trust indenture relating to the issuance of such turnpike  
 1902 bonds.

1903 (6)~~(7)~~ The use and disposition of revenues pledged to  
 1904 bonds are subject to the provisions of ss. 338.22-338.241 and

1905 such regulations as the resolution authorizing the issuance of  
 1906 such bonds or such trust agreement may provide.

1907 Section 32. Subsection (4) of section 339.12, Florida  
 1908 Statutes, is amended to read:

1909 339.12 Aid and contributions by governmental entities for  
 1910 department projects; federal aid.--

1911 (4) (a) Prior to accepting the contribution of road bond  
 1912 proceeds, time warrants, or cash for which reimbursement is  
 1913 sought, the department shall enter into agreements with the  
 1914 governing body of the governmental entity for the project or  
 1915 project phases in accordance with specifications agreed upon  
 1916 between the department and the governing body of the  
 1917 governmental entity. The department in no instance is to receive  
 1918 from such governmental entity an amount in excess of the actual  
 1919 cost of the project or project phase. By specific provision in  
 1920 the written agreement between the department and the governing  
 1921 body of the governmental entity, the department may agree to  
 1922 reimburse the governmental entity for the actual amount of the  
 1923 bond proceeds, time warrants, or cash used on a highway project  
 1924 or project phases that are not revenue producing and are  
 1925 contained in the department's adopted work program, or any  
 1926 public transportation project contained in the adopted work  
 1927 program. Subject to appropriation of funds by the Legislature,  
 1928 the department may commit state funds for reimbursement of such  
 1929 projects or project phases. Reimbursement to the governmental  
 1930 entity for such a project or project phase must be made from  
 1931 funds appropriated by the Legislature, and reimbursement for the  
 1932 cost of the project or project phase is to begin in the year the

1933 project or project phase is scheduled in the work program as of  
1934 the date of the agreement. Funds advanced pursuant to this  
1935 section, which were originally designated for transportation  
1936 purposes and so reimbursed to a county or municipality, shall be  
1937 used by the county or municipality for any transportation  
1938 expenditure authorized under s. 336.025(7). Also, cities and  
1939 counties may receive funds from persons, and reimburse those  
1940 persons, for the purposes of this section. Such persons may  
1941 include, but are not limited to, those persons defined in s.  
1942 607.01401(19).

1943 (b) Prior to entering an agreement to advance a project or  
1944 project phase pursuant to this subsection and subsection (5),  
1945 the department shall first update the estimated cost of the  
1946 project or project phase and certify that the estimate is  
1947 accurate and consistent with the amount estimated in the adopted  
1948 work program. If the original estimate and the updated estimate  
1949 vary, the department shall amend the adopted work program  
1950 according to the amendatory procedures for the work program set  
1951 forth in s. 339.135(7). The amendment shall reflect all  
1952 corresponding increases and decreases to the affected projects  
1953 within the adopted work program.

1954 (c) The department may enter into agreements under this  
1955 subsection for a project or project phase not included in the  
1956 adopted work program. As used in this paragraph, the term  
1957 "project phase" means acquisition of rights-of-way,  
1958 construction, construction inspection, and related support  
1959 phases. The project or project phase must be a high priority of  
1960 the governmental entity. Reimbursement for a project or project

1961 phase must be made from funds appropriated by the Legislature  
 1962 pursuant to s. 339.135(5). All other provisions of this  
 1963 subsection apply to agreements entered into under this  
 1964 paragraph. The total amount of project agreements for projects  
 1965 or project phases not included in the adopted work program  
 1966 authorized by this paragraph may not at any time exceed \$500  
 1967 \$100 million, of which a maximum of \$200 million may be related  
 1968 to the purchase of rights-of-way. However, notwithstanding such  
 1969 \$500 ~~\$100~~ million limit and any similar limit in s. 334.30,  
 1970 project advances for any inland county with a population greater  
 1971 than 500,000 dedicating amounts equal to \$500 million or more of  
 1972 its Local Government Infrastructure Surtax pursuant to s.  
 1973 212.055(2) for improvements to the State Highway System which  
 1974 are included in the local metropolitan planning organization's  
 1975 or the department's long-range transportation plans shall be  
 1976 excluded from the calculation of the statewide limit of project  
 1977 advances.

1978 (d) The department may enter into agreements under this  
 1979 subsection with any county that has a population of 150,000 or  
 1980 less as determined by the most recent official estimate pursuant  
 1981 to s. 186.901 for a project or project phase not included in the  
 1982 adopted work program. As used in this paragraph, the term  
 1983 "project phase" means acquisition of rights-of-way,  
 1984 construction, construction inspection, and related support  
 1985 phases. The project or project phase must be a high priority of  
 1986 the governmental entity. Reimbursement for a project or project  
 1987 phase must be made from funds appropriated by the Legislature  
 1988 pursuant to s. 339.135(5). All other provisions of this

1989 subsection apply to agreements entered into under this  
 1990 paragraph. The total amount of project agreements for projects  
 1991 or project phases not included in the adopted work program  
 1992 authorized by this paragraph may not at any time exceed \$200  
 1993 million. The project must be included in the local government's  
 1994 adopted comprehensive plan. The department is authorized to  
 1995 enter into long-term repayment agreements of up to 30 years.

1996 Section 33. Paragraphs (c) and (d) of subsection (7) of  
 1997 section 339.135, Florida Statutes, are amended to read:

1998 339.135 Work program; legislative budget request;  
 1999 definitions; preparation, adoption, execution, and amendment.--

2000 (7) AMENDMENT OF THE ADOPTED WORK PROGRAM.--

2001 (c) The department may amend the adopted work program to  
 2002 transfer fixed capital outlay appropriations for projects within  
 2003 the same appropriations category or between appropriations  
 2004 categories, including the following amendments which shall be  
 2005 subject to the procedures in paragraph (d):

2006 1. Any amendment which deletes any project or project  
 2007 phase;

2008 2. Any amendment which adds a project estimated to cost  
 2009 over \$500,000 ~~\$150,000~~ in funds appropriated by the Legislature;

2010 3. Any amendment which advances or defers to another  
 2011 fiscal year, a right-of-way phase, a construction phase, or a  
 2012 public transportation project phase estimated to cost over  
 2013 \$500,000 in funds appropriated by the Legislature, except an  
 2014 amendment advancing a phase to the current fiscal year by 1  
 2015 fiscal year or deferring a phase for a period of 90 days or  
 2016 less; or



2017 4. Any amendment which advances or defers to another  
2018 fiscal year, any preliminary engineering phase or design phase  
2019 estimated to cost over \$500,000 ~~\$150,000~~ in funds appropriated  
2020 by the Legislature, except an amendment advancing a phase to the  
2021 current fiscal year by 1 fiscal year or deferring a phase for a  
2022 period of 90 days or less.

2023 (d)1. Whenever the department proposes any amendment to  
2024 the adopted work program, as defined in subparagraph (c)1. or  
2025 subparagraph (c)3., which deletes or defers a construction phase  
2026 on a capacity project, it shall notify each county affected by  
2027 the amendment and each municipality within the county. The  
2028 notification shall be issued in writing to the chief elected  
2029 official of each affected county, each municipality within the  
2030 county, and to the chair of each affected metropolitan planning  
2031 organization. Each affected county and each municipality within  
2032 a county are encouraged to coordinate with one another to  
2033 determine how the amendment impacts local concurrency management  
2034 and regional transportation planning efforts. Each affected  
2035 county and each municipality within the county shall have 14  
2036 calendar days to provide written comments to the department  
2037 regarding how the amendment will impact its respective  
2038 concurrency management systems, including whether any  
2039 development permits were issued contingent upon the capacity  
2040 improvement, if applicable. After receipt of written comments  
2041 from the affected local governments, the department shall  
2042 include any written comments submitted by the affected local  
2043 governments in its preparation of the proposed amendment.

2044 2. Following the 14-day comment period in subparagraph 1.,

2045 if applicable, whenever the department proposes any amendment to  
 2046 the adopted work program, which amendment is defined in  
 2047 subparagraph (c)1., subparagraph (c)2., subparagraph (c)3., or  
 2048 subparagraph (c)4., it shall submit the proposed amendment to  
 2049 the Governor for approval and shall immediately notify the  
 2050 chairs of the legislative appropriations committees, the chairs  
 2051 of the legislative transportation committees, and each member of  
 2052 the Legislature who represents a district affected by the  
 2053 proposed amendment. The department shall also notify each  
 2054 metropolitan planning organization affected by the proposed  
 2055 amendment, and each unit of local government affected by the  
 2056 proposed amendment unless the department provided to each  
 2057 organization or government the notification required in  
 2058 subparagraph 1. Such proposed amendment shall provide a complete  
 2059 justification of the need for the proposed amendment.

2060 ~~3.2.~~ The Governor shall not approve a proposed amendment  
 2061 until 14 days following the notification required in  
 2062 subparagraph 2. ~~1.~~

2063 ~~4.3.~~ If either of the chairs of the legislative  
 2064 appropriations committees or the President of the Senate or the  
 2065 Speaker of the House of Representatives objects in writing to a  
 2066 proposed amendment within 14 days following notification and  
 2067 specifies the reasons for such objection, the Governor shall  
 2068 disapprove the proposed amendment.

2069 Section 34. Section 339.155, Florida Statutes, is amended  
 2070 to read:

2071 339.155 Transportation planning.--

2072 (1) THE FLORIDA TRANSPORTATION PLAN.--The department shall

2073 develop ~~and annually update~~ a statewide transportation plan, to  
 2074 be known as the Florida Transportation Plan. The plan shall be  
 2075 designed so as to be easily read and understood by the general  
 2076 public. The purpose of the Florida Transportation Plan is to  
 2077 establish and define the state's long-range transportation goals  
 2078 and objectives to be accomplished over a period of at least 20  
 2079 years within the context of the State Comprehensive Plan, and  
 2080 any other statutory mandates and authorizations and based upon  
 2081 the prevailing principles of: preserving the existing  
 2082 transportation infrastructure; enhancing Florida's economic  
 2083 competitiveness; and improving travel choices to ensure  
 2084 mobility. The Florida Transportation Plan shall consider the  
 2085 needs of the entire state transportation system and examine the  
 2086 use of all modes of transportation to effectively and  
 2087 efficiently meet such needs.

2088 (2) SCOPE OF PLANNING PROCESS.--The department shall carry  
 2089 out a transportation planning process in conformance with s.  
 2090 334.046(1) ~~. which provides for consideration of projects and~~  
 2091 ~~strategies that will:~~

2092 ~~(a) Support the economic vitality of the United States,~~  
 2093 ~~Florida, and the metropolitan areas, especially by enabling~~  
 2094 ~~global competitiveness, productivity, and efficiency;~~

2095 ~~(b) Increase the safety and security of the transportation~~  
 2096 ~~system for motorized and nonmotorized users;~~

2097 ~~(c) Increase the accessibility and mobility options~~  
 2098 ~~available to people and for freight;~~

2099 ~~(d) Protect and enhance the environment, promote energy~~  
 2100 ~~conservation, and improve quality of life;~~

2101 ~~(e) Enhance the integration and connectivity of the~~  
 2102 ~~transportation system, across and between modes throughout~~  
 2103 ~~Florida, for people and freight;~~  
 2104 ~~(f) Promote efficient system management and operation; and~~  
 2105 ~~(g) Emphasize the preservation of the existing~~  
 2106 ~~transportation system.~~

2107 (3) FORMAT, SCHEDULE, AND REVIEW.--The Florida  
 2108 Transportation Plan shall be a unified, concise planning  
 2109 document that clearly defines the state's long-range  
 2110 transportation goals and objectives ~~and documents the~~  
 2111 ~~department's short range objectives developed to further such~~  
 2112 ~~goals and objectives.~~ The plan shall:

2113 (a) Include a glossary that clearly and succinctly defines  
 2114 any and all phrases, words, or terms of art included in the  
 2115 plan, with which the general public may be unfamiliar. ~~and shall~~  
 2116 ~~consist of, at a minimum, the following components:~~

2117 (b) ~~(a)~~ Document ~~A long range component documenting the~~  
 2118 ~~goals and long-term objectives necessary to implement the~~  
 2119 ~~results of the department's findings from its examination of the~~  
 2120 ~~prevailing principles and criteria provided under listed in~~  
 2121 ~~subsection (2) and s. 334.046(1). The long range component must~~

2122 (c) Be developed in cooperation with the metropolitan  
 2123 planning organizations and reconciled, to the maximum extent  
 2124 feasible, with the long-range plans developed by metropolitan  
 2125 planning organizations pursuant to s. 339.175. ~~The plan must~~  
 2126 ~~also~~

2127 (d) Be developed in consultation with affected local  
 2128 officials in nonmetropolitan areas and with any affected Indian

2129 tribal governments. ~~The plan must~~

2130 (e) Provide an examination of transportation issues likely  
 2131 to arise during at least a 20-year period. ~~The long-range~~  
 2132 ~~component shall~~

2133 (f) Be updated at least once every 5 years, or more often  
 2134 as necessary, to reflect substantive changes to federal or state  
 2135 law.

2136 ~~(b) A short-range component documenting the short-term~~  
 2137 ~~objectives and strategies necessary to implement the goals and~~  
 2138 ~~long-term objectives contained in the long-range component. The~~  
 2139 ~~short-range component must define the relationship between the~~  
 2140 ~~long-range goals and the short-range objectives, specify those~~  
 2141 ~~objectives against which the department's achievement of such~~  
 2142 ~~goals will be measured, and identify transportation strategies~~  
 2143 ~~necessary to efficiently achieve the goals and objectives in the~~  
 2144 ~~plan. It must provide a policy framework within which the~~  
 2145 ~~department's legislative budget request, the strategic~~  
 2146 ~~information resource management plan, and the work program are~~  
 2147 ~~developed. The short-range component shall serve as the~~  
 2148 ~~department's annual agency strategic plan pursuant to s.~~  
 2149 ~~186.021. The short-range component shall be developed consistent~~  
 2150 ~~with available and forecasted state and federal funds. The~~  
 2151 ~~short-range component shall also be submitted to the Florida~~  
 2152 ~~Transportation Commission.~~

2153 ~~(4) ANNUAL PERFORMANCE REPORT. The department shall~~  
 2154 ~~develop an annual performance report evaluating the operation of~~  
 2155 ~~the department for the preceding fiscal year. The report shall~~  
 2156 ~~also include a summary of the financial operations of the~~

2157 ~~department and shall annually evaluate how well the adopted work~~  
 2158 ~~program meets the short-term objectives contained in the short-~~  
 2159 ~~range component of the Florida Transportation Plan. This~~  
 2160 ~~performance report shall be submitted to the Florida~~  
 2161 ~~Transportation Commission and the legislative appropriations and~~  
 2162 ~~transportation committees.~~

2163 (4)~~(5)~~ ADDITIONAL TRANSPORTATION PLANS.--

2164 (a) Upon request by local governmental entities, the  
 2165 department may in its discretion develop and design  
 2166 transportation corridors, arterial and collector streets,  
 2167 vehicular parking areas, and other support facilities which are  
 2168 consistent with the plans of the department for major  
 2169 transportation facilities. The department may render to local  
 2170 governmental entities or their planning agencies such technical  
 2171 assistance and services as are necessary so that local plans and  
 2172 facilities are coordinated with the plans and facilities of the  
 2173 department.

2174 (b) Each regional planning council, as provided for in s.  
 2175 186.504, or any successor agency thereto, shall develop, as an  
 2176 element of its strategic regional policy plan, transportation  
 2177 goals and policies. The transportation goals and policies must  
 2178 be prioritized to comply with the prevailing principles provided  
 2179 in subsection (2) and s. 334.046(1). The transportation goals  
 2180 and policies shall be consistent, to the maximum extent  
 2181 feasible, with the goals and policies of the metropolitan  
 2182 planning organization and the Florida Transportation Plan. The  
 2183 transportation goals and policies of the regional planning  
 2184 council will be advisory only and shall be submitted to the

CS/CS/HB 1399

2008

2185 department and any affected metropolitan planning organization  
2186 for their consideration and comments. Metropolitan planning  
2187 organization plans and other local transportation plans shall be  
2188 developed consistent, to the maximum extent feasible, with the  
2189 regional transportation goals and policies. The regional  
2190 planning council shall review urbanized area transportation  
2191 plans and any other planning products stipulated in s. 339.175  
2192 and provide the department and respective metropolitan planning  
2193 organizations with written recommendations which the department  
2194 and the metropolitan planning organizations shall take under  
2195 advisement. Further, the regional planning councils shall  
2196 directly assist local governments which are not part of a  
2197 metropolitan area transportation planning process in the  
2198 development of the transportation element of their comprehensive  
2199 plans as required by s. 163.3177.

2200 (c) Regional transportation plans may be developed in  
2201 regional transportation areas in accordance with an interlocal  
2202 agreement entered into pursuant to s. 163.01 by two or more  
2203 contiguous metropolitan planning organizations; one or more  
2204 metropolitan planning organizations and one or more contiguous  
2205 counties, none of which is a member of a metropolitan planning  
2206 organization; a multicounty regional transportation authority  
2207 created by or pursuant to law; two or more contiguous counties  
2208 that are not members of a metropolitan planning organization; or  
2209 metropolitan planning organizations comprised of three or more  
2210 counties.

2211 (d) The interlocal agreement must, at a minimum, identify  
2212 the entity that will coordinate the development of the regional

2213 transportation plan; delineate the boundaries of the regional  
 2214 transportation area; provide the duration of the agreement and  
 2215 specify how the agreement may be terminated, modified, or  
 2216 rescinded; describe the process by which the regional  
 2217 transportation plan will be developed; and provide how members  
 2218 of the entity will resolve disagreements regarding  
 2219 interpretation of the interlocal agreement or disputes relating  
 2220 to the development or content of the regional transportation  
 2221 plan. Such interlocal agreement shall become effective upon its  
 2222 recordation in the official public records of each county in the  
 2223 regional transportation area.

2224 (e) The regional transportation plan developed pursuant to  
 2225 this section must, at a minimum, identify regionally significant  
 2226 transportation facilities located within a regional  
 2227 transportation area and contain a prioritized list of regionally  
 2228 significant projects. The level-of-service standards for  
 2229 facilities to be funded under this subsection shall be adopted  
 2230 by the appropriate local government in accordance with s.  
 2231 163.3180(10). The projects shall be adopted into the capital  
 2232 improvements schedule of the local government comprehensive plan  
 2233 pursuant to s. 163.3177(3).

2234 (5)~~(6)~~ PROCEDURES FOR PUBLIC PARTICIPATION IN  
 2235 TRANSPORTATION PLANNING.--

2236 (a) During the development of the ~~long range component of~~  
 2237 ~~the~~ Florida Transportation Plan and prior to substantive  
 2238 revisions, the department shall provide citizens, affected  
 2239 public agencies, representatives of transportation agency  
 2240 employees, other affected employee representatives, private



2241 providers of transportation, and other known interested parties  
2242 with an opportunity to comment on the proposed plan or  
2243 revisions. These opportunities shall include, at a minimum,  
2244 publishing a notice in the Florida Administrative Weekly and  
2245 within a newspaper of general circulation within the area of  
2246 each department district office.

2247 (b) During development of major transportation  
2248 improvements, such as those increasing the capacity of a  
2249 facility through the addition of new lanes or providing new  
2250 access to a limited or controlled access facility or  
2251 construction of a facility in a new location, the department  
2252 shall hold one or more hearings prior to the selection of the  
2253 facility to be provided; prior to the selection of the site or  
2254 corridor of the proposed facility; and prior to the selection of  
2255 and commitment to a specific design proposal for the proposed  
2256 facility. Such public hearings shall be conducted so as to  
2257 provide an opportunity for effective participation by interested  
2258 persons in the process of transportation planning and site and  
2259 route selection and in the specific location and design of  
2260 transportation facilities. The various factors involved in the  
2261 decision or decisions and any alternative proposals shall be  
2262 clearly presented so that the persons attending the hearing may  
2263 present their views relating to the decision or decisions which  
2264 will be made.

2265 (c) Opportunity for design hearings:

2266 1. The department, prior to holding a design hearing,  
2267 shall duly notify all affected property owners of record, as  
2268 recorded in the property appraiser's office, by mail at least 20

2269 | days prior to the date set for the hearing. The affected  
 2270 | property owners shall be:

2271 |       a. Those whose property lies in whole or in part within  
 2272 | 300 feet on either side of the centerline of the proposed  
 2273 | facility.

2274 |       b. Those whom the department determines will be  
 2275 | substantially affected environmentally, economically, socially,  
 2276 | or safetywise.

2277 |       2. For each subsequent hearing, the department shall  
 2278 | publish notice prior to the hearing date in a newspaper of  
 2279 | general circulation for the area affected. These notices must be  
 2280 | published twice, with the first notice appearing at least 15  
 2281 | days, but no later than 30 days, before the hearing.

2282 |       3. A copy of the notice of opportunity for the hearing  
 2283 | must be furnished to the United States Department of  
 2284 | Transportation and to the appropriate departments of the state  
 2285 | government at the time of publication.

2286 |       4. The opportunity for another hearing shall be afforded  
 2287 | in any case when proposed locations or designs are so changed  
 2288 | from those presented in the notices specified above or at a  
 2289 | hearing as to have a substantially different social, economic,  
 2290 | or environmental effect.

2291 |       5. The opportunity for a hearing shall be afforded in each  
 2292 | case in which the department is in doubt as to whether a hearing  
 2293 | is required.

2294 |       Section 35. Subsection (3) and paragraphs (b) and (c) of  
 2295 | subsection (4) of section 339.2816, Florida Statutes, are  
 2296 | amended to read:

2297 339.2816 Small County Road Assistance Program.--  
 2298 (3) Beginning with fiscal year 1999-2000 until fiscal year  
 2299 2009-2010, and beginning again with fiscal year 2012-2013, up to  
 2300 \$25 million annually from the State Transportation Trust Fund  
 2301 may be used for the purposes of funding the Small County Road  
 2302 Assistance Program as described in this section.

2303 (4)

2304 (b) In determining a county's eligibility for assistance  
 2305 under this program, the department may consider whether the  
 2306 county has attempted to keep county roads in satisfactory  
 2307 condition, including the amount of local option fuel tax ~~and ad~~  
 2308 ~~valorem millage rate~~ imposed by the county. The department may  
 2309 also consider the extent to which the county has offered to  
 2310 provide a match of local funds with state funds provided under  
 2311 the program. At a minimum, small counties shall be eligible only  
 2312 if+

2313 ~~1. The county has enacted the maximum rate of the local~~  
 2314 ~~option fuel tax authorized by s. 336.025(1)(a) .7, and has imposed~~  
 2315 ~~an ad valorem millage rate of at least 8 mills; or~~

2316 ~~2. The county has imposed an ad valorem millage rate of 10~~  
 2317 ~~mills.~~

2318 (c) The following criteria shall be used to prioritize  
 2319 road projects for funding under the program:

2320 1. The primary criterion is the physical condition of the  
 2321 road as measured by the department.

2322 2. As secondary criteria the department may consider:

2323 a. Whether a road is used as an evacuation route.

2324 b. Whether a road has high levels of agricultural travel.

2325 c. Whether a road is considered a major arterial route.

2326 d. Whether a road is considered a feeder road.

2327 e. Whether a road is located in a fiscally constrained  
 2328 county, as defined in s. 218.67(1).

2329 ~~f.e.~~ Other criteria related to the impact of a project on  
 2330 the public road system or on the state or local economy as  
 2331 determined by the department.

2332 Section 36. Subsections (1) and (3) of section 339.2819,  
 2333 Florida Statutes, are amended to read:

2334 339.2819 Transportation Regional Incentive Program.--

2335 (1) There is created within the Department of  
 2336 Transportation a Transportation Regional Incentive Program for  
 2337 the purpose of providing funds to improve regionally significant  
 2338 transportation facilities in regional transportation areas  
 2339 created pursuant to s. 339.155(4)~~(5)~~.

2340 (3) The department shall allocate funding available for  
 2341 the Transportation Regional Incentive Program to the districts  
 2342 based on a factor derived from equal parts of population and  
 2343 motor fuel collections for eligible counties in regional  
 2344 transportation areas created pursuant to s. 339.155(4)~~(5)~~.

2345 Section 37. Subsection (6) of section 339.285, Florida  
 2346 Statutes, is amended to read:

2347 339.285 Enhanced Bridge Program for Sustainable  
 2348 Transportation.--

2349 (6) Preference shall be given to bridge projects located  
 2350 on corridors that connect to the Strategic Intermodal System,  
 2351 created under s. 339.64, and that have been identified as  
 2352 regionally significant in accordance with s. 339.155(4)~~(5)~~(c),

2353 (d), and (e).

2354 Section 38. Subsections (8) through (14) are added to  
2355 section 341.301, Florida Statutes, to read:

2356 341.301 Definitions; ss. 341.302 and 341.303.--As used in  
2357 ss. 341.302 and 341.303, the term:

2358 (8) "Commuter rail passenger or passengers" means and  
2359 includes any and all persons, ticketed or unticketed, using the  
2360 commuter rail service on a department owned rail corridor:

2361 (a) On board trains, locomotives, rail cars, or rail  
2362 equipment employed in commuter rail service or entraining and  
2363 detraining therefrom;

2364 (b) On or about the rail corridor for any purpose related  
2365 to the commuter rail service, including, without limitation,  
2366 parking, inquiring about commuter rail service or purchasing  
2367 tickets therefor and coming to, waiting for, leaving from, or  
2368 observing trains, locomotives, rail cars, or rail equipment; or

2369 (c) Meeting, assisting, or in the company of any person  
2370 described in paragraph (a) or paragraph (b).

2371 (9) "Commuter rail service" means the transportation of  
2372 commuter rail passengers and other passengers by rail pursuant  
2373 to a rail program provided by the department or any other  
2374 governmental entities.

2375 (10) "Rail corridor invitee" means and includes any and  
2376 all persons who are on or about a department-owned rail  
2377 corridor:

2378 (a) For any purpose related to any ancillary development  
2379 thereon; or

2380 (b) Meeting, assisting, or in the company of any person

2381 described in paragraph (a).

2382 (11) "Rail corridor" means a linear contiguous strip of  
 2383 real property that is used for rail service. The term includes  
 2384 the corridor and structures essential to the operation of a  
 2385 railroad, including the land, structures, improvements, rights-  
 2386 of-way, easements, rail lines, rail beds, guideway structures,  
 2387 switches, yards, parking facilities, power relays, switching  
 2388 houses, rail stations, ancillary development, and any other  
 2389 facilities or equipment used for the purposes of construction,  
 2390 operation, or maintenance of a railroad that provides rail  
 2391 service.

2392 (12) "Railroad operations" means the use of the rail  
 2393 corridor to conduct commuter rail service, intercity rail  
 2394 passenger service, or freight rail service.

2395 (13) "Ancillary development" includes any lessee or  
 2396 licensee of the department, including, but not limited to, other  
 2397 governmental entities, vendors, retailers, restaurateurs, or  
 2398 contract service providers, within a department-owned rail  
 2399 corridor, except for providers of commuter rail service,  
 2400 intercity rail passenger service, or freight rail service.

2401 (14) "Governmental entity or entities" means as defined in  
 2402 s. 11.45, including a "public agency" as defined in s. 163.01.

2403 Section 39. Section 341.302, Florida Statutes, is amended  
 2404 to read:

2405 341.302 Rail program, duties and responsibilities of the  
 2406 department.--The department, in conjunction with other  
 2407 governmental entities ~~units~~ and the private sector, shall  
 2408 develop and implement a rail program of statewide application

2409 | designed to ensure the proper maintenance, safety,  
 2410 | revitalization, and expansion of the rail system to assure its  
 2411 | continued and increased availability to respond to statewide  
 2412 | mobility needs. Within the resources provided pursuant to  
 2413 | chapter 216, and as authorized under federal law Title 49 C.F.R.  
 2414 | ~~part 212~~, the department shall:

2415 |         (1) Provide the overall leadership, coordination, and  
 2416 | financial and technical assistance necessary to assure the  
 2417 | effective responses of the state's rail system to current and  
 2418 | anticipated mobility needs.

2419 |         (2) Promote and facilitate the implementation of advanced  
 2420 | rail systems, including high-speed rail and magnetic levitation  
 2421 | systems.

2422 |         (3) Develop and periodically update the rail system plan,  
 2423 | on the basis of an analysis of statewide transportation needs.  
 2424 | The plan shall be consistent with the Florida Transportation  
 2425 | Plan developed pursuant to s. 339.155. The rail system plan  
 2426 | shall include an identification of priorities, programs, and  
 2427 | funding levels required to meet statewide needs. The rail system  
 2428 | plan shall be developed in a manner that will assure the maximum  
 2429 | use of existing facilities and the optimum integration and  
 2430 | coordination of the various modes of transportation, public and  
 2431 | private, in the most cost-effective manner possible. The rail  
 2432 | system plan shall be updated at least every 2 years and include  
 2433 | plans for both passenger rail service and freight rail service.

2434 |         (4) As part of the work program of the department,  
 2435 | formulate a specific program of projects and financing to  
 2436 | respond to identified railroad needs.

2437 (5) Provide technical and financial assistance to units of  
 2438 local government to address identified rail transportation  
 2439 needs.

2440 (6) Secure and administer federal grants, loans, and  
 2441 apportionments for rail projects within this state when  
 2442 necessary to further the statewide program.

2443 (7) Develop and administer state standards concerning the  
 2444 safety and performance of rail systems, hazardous material  
 2445 handling, and operations. Such standards shall be developed  
 2446 jointly with representatives of affected rail systems, with full  
 2447 consideration given to nationwide industry norms, and shall  
 2448 define the minimum acceptable standards for safety and  
 2449 performance.

2450 (8) Conduct, at a minimum, inspections of track and  
 2451 rolling stock; train signals and related equipment; hazardous  
 2452 materials transportation, including the loading, unloading, and  
 2453 labeling of hazardous materials at shippers', receivers', and  
 2454 transfer points; and train operating practices to determine  
 2455 adherence to state and federal standards. Department personnel  
 2456 may enforce any safety regulation issued under the Federal  
 2457 Government's preemptive authority over interstate commerce.

2458 (9) Assess penalties, in accordance with the applicable  
 2459 federal regulations, for the failure to adhere to the state  
 2460 standards.

2461 (10) Administer rail operating and construction programs,  
 2462 which programs shall include the regulation of maximum train  
 2463 operating speeds, the opening and closing of public grade  
 2464 crossings, the construction and rehabilitation of public grade



2465 crossings, and the installation of traffic control devices at  
 2466 public grade crossings, the administering of the programs by the  
 2467 department including participation in the cost of the programs.

2468 (11) Coordinate and facilitate the relocation of railroads  
 2469 from congested urban areas to nonurban areas when relocation has  
 2470 been determined feasible and desirable from the standpoint of  
 2471 safety, operational efficiency, and economics.

2472 (12) Implement a program of branch line continuance  
 2473 projects when an analysis of the industrial and economic  
 2474 potential of the line indicates that public involvement is  
 2475 required to preserve essential rail service and facilities.

2476 (13) Provide new rail service and equipment when:

2477 (a) Pursuant to the transportation planning process, a  
 2478 public need has been determined to exist;

2479 (b) The cost of providing such service does not exceed the  
 2480 sum of revenues from fares charged to users, services purchased  
 2481 by other public agencies, local fund participation, and specific  
 2482 legislative appropriation for this purpose; and

2483 (c) Service cannot be reasonably provided by other  
 2484 governmental or privately owned rail systems.

2485  
 2486 The department may own, lease, and otherwise encumber  
 2487 facilities, equipment, and appurtenances thereto, as necessary  
 2488 to provide new rail services; or the department may provide such  
 2489 service by contracts with privately owned service providers.

2490 (14) Furnish required emergency rail transportation  
 2491 service if no other private or public rail transportation  
 2492 operation is available to supply the required service and such

2493 service is clearly in the best interest of the people in the  
 2494 communities being served. Such emergency service may be  
 2495 furnished through contractual arrangement, actual operation of  
 2496 state-owned equipment and facilities, or any other means  
 2497 determined appropriate by the secretary.

2498 (15) Assist in the development and implementation of  
 2499 marketing programs for rail services and of information systems  
 2500 directed toward assisting rail systems users.

2501 (16) Conduct research into innovative or potentially  
 2502 effective rail technologies and methods and maintain expertise  
 2503 in state-of-the-art rail developments.

2504 (17) In conjunction with the acquisition, ownership,  
 2505 construction, operation, maintenance, and management of a rail  
 2506 corridor, have the authority to:

2507 (a) Assume the obligation by contract to forever protect,  
 2508 defend, and indemnify and hold harmless the freight rail  
 2509 operator, or its successors, from whom the department has  
 2510 acquired a real property interest in the rail corridor, and that  
 2511 freight rail operator's officers, agents, and employees, from  
 2512 and against any liability, cost, and expense including, but not  
 2513 limited to, commuter rail passengers, rail corridor invitees,  
 2514 and trespassers in the rail corridor, regardless of whether the  
 2515 loss, damage, destruction, injury, or death giving rise to any  
 2516 such liability, cost, or expense is caused in whole or in part  
 2517 and to whatever nature or degree by the fault, failure,  
 2518 negligence, misconduct, nonfeasance, or misfeasance of such  
 2519 freight rail operator, its successors, or its officers, agents,  
 2520 and employees, or any other person or persons whomsoever,

2521 provided that such assumption of liability of the department by  
 2522 contract shall not in any instance exceed the following  
 2523 parameters of allocation of risk:

2524 1. The department may be solely responsible for any loss,  
 2525 injury, or damage to commuter rail passengers, rail corridor  
 2526 invitees, or trespassers, regardless of circumstances or cause,  
 2527 subject to subparagraphs 2., 3., and 4.

2528 2. When only one train is involved in an incident, the  
 2529 department may be solely responsible for any loss, injury, or  
 2530 damage if the train is a department train or other train  
 2531 pursuant to subparagraph 3., but only if in an instance when  
 2532 only a freight rail operator train is involved the freight rail  
 2533 operator is solely responsible for any loss, injury, or damage,  
 2534 except for commuter rail passengers, rail corridor invitees, and  
 2535 trespassers; and, the freight rail operator is solely  
 2536 responsible for its property and all of its people in any  
 2537 instance when its train is involved in an incident.

2538 3. For the purposes of this subsection, any train involved  
 2539 in an incident that is neither the department's train nor the  
 2540 freight rail operator's train, hereinafter referred to in this  
 2541 subsection as an "other train," may be treated as a department  
 2542 train, solely for purposes of any allocation of liability  
 2543 between the department and the freight rail operator only, but  
 2544 only if the department and the freight rail operator share  
 2545 responsibility equally as to third parties outside the rail  
 2546 corridor who incur loss, injury, or damage as a result of any  
 2547 incident involving both a department train and a freight rail  
 2548 operator train; and, the allocation as between the department

2549 and the freight rail operator, regardless of whether the other  
 2550 train is treated as a department train, shall remain one-half  
 2551 each as to third parties outside the rail corridor who incur  
 2552 loss, injury, or damage as a result of the incident, and the  
 2553 involvement of any other train shall not alter the sharing of  
 2554 equal responsibility as to third parties outside the rail  
 2555 corridor who incur loss, injury, or damage as a result of the  
 2556 incident.

2557 4. When more than one train is involved in an incident:

2558 a. If only a department train and a freight rail  
 2559 operator's train, or only another train as described in  
 2560 subparagraph 3. and a freight rail operator's train, are  
 2561 involved in an incident, the department may be responsible for  
 2562 its property and all of its people, all commuter rail  
 2563 passengers, rail corridor invitees, and trespassers, but only if  
 2564 the freight rail operator is responsible for its property and  
 2565 all of its people; and the department and the freight rail  
 2566 operator share responsibility one-half each as to third parties  
 2567 outside the rail corridor who incur loss, injury, or damage as a  
 2568 result of the incident.

2569 b. If a department train, a freight rail operator train,  
 2570 and any other train are involved in an incident, the allocation  
 2571 of liability as between the department and the freight rail  
 2572 operator, regardless of whether the other train is treated as a  
 2573 department train, shall remain one-half each as to third parties  
 2574 outside the rail corridor who incur loss, injury, or damage as a  
 2575 result of the incident; the involvement of any other train shall  
 2576 not alter the sharing of equal responsibility as to third

2577 parties outside the rail corridor who incur loss, injury, or  
 2578 damage as a result of the incident; and, if the owner, operator,  
 2579 or insurer of the other train makes any payment to injured third  
 2580 parties outside the rail corridor who incur loss, injury, or  
 2581 damage as a result of the incident, the allocation of credit  
 2582 between the department and the freight rail operator as to such  
 2583 payment shall not in any case reduce the freight rail operator's  
 2584 third party sharing allocation of one-half under this paragraph  
 2585 to less than one-third of the total third party liability.

2586 5. Any such contractual duty to protect, defend,  
 2587 indemnify, and hold harmless such a freight rail operator shall  
 2588 expressly: include a specific cap on the amount of the  
 2589 contractual duty, which amount shall not exceed \$200 million  
 2590 without prior legislative approval; require the department to  
 2591 purchase liability insurance and establish a self-insurance  
 2592 retention fund in the amount of the specific cap established  
 2593 under this paragraph; provide that no such contractual duty  
 2594 shall in any case be effective nor otherwise extend the  
 2595 department's liability in scope and effect beyond the  
 2596 contractual liability insurance and self-insurance retention  
 2597 fund required pursuant to this paragraph; and provide that the  
 2598 freight rail operator's compensation to the department for  
 2599 future use of the department's rail corridor shall include a  
 2600 monetary contribution to the cost of such liability coverage for  
 2601 the sole benefit of the freight rail operator.

2602 (b) Purchase liability insurance which amount shall not  
 2603 exceed \$200 million and establish a self-insurance retention  
 2604 fund for the purpose of paying the deductible limit established

2605 in the insurance policies it may obtain, including coverage for  
 2606 the department, any freight rail operator as described in  
 2607 paragraph (a), commuter rail service providers, governmental  
 2608 entities, or ancillary development; however, the insureds shall  
 2609 pay a reasonable monetary contribution to the cost of such  
 2610 liability coverage for the sole benefit of the insured. Such  
 2611 insurance and self-insurance retention fund may provide coverage  
 2612 for all damages, including, but not limited to, compensatory,  
 2613 special, and exemplary, and be maintained to provide an adequate  
 2614 fund to cover claims and liabilities for loss, injury, or damage  
 2615 arising out of or connected with the ownership, operation,  
 2616 maintenance, and management of a rail corridor.

2617 (c) Incur expenses for the purchase of advertisements,  
 2618 marketing, and promotional items.

2619  
 2620 Neither the assumption by contract to protect, defend,  
 2621 indemnify, and hold harmless; the purchase of insurance; nor the  
 2622 establishment of a self-insurance retention fund shall be deemed  
 2623 to be a waiver of any defense of sovereign immunity for torts  
 2624 nor deemed to increase the limits of the department's or the  
 2625 governmental entity's liability for torts as provided in s.  
 2626 768.28. The requirements of s. 287.022(1) shall not apply to the  
 2627 purchase of any insurance hereunder. The provisions of this  
 2628 subsection shall apply and inure fully as to any other  
 2629 governmental entity providing commuter rail service and  
 2630 constructing, operating, maintaining, or managing a rail  
 2631 corridor on publicly owned right-of-way under contract by the  
 2632 governmental entity with the department or a governmental entity

2633 designated by the department.

2634 (18)-(17) Exercise such other functions, powers, and duties  
 2635 in connection with the rail system plan as are necessary to  
 2636 develop a safe, efficient, and effective statewide  
 2637 transportation system.

2638 Section 40. Section 341.3023, Florida Statutes, is created  
 2639 to read:

2640 341.3023 Commuter rail programs and intercity rail  
 2641 transportation system study.--

2642 (1) The department shall undertake a comprehensive review  
 2643 and study of commuter railroad programs and intercity railroad  
 2644 transportation system plans and their impacts in the state  
 2645 through 2028.

2646 (2) The review and study shall encompass and include  
 2647 information concerning:

2648 (a) Commuter rail programs and intercity rail  
 2649 transportation system facility and improvement needs and plans,  
 2650 including those associated with connectivity to such facilities  
 2651 and improvements, outlined or contained in, without limitation  
 2652 thereto, the current Florida Transportation Plan developed  
 2653 pursuant to s. 339.155(1); regional transportation plans  
 2654 developed pursuant to s. 339.155(5); the Strategic Intermodal  
 2655 System Plan developed pursuant to s. 339.64; the adopted work  
 2656 plan developed pursuant to s. 339.135; long-range transportation  
 2657 plans developed pursuant to s. 339.175(7); transportation  
 2658 improvement plans of relevant metropolitan planning  
 2659 organizations developed pursuant to s. 339.175(8); plans,  
 2660 information, and studies prepared for or by the authorities

2661 created in parts I, II, III, and V of chapter 343; relevant  
2662 studies and information previously prepared by the department  
2663 and the Transportation Commission; and the transportation and  
2664 capital improvement elements of relevant approved local  
2665 government comprehensive plans.

2666 (b) A detailed review of funding in the state for commuter  
2667 rail programs and intercity rail transportation system  
2668 improvements, projects, facilities, equipment, rights-of-way,  
2669 operating costs, and other costs during the previous 20 years  
2670 from state, federal, and local government sources.

2671 (c) An assessment of the impacts of commuter rail programs  
2672 and intercity rail transportation system improvements, projects,  
2673 and facilities that have been undertaken in the state during the  
2674 previous 20 years and their impact on the state, regional, and  
2675 local transportation system and Florida's economic development.

2676 (d) Proposed commuter rail programs and intercity rail  
2677 transportation system improvements, projects, and facilities  
2678 throughout the state to be undertaken during the next 20 years,  
2679 including, based upon the best available, existing data, a  
2680 detailed listing of specific projects with estimates of the  
2681 costs of each specific project; projected timelines for such  
2682 improvements, projects, and facilities; and the estimated  
2683 priority of each such improvement, project, and facility.

2684 (e) A map of those proposed improvements, projects, and  
2685 facilities.

2686 (f) A finance plan based upon reasonable projections of  
2687 anticipated revenues available to the department and units of  
2688 local government, including both 10-year and 20-year cost-



2689 feasible components, for such improvements, projects, and  
 2690 facilities that demonstrates how or what portion of such  
 2691 improvements, projects, and facilities can be implemented.

2692 (g) A feasibility study of the best alternatives for  
 2693 implementing intercity passenger railroad service between the  
 2694 Tampa Bay region and the greater Orlando area.

2695 (h) A proposed prioritization process, including  
 2696 alternatives, for commuter railroad and intercity railroad  
 2697 improvements, projects, and facilities.

2698 (i) Funding alternatives for commuter rail programs and  
 2699 intercity rail transportation system improvements, projects, and  
 2700 facilities including specific resources, both public and  
 2701 private, that are reasonably expected to be available to  
 2702 accomplish such improvements, projects, and facilities and any  
 2703 innovative financing techniques that might be used to fund such  
 2704 improvements, projects, and facilities.

2705 (3) The report shall also include detailed information and  
 2706 findings about negative impacts caused by current, or projected  
 2707 to be caused by proposed, commuter rail programs and intercity  
 2708 rail transportation system projects or freight railroad traffic  
 2709 in urban areas of the state. For the purpose of this section,  
 2710 "negative impacts" means those caused by noise, vibration, and  
 2711 vehicular traffic congestion and delays occurring at rail and  
 2712 road intersections. "Urban areas" means those areas within or  
 2713 adjacent to a municipality generally characterized by high  
 2714 density development and building patterns, greater concentration  
 2715 of population, and a high level and concentration of public  
 2716 services and facilities. The Orlando commuter rail project means

2717 the Central Florida Rail Corridor, a line of railroad between  
2718 Deland and Poinciana. The report shall include, without  
2719 limitation:

2720 (a) Options and alternatives for eliminating negative  
2721 impacts associated with increased freight railroad traffic and  
2722 freight railroad congestions within urban areas resulting from  
2723 commuter rail programs or intercity rail transportation system  
2724 improvements, projects, and facilities, including specifically  
2725 those associated with the Orlando commuter railroad project.

2726 (b) Proposed freight railroad improvements, projects, and  
2727 facilities to be undertaken in the next 20 years, including  
2728 those associated with the Orlando commuter railroad project, to  
2729 eliminate such negative impacts, including, based upon the best  
2730 available, existing data, a detailed listing of specific  
2731 projects with estimates of the costs of each specific  
2732 improvement, project, and facility; projected timelines for such  
2733 improvements, projects, and facilities; the estimated priority  
2734 of each such improvement, project, and facility; and the  
2735 benefits to public safety, economic development, and downtown  
2736 development and redevelopment from such improvements, projects,  
2737 and facilities.

2738 (c) A map of those proposed improvements, projects, and  
2739 facilities.

2740 (d) A finance plan based upon reasonable projections of  
2741 anticipated revenues available to the department and units of  
2742 local government, including both 10-year and 20-year cost-  
2743 feasible components, for such improvements, projects, and  
2744 facilities that demonstrates how or what portion of such

2745 improvements, projects, and facilities can be implemented, as it  
 2746 is the intent of the Legislature and the public policy of the  
 2747 state that such negative impacts of commuter rail programs, and  
 2748 intercity rail transportation system projects funded by the  
 2749 state, including those associated with the Orlando commuter  
 2750 railroad project, be eliminated not later than 8 years after  
 2751 commuter rail programs and intercity rail transportation system  
 2752 projects begin operation.

2753 (4) The report containing the information required  
 2754 pursuant to subsections (1), (2), and (3) shall be delivered to  
 2755 the Governor, the President of the Senate, the Speaker of the  
 2756 House of Representatives, and the leaders of the minority  
 2757 parties of the Senate and House of Representatives on or before  
 2758 January 15, 2009.

2759 Section 41. Part III of chapter 343, Florida Statutes,  
 2760 consisting of sections 343.71, 343.72, 343.73, 343.74, 343.75,  
 2761 343.76, and 343.77, is repealed.

2762 Section 42. Subsection (4) of section 348.0003, Florida  
 2763 Statutes, is amended to read:

2764 348.0003 Expressway authority; formation; membership.--

2765 (4) (a) An authority may employ an executive secretary, an  
 2766 executive director, its own counsel and legal staff, technical  
 2767 experts, and such engineers and employees, permanent or  
 2768 temporary, as it may require and shall determine the  
 2769 qualifications and fix the compensation of such persons, firms,  
 2770 or corporations. An authority may employ a fiscal agent or  
 2771 agents; however, the authority must solicit sealed proposals  
 2772 from at least three persons, firms, or corporations for the

2773 performance of any services as fiscal agents. An authority may  
 2774 delegate to one or more of its agents or employees such of its  
 2775 power as it deems necessary to carry out the purposes of the  
 2776 Florida Expressway Authority Act, subject always to the  
 2777 supervision and control of the authority. Members of an  
 2778 authority may be removed from office by the Governor for  
 2779 misconduct, malfeasance, misfeasance, or nonfeasance in office.

2780 (b) Members of an authority are entitled to receive from  
 2781 the authority their travel and other necessary expenses incurred  
 2782 in connection with the business of the authority as provided in  
 2783 s. 112.061, but they may not draw salaries or other  
 2784 compensation.

2785 (c) Members of each expressway an authority,  
 2786 transportation authority, bridge authority, or toll authority,  
 2787 created pursuant to this chapter, chapter 343, or chapter 349,  
 2788 or pursuant to any other legislative enactment, shall be  
 2789 required to comply with the applicable financial disclosure  
 2790 requirements of s. 8, Art. II of the State Constitution. This  
 2791 subsection does not subject a statutorily created expressway  
 2792 authority, transportation authority, bridge authority, or toll  
 2793 authority, other than one created under this part, to any of the  
 2794 requirements of this part other than those contained in this  
 2795 subsection.

2796 Section 43. Paragraph (c) is added to subsection (1) of  
 2797 section 348.0004, Florida Statutes, to read:

2798 348.0004 Purposes and powers.--

2799 (1)

2800 (c) Notwithstanding any other provision of law, expressway

CS/CS/HB 1399

2008

2801 authorities as defined in chapter 348 shall index toll rates on  
 2802 toll facilities to the annual Consumer Price Index or similar  
 2803 inflation indicators. Toll rate index for inflation under this  
 2804 subsection must be adopted and approved by the expressway  
 2805 authority board at a public meeting and may be made no more  
 2806 frequently than once a year and must be made no less frequently  
 2807 than once every 5 years as necessary to accommodate cash toll  
 2808 rate schedules. Toll rates may be increased beyond these limits  
 2809 as directed by bond documents, covenants, or governing body  
 2810 authorization or pursuant to department administrative rule.

2811 Section 44. Subsection (1) of section 479.01, Florida  
 2812 Statutes, is amended to read:

2813 479.01 Definitions.--As used in this chapter, the term:

2814 (1) "Automatic changeable facing" means a facing that  
 2815 ~~which through a mechanical system~~ is capable of delivering two  
 2816 or more advertising messages through an automated or remotely  
 2817 controlled process and ~~shall not rotate so rapidly as to cause~~  
 2818 ~~distraction to a motorist.~~

2819 Section 45. Subsections (1), (5), and (9) of section  
 2820 479.07, Florida Statutes, are amended to read:

2821 479.07 Sign permits.--

2822 (1) Except as provided in ss. 479.105(1)(e) and 479.16, a  
 2823 person may not erect, operate, use, or maintain, or cause to be  
 2824 erected, operated, used, or maintained, any sign on the State  
 2825 Highway System outside an urban incorporated area, as defined in  
 2826 s. 334.03(32), or on any portion of the interstate or federal-  
 2827 aid primary highway system without first obtaining a permit for  
 2828 the sign from the department and paying the annual fee as

CS/CS/HB 1399

2008

2829 provided in this section. For purposes of this section, "on any  
2830 portion of the State Highway System, interstate, or federal-aid  
2831 primary system" shall mean a sign located within the controlled  
2832 area which is visible from any portion of the main-traveled way  
2833 of such system.

2834 (5) (a) For each permit issued, the department shall  
2835 furnish to the applicant a serially numbered permanent metal  
2836 permit tag. The permittee is responsible for maintaining a valid  
2837 permit tag on each permitted sign facing at all times. The tag  
2838 shall be securely attached to the sign facing or, if there is no  
2839 facing, on the pole nearest the highway; and it shall be  
2840 attached in such a manner as to be plainly visible from the  
2841 main-traveled way. Effective July 1, 2011, the tag shall be  
2842 securely attached to the upper 50 percent of the pole nearest  
2843 the highway and shall be attached in such a manner as to be  
2844 plainly visible from the main-traveled way. The permit will  
2845 become void unless the permit tag is properly and permanently  
2846 displayed at the permitted site within 30 days after the date of  
2847 permit issuance. If the permittee fails to erect a completed  
2848 sign on the permitted site within 270 days after the date on  
2849 which the permit was issued, the permit will be void, and the  
2850 department may not issue a new permit to that permittee for the  
2851 same location for 270 days after the date on which the permit  
2852 became void.

2853 (b) If a permit tag is lost, stolen, or destroyed, the  
2854 permittee to whom the tag was issued may ~~must~~ apply to the  
2855 department for a replacement tag. The department shall establish  
2856 by rule a service fee for replacement tags in an amount that

2857 will recover the actual cost of providing the replacement tag.  
 2858 Upon receipt of the application accompanied by the a service fee  
 2859 ~~of \$3~~, the department shall issue a replacement permit tag.  
 2860 Alternatively, the permittee may provide its own replacement tag  
 2861 pursuant to department specifications which the department shall  
 2862 establish by rule at the time it establishes the service fee for  
 2863 replacement tags.

2864 (9) (a) A permit shall not be granted for any sign for  
 2865 which a permit had not been granted by the effective date of  
 2866 this act unless such sign is located at least:

2867 1. One thousand five hundred feet from any other permitted  
 2868 sign on the same side of the highway, if on an interstate  
 2869 highway.

2870 2. One thousand feet from any other permitted sign on the  
 2871 same side of the highway, if on a federal-aid primary highway.

2872  
 2873 The minimum spacing provided in this paragraph does not preclude  
 2874 the permitting of V-type, back-to-back, side-to-side, stacked,  
 2875 or double-faced signs at the permitted sign site. If a sign is  
 2876 visible from the controlled area of more than one highway  
 2877 subject to the jurisdiction of the department, the sign shall  
 2878 meet the permitting requirements of, and, if the sign meets the  
 2879 applicable permitting requirements, be permitted to, the highway  
 2880 with the more stringent permitting requirements.

2881 (b) A permit shall not be granted for a sign pursuant to  
 2882 this chapter to locate such sign on any portion of the  
 2883 interstate or federal-aid primary highway system, which sign:

2884 1. Exceeds 50 feet in sign structure height above the

2885 crown of the main-traveled way, if outside an incorporated area;

2886 2. Exceeds 65 feet in sign structure height above the  
 2887 crown of the main-traveled way, if inside an incorporated area;  
 2888 or

2889 3. Exceeds 950 square feet of sign facing including all  
 2890 embellishments.

2891 (c) Notwithstanding subparagraph (a)1., there is  
 2892 established a pilot program in Orange, Hillsborough, and Osceola  
 2893 Counties, and within the boundaries of the City of Miami, under  
 2894 which the distance between permitted signs on the same side of  
 2895 an interstate highway may be reduced to 1,000 feet if all other  
 2896 requirements of this chapter are met and if:

2897 1. The local government has adopted a plan, program,  
 2898 resolution, ordinance, or other policy encouraging the voluntary  
 2899 removal of signs in a downtown, historic, redevelopment, infill,  
 2900 or other designated area which also provides for a new or  
 2901 replacement sign to be erected on an interstate highway within  
 2902 that jurisdiction if a sign in the designated area is removed;

2903 2. The sign owner and the local government mutually agree  
 2904 to the terms of the removal and replacement; and

2905 3. The local government notifies the department of its  
 2906 intention to allow such removal and replacement as agreed upon  
 2907 pursuant to subparagraph 2.

2908  
 2909 The department shall maintain statistics tracking the use of the  
 2910 provisions of this pilot program based on the notifications  
 2911 received by the department from local governments under this  
 2912 paragraph.



CS/CS/HB 1399

2008

2913 Section 46. Section 479.08, Florida Statutes, is amended  
 2914 to read:

2915 479.08 Denial or revocation of permit.--The department has  
 2916 the authority to deny or revoke any permit requested or granted  
 2917 under this chapter in any case in which it determines that the  
 2918 application for the permit contains knowingly false or knowingly  
 2919 misleading information. The department has the authority to  
 2920 revoke any permit granted under this chapter in any case in  
 2921 which ~~or that~~ the permittee has violated any of the provisions  
 2922 of this chapter, unless such permittee, within 30 days after the  
 2923 receipt of notice by the department, ~~corrects such false or~~  
 2924 ~~misleading information and~~ complies with the provisions of this  
 2925 chapter. For the purpose of this section, the notice of  
 2926 violation issued by the department shall describe in detail the  
 2927 alleged violation. Any person aggrieved by any action of the  
 2928 department in denying or revoking a permit under this chapter  
 2929 may, within 30 days after receipt of the notice, apply to the  
 2930 department for an administrative hearing pursuant to chapter  
 2931 120. If a timely request for hearing has been filed and the  
 2932 department issues a final order revoking a permit, such  
 2933 revocation shall be effective 30 days after the date of  
 2934 rendition. Except for department action pursuant to s.  
 2935 479.107(1), the filing of a timely and proper notice of appeal  
 2936 shall operate to stay the revocation until the department's  
 2937 action is upheld.

2938 Section 47. Section 479.156, Florida Statutes, is amended  
 2939 to read:

2940 479.156 Wall murals.--Notwithstanding any other provision

2941 of this chapter, a municipality or county may permit and  
 2942 regulate wall murals within areas designated by such government.  
 2943 If a municipality or county permits wall murals, a wall mural  
 2944 that displays a commercial message and is within 660 feet of the  
 2945 nearest edge of the right-of-way within an area adjacent to the  
 2946 interstate highway system or the federal-aid primary highway  
 2947 system shall be located in an area that is zoned for industrial  
 2948 or commercial use and the municipality or county shall establish  
 2949 and enforce regulations for such areas that, at a minimum, set  
 2950 forth criteria governing the size, lighting, and spacing of wall  
 2951 murals consistent with the intent of the Highway Beautification  
 2952 Act of 1965 and with customary use. Whenever a municipality or  
 2953 county exercises such control and makes a determination of  
 2954 customary use, pursuant to 23 U.S.C. s. 131(d), such  
 2955 determination shall be accepted in lieu of controls in the  
 2956 agreement between the state and the United States Department of  
 2957 Transportation, and the department shall certify effective local  
 2958 control pursuant to 23 U.S.C. s. 131(d) and C.F.R. s.  
 2959 750.706(c). A wall mural that is subject to municipal or county  
 2960 regulation and the Highway Beautification Act of 1965 must be  
 2961 approved by the Department of Transportation pursuant to ~~and the~~  
 2962 ~~Federal Highway Administration and may not violate the agreement~~  
 2963 ~~and between the state and the United States Department of~~  
 2964 ~~Transportation or violate~~ federal regulations enforced by the  
 2965 Department of Transportation under s. 479.02(1). The existence  
 2966 of a wall mural as defined in s. 479.01(27) shall not be  
 2967 considered in determining whether a sign as defined in s.  
 2968 479.01(17), either existing or new, is in compliance with s.

CS/CS/HB 1399

2008

2969 479.07(9)(a).

2970 Section 48. Subsections (1), (3), (4), and (5) of section  
2971 479.261, Florida Statutes, are amended to read:

2972 479.261 Logo sign program.--

2973 (1) The department shall establish a logo sign program for  
2974 the rights-of-way of the interstate highway system to provide  
2975 information to motorists about available gas, food, lodging, ~~and~~  
2976 camping, attractions, and other services which are approved by  
2977 the Federal Highway Administration at interchanges, through the  
2978 use of business logos, and may include additional interchanges  
2979 under the program. ~~A logo sign for nearby attractions may be~~  
2980 ~~added to this program if allowed by federal rules.~~

2981 (a) An attraction as used in this chapter is defined as an  
2982 establishment, site, facility, or landmark which is open a  
2983 minimum of 5 days a week for 52 weeks a year; ~~which charges an~~  
2984 ~~admission for entry,~~ which has as its principal focus family-  
2985 oriented entertainment, cultural, educational, recreational,  
2986 scientific, or historical activities; and which is publicly  
2987 recognized as a bona fide tourist attraction. ~~However, the~~  
2988 ~~permits for businesses seeking to participate in the attractions~~  
2989 ~~logo sign program shall be awarded by the department annually to~~  
2990 ~~the highest bidders, notwithstanding the limitation on fees in~~  
2991 ~~subsection (5), which are qualified for available space at each~~  
2992 ~~qualified location, but the fees therefor may not be less than~~  
2993 ~~the fees established for logo participants in other logo~~  
2994 ~~categories.~~

2995 (b) The department shall incorporate the use of RV-  
2996 friendly markers on specific information logo signs for

2997 establishments that cater to the needs of persons driving  
2998 recreational vehicles. Establishments that qualify for  
2999 participation in the specific information logo program and that  
3000 also qualify as "RV-friendly" may request the RV-friendly marker  
3001 on their specific information logo sign. An RV-friendly marker  
3002 must consist of a design approved by the Federal Highway  
3003 Administration. The department shall adopt rules in accordance  
3004 with chapter 120 to administer this paragraph, including rules  
3005 setting forth the minimum requirements that establishments must  
3006 meet in order to qualify as RV-friendly. These requirements  
3007 shall include large parking spaces, entrances, and exits that  
3008 can easily accommodate recreational vehicles and facilities  
3009 having appropriate overhead clearances, if applicable.

3010 (c) The department is authorized to implement by rule a  
3011 rotation-based logo program providing for the removal and  
3012 addition of participating businesses in the program.

3013 (3) Logo signs may be installed upon the issuance of an  
3014 annual permit by the department or its agent and payment of a ~~an~~  
3015 ~~application and~~ permit fee to the department or its agent.

3016 (4) The department may contract pursuant to s. 287.057 for  
3017 the provision of services related to the logo sign program,  
3018 including recruitment and qualification of businesses, review of  
3019 applications, permit issuance, and fabrication, installation,  
3020 and maintenance of logo signs. The department may reject all  
3021 proposals and seek another request for proposals or otherwise  
3022 perform the work. ~~If the department contracts for the provision~~  
3023 ~~of services for the logo sign program, the contract must~~  
3024 ~~require, unless the business owner declines, that businesses~~

CS/CS/HB 1399

2008

3025 ~~that previously entered into agreements with the department to~~  
3026 ~~privately fund logo sign construction and installation be~~  
3027 ~~reimbursed by the contractor for the cost of the signs which has~~  
3028 ~~not been recovered through a previously agreed upon waiver of~~  
3029 ~~fees.~~ The contract also may allow the contractor to retain a  
3030 portion of the annual fees as compensation for its services.

3031 (5) Permit fees for businesses that participate in the  
3032 logo program must be established in an amount not less than that  
3033 sufficient to offset the total cost to the department for the  
3034 program, including contract costs. The department shall provide  
3035 the services in the most efficient and cost-effective manner  
3036 through department staff or by contracting for some or all of  
3037 the services. ~~Such annual permit fee shall not exceed \$1,250.~~  
3038 Annual permit fees shall be set by department rule based upon  
3039 factors such as population, traffic volume, market demand, and  
3040 costs. The annual permit fees shall be phased in by rule over a  
3041 4-year period of time.

3042 Section 49. Business partnerships; display of names.--

3043 (1) School districts are encouraged to partner with local  
3044 businesses for the purposes of mentorship opportunities,  
3045 development of employment options and additional funding  
3046 sources, and other mutual benefits.

3047 (2) As a pilot program through June 30, 2011, the Palm  
3048 Beach County School District may publicly display the names and  
3049 recognitions of their business partners on school district  
3050 property. Examples of appropriate business partner recognition  
3051 include "Project Graduation" and athletic sponsorships. The  
3052 district shall make every effort to display business partner

3053 names in a manner that is consistent with the county standards  
 3054 for uniformity in size, color, and placement of the signs.  
 3055 Whenever the provisions of this section are inconsistent with  
 3056 the provisions of the county ordinances or regulations relating  
 3057 to signs or the provisions of chapter 125, chapter 166, or  
 3058 chapter 479, Florida Statutes, in the unincorporated areas, the  
 3059 provisions of this section shall prevail.

3060 Section 50. Paragraph (d) of subsection (10) of section  
 3061 768.28, Florida Statutes, is amended to read:

3062 768.28 Waiver of sovereign immunity in tort actions;  
 3063 recovery limits; limitation on attorney fees; statute of  
 3064 limitations; exclusions; indemnification; risk management  
 3065 programs.--

3066 (10)

3067 (d)1. For the purposes of this section, operators,  
 3068 dispatchers, and providers of security for rail services and  
 3069 rail facility maintenance providers in any rail corridor owned  
 3070 by the Department of Transportation ~~the South Florida Rail~~  
 3071 ~~Corridor~~, or any of their employees or agents, performing such  
 3072 services under contract with and on behalf of the ~~South Florida~~  
 3073 ~~Regional Transportation Authority~~ or the Department of  
 3074 Transportation, or a governmental entity that is under contract  
 3075 with the Department of Transportation to perform such services  
 3076 or a governmental entity designated by the Department of  
 3077 Transportation, shall be considered agents of the state while  
 3078 acting within the scope of and pursuant to guidelines  
 3079 established in said contract or by rule. This subsection shall  
 3080 not be construed as designating persons providing contracted

3081 operator, dispatcher, security services, rail facility  
 3082 maintenance, or other services as employees or agents of the  
 3083 state for the purposes of the Federal Employers Liability Act,  
 3084 the Federal Railway Labor Act, or chapter 440.

3085 2. The Department of Transportation shall ensure that  
 3086 operators, dispatchers, and providers of security for rail  
 3087 services and rail facility maintenance providers in any rail  
 3088 corridor owned by the Department of Transportation meet  
 3089 requirements, as applicable to the service provided,  
 3090 demonstrating that, at a minimum, the provider:

3091 a. Has complete knowledge of railroad specific dispatch  
 3092 operating rules, physical characteristics of the rail line for  
 3093 which the provider is responsible, and overall railroad  
 3094 operations including responsibilities of various departments  
 3095 within the railroad organization.

3096 b. Has complete knowledge of railroad track maintenance  
 3097 standards and the Federal Railroad Administration Track Safety  
 3098 Standards, 49 C.F.R. part 213, and the Railroad Worker  
 3099 Protection, 49 C.F.R. part 214.

3100 c. Meets the requirements of 49 C.F.R. s. 213.7,  
 3101 specifying the minimum qualifications and abilities for those  
 3102 persons to supervise the restoration and renewal of railroad  
 3103 track and for those persons to inspect such track for compliance  
 3104 with railroad specific maintenance standards and Federal  
 3105 Railroad Administration track safety standards.

3106 d. Has complete knowledge of railroad signal maintenance  
 3107 standards and Federal Railroad Administration Grade Crossing  
 3108 Signal System Safety Standards, 49 C.F.R. part 234, and the

3109 Railroad Worker Protection, 49 C.F.R. part 214.  
 3110 e. Has the ability to read and understand highly complex  
 3111 wiring diagrams and technical instruction manuals relating to  
 3112 railroad signals.  
 3113 f. Understands rail corridor operating and safety rules.  
 3114 g. Has the ability to develop and comply with Federal  
 3115 Transit Administration Management plans.  
 3116 h. Has the ability to develop and comply with Federal  
 3117 Railroad Administration Safety and Security Program plans.  
 3118 Section 51. The Department of Transportation, in  
 3119 consultation with the Department of Law Enforcement, the  
 3120 Division of Emergency Management of the Department of Community  
 3121 Affairs, and the Office of Tourism, Trade, and Economic  
 3122 Development, and regional planning councils within whose  
 3123 jurisdictional area the I-95 corridor lies, shall complete a  
 3124 study of transportation alternatives for the travel corridor  
 3125 parallel to Interstate 95 which takes into account the  
 3126 transportation, emergency management, homeland security, and  
 3127 economic development needs of the state. The report must include  
 3128 identification of cost effective measures that may be  
 3129 implemented to alleviate congestion on Interstate 95, facilitate  
 3130 emergency and security responses, and foster economic  
 3131 development. The Department of Transportation shall send the  
 3132 report to the Governor, the President of the Senate, the Speaker  
 3133 of the House of Representatives, and each affected metropolitan  
 3134 planning organization by June 30, 2009.  
 3135 Section 52. (1) The Office of Motor Carrier Compliance of  
 3136 the Department of Transportation is hereby transferred by a type



3137 two transfer, as defined in s. 20.06(2), Florida Statutes, to  
 3138 the Division of the Florida Highway Patrol of the Department of  
 3139 Highway Safety and Motor Vehicles. The Department of Highway  
 3140 Safety and Motor Vehicles shall be reimbursed by the Department  
 3141 of Transportation for such expenses incurred to provide motor  
 3142 carrier compliance functions within the division of the Florida  
 3143 Highway Patrol. This amount shall be determined annually by the  
 3144 Department of Highway Safety and Motor Vehicles based upon the  
 3145 appropriation provided for these functions, less any federal  
 3146 grant funds, in the General Appropriations Act.

3147 (2) The Legislature recognizes that there is a need to  
 3148 conform the Florida Statutes to the organizational changes in  
 3149 this section and that there may be a need to resolve apparent  
 3150 conflicts with any other legislation that has been or may be  
 3151 enacted during the 2008 Regular Session. Therefore, in the  
 3152 interim between this act becoming a law and the 2009 Regular  
 3153 Session of the Legislature or an earlier special session  
 3154 addressing this issue, the Division of Statutory Revision shall  
 3155 provide the relevant substantive committees of the Senate and  
 3156 the House of Representatives with assistance, upon request, to  
 3157 enable such committees to prepare draft legislation to conform  
 3158 the Florida Statutes and any legislation enacted during 2008 to  
 3159 the provisions of this section.

3160 Section 53. The Office of Program Policy Analysis and  
 3161 Government Accountability shall review the operations and  
 3162 efficiencies of the Miami-Dade Expressway Authority and submit a  
 3163 report on its findings to the President of the Senate, the  
 3164 Speaker of the House of Representatives, and the majority and

3165 minority leaders of the Senate and the House of Representatives.

3166 Section 54. For the purpose of incorporating the amendment  
 3167 made by this act to section 316.193, Florida Statutes, in a  
 3168 reference thereto, paragraph (a) of subsection (3) of section  
 3169 316.066, Florida Statutes, is reenacted to read:

3170 316.066 Written reports of crashes.--

3171 (3) (a) Every law enforcement officer who in the regular  
 3172 course of duty investigates a motor vehicle crash:

3173 1. Which crash resulted in death or personal injury shall,  
 3174 within 10 days after completing the investigation, forward a  
 3175 written report of the crash to the department or traffic records  
 3176 center.

3177 2. Which crash involved a violation of s. 316.061(1) or s.  
 3178 316.193 shall, within 10 days after completing the  
 3179 investigation, forward a written report of the crash to the  
 3180 department or traffic records center.

3181 3. In which crash a vehicle was rendered inoperative to a  
 3182 degree which required a wrecker to remove it from traffic may,  
 3183 within 10 days after completing the investigation, forward a  
 3184 written report of the crash to the department or traffic records  
 3185 center if such action is appropriate, in the officer's  
 3186 discretion.

3187 Section 55. For the purpose of incorporating the amendment  
 3188 made by this act to section 316.193, Florida Statutes, in a  
 3189 reference thereto, paragraph (b) of subsection (4) of section  
 3190 316.072, Florida Statutes, is reenacted to read:

3191 316.072 Obedience to and effect of traffic laws.--

3192 (4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER;

3193 | EXCEPTIONS.--

3194 |       (b) Unless specifically made applicable, the provisions of  
 3195 | this chapter, except those contained in ss. 316.192, 316.1925,  
 3196 | and 316.193, shall not apply to persons, teams, or motor  
 3197 | vehicles and other equipment while actually engaged in work upon  
 3198 | the surface of a highway, but shall apply to such persons and  
 3199 | vehicles when traveling to or from such work.

3200 |       Section 56. For the purpose of incorporating the amendment  
 3201 | made by this act to section 316.193, Florida Statutes, in a  
 3202 | reference thereto, subsection (3) of section 316.1932, Florida  
 3203 | Statutes, is reenacted to read:

3204 |       316.1932 Tests for alcohol, chemical substances, or  
 3205 | controlled substances; implied consent; refusal.--

3206 |       (3) Notwithstanding any provision of law pertaining to the  
 3207 | confidentiality of hospital records or other medical records,  
 3208 | information relating to the alcoholic content of the blood or  
 3209 | breath or the presence of chemical substances or controlled  
 3210 | substances in the blood obtained pursuant to this section shall  
 3211 | be released to a court, prosecuting attorney, defense attorney,  
 3212 | or law enforcement officer in connection with an alleged  
 3213 | violation of s. 316.193 upon request for such information.

3214 |       Section 57. For the purpose of incorporating the amendment  
 3215 | made by this act to section 316.193, Florida Statutes, in a  
 3216 | reference thereto, subsection (4) of section 316.1933, Florida  
 3217 | Statutes, is reenacted to read:

3218 |       316.1933 Blood test for impairment or intoxication in  
 3219 | cases of death or serious bodily injury; right to use reasonable  
 3220 | force.--

3221 (4) Notwithstanding any provision of law pertaining to the  
 3222 confidentiality of hospital records or other medical records,  
 3223 information relating to the alcoholic content of the blood or  
 3224 the presence of chemical substances or controlled substances in  
 3225 the blood obtained pursuant to this section shall be released to  
 3226 a court, prosecuting attorney, defense attorney, or law  
 3227 enforcement officer in connection with an alleged violation of  
 3228 s. 316.193 upon request for such information.

3229 Section 58. For the purpose of incorporating the amendment  
 3230 made by this act to section 316.193, Florida Statutes, in  
 3231 references thereto, subsection (1) and paragraph (d) of  
 3232 subsection (2) of section 316.1937, Florida Statutes, are  
 3233 reenacted to read:

3234 316.1937 Ignition interlock devices, requiring; unlawful  
 3235 acts.--

3236 (1) In addition to any other authorized penalties, the  
 3237 court may require that any person who is convicted of driving  
 3238 under the influence in violation of s. 316.193 shall not operate  
 3239 a motor vehicle unless that vehicle is equipped with a  
 3240 functioning ignition interlock device certified by the  
 3241 department as provided in s. 316.1938, and installed in such a  
 3242 manner that the vehicle will not start if the operator's blood  
 3243 alcohol level is in excess of 0.05 percent or as otherwise  
 3244 specified by the court. The court may require the use of an  
 3245 approved ignition interlock device for a period of not less than  
 3246 6 months, if the person is permitted to operate a motor vehicle,  
 3247 whether or not the privilege to operate a motor vehicle is  
 3248 restricted, as determined by the court. The court, however,

CS/CS/HB 1399

2008

3249 shall order placement of an ignition interlock device in those  
 3250 circumstances required by s. 316.193.

3251 (2) If the court imposes the use of an ignition interlock  
 3252 device, the court shall:

3253 (d) Determine the person's ability to pay for installation  
 3254 of the device if the person claims inability to pay. If the  
 3255 court determines that the person is unable to pay for  
 3256 installation of the device, the court may order that any portion  
 3257 of a fine paid by the person for a violation of s. 316.193 shall  
 3258 be allocated to defray the costs of installing the device.

3259 Section 59. For the purpose of incorporating the amendment  
 3260 made by this act to section 316.193, Florida Statutes, in a  
 3261 reference thereto, paragraph (b) of subsection (1) of section  
 3262 316.1939, Florida Statutes, is reenacted to read:

3263 316.1939 Refusal to submit to testing; penalties.--

3264 (1) Any person who has refused to submit to a chemical or  
 3265 physical test of his or her breath, blood, or urine, as  
 3266 described in s. 316.1932, and whose driving privilege was  
 3267 previously suspended for a prior refusal to submit to a lawful  
 3268 test of his or her breath, urine, or blood, and:

3269 (b) Who was placed under lawful arrest for a violation of  
 3270 s. 316.193 unless such test was requested pursuant to s.  
 3271 316.1932(1)(c);

3272  
 3273 commits a misdemeanor of the first degree and is subject to  
 3274 punishment as provided in s. 775.082 or s. 775.083.

3275 Section 60. For the purpose of incorporating the amendment  
 3276 made by this act to section 316.193, Florida Statutes, in a

3277 reference thereto, subsection (1) of section 316.656, Florida  
 3278 Statutes, is reenacted to read:

3279 316.656 Mandatory adjudication; prohibition against  
 3280 accepting plea to lesser included offense.--

3281 (1) Notwithstanding the provisions of s. 948.01, no court  
 3282 may suspend, defer, or withhold adjudication of guilt or  
 3283 imposition of sentence for any violation of s. 316.193, for  
 3284 manslaughter resulting from the operation of a motor vehicle, or  
 3285 for vehicular homicide.

3286 Section 61. For the purpose of incorporating the amendment  
 3287 made by this act to section 316.193, Florida Statutes, in  
 3288 references thereto, subsections (4) and (5) of section 318.143,  
 3289 Florida Statutes, are reenacted to read:

3290 318.143 Sanctions for infractions by minors.--

3291 (4) For the first conviction for a violation of s.  
 3292 316.193, the court may order the Department of Highway Safety  
 3293 and Motor Vehicles to revoke the minor's driver's license until  
 3294 the minor is 18 years of age. For a second or subsequent  
 3295 conviction for such a violation, the court may order the  
 3296 Department of Highway Safety and Motor Vehicles to revoke the  
 3297 minor's driver's license until the minor is 21 years of age.

3298 (5) A minor who is arrested for a violation of s. 316.193  
 3299 may be released from custody as soon as:

3300 (a) The minor is no longer under the influence of  
 3301 alcoholic beverages, of any chemical substance set forth in s.  
 3302 877.111, or of any substance controlled under chapter 893, and  
 3303 is not affected to the extent that his or her normal faculties  
 3304 are impaired;

3305 (b) The minor's blood-alcohol level is less than 0.05  
 3306 percent; or

3307 (c) Six hours have elapsed after the minor's arrest.

3308 Section 62. For the purpose of incorporating the amendment  
 3309 made by this act to section 316.193, Florida Statutes, in a  
 3310 reference thereto, subsection (3) of section 318.17, Florida  
 3311 Statutes, is reenacted to read:

3312 318.17 Offenses excepted.--No provision of this chapter is  
 3313 available to a person who is charged with any of the following  
 3314 offenses:

3315 (3) Driving, or being in actual physical control of, any  
 3316 vehicle while under the influence of alcoholic beverages, any  
 3317 chemical substance set forth in s. 877.111, or any substance  
 3318 controlled under chapter 893, in violation of s. 316.193, or  
 3319 driving with an unlawful blood-alcohol level;

3320 Section 63. For the purpose of incorporating the amendment  
 3321 made by this act to section 316.193, Florida Statutes, in a  
 3322 reference thereto, paragraph (c) of subsection (1) of section  
 3323 320.055, Florida Statutes, is reenacted to read:

3324 320.055 Registration periods; renewal periods.--The  
 3325 following registration periods and renewal periods are  
 3326 established:

3327 (1)

3328 (c) Notwithstanding the requirements of paragraph (a), the  
 3329 owner of a motor vehicle subject to paragraph (a) who has had  
 3330 his or her driver's license suspended pursuant to a violation of  
 3331 s. 316.193 or pursuant to s. 322.26(2) for driving under the  
 3332 influence must obtain a 6-month registration as a condition of

3333 reinstating the license, subject to renewal during the 3-year  
 3334 period that financial responsibility requirements apply. The  
 3335 registration period begins the first day of the birth month of  
 3336 the owner and ends the last day of the fifth month immediately  
 3337 following the owner's birth month. For such vehicles, the  
 3338 department shall issue a vehicle registration certificate that  
 3339 is valid for 6 months and shall issue a validation sticker that  
 3340 displays an expiration date of 6 months after the date of  
 3341 issuance. The license tax required by s. 320.08 and all other  
 3342 applicable license taxes shall be one-half of the amount  
 3343 otherwise required, except the service charge required by s.  
 3344 320.04 shall be paid in full for each 6-month registration. A  
 3345 vehicle required to be registered under this paragraph is not  
 3346 eligible for the extended registration period under paragraph  
 3347 (b).

3348 Section 64. For the purpose of incorporating the amendment  
 3349 made by this act to section 316.193, Florida Statutes, in a  
 3350 reference thereto, subsection (2) of section 322.03, Florida  
 3351 Statutes, is reenacted to read:

3352 322.03 Drivers must be licensed; penalties.--

3353 (2) Prior to issuing a driver's license, the department  
 3354 shall require any person who has been convicted two or more  
 3355 times of a violation of s. 316.193 or of a substantially similar  
 3356 alcohol-related or drug-related offense outside this state  
 3357 within the preceding 5 years, or who has been convicted of three  
 3358 or more such offenses within the preceding 10 years, to present  
 3359 proof of successful completion of or enrollment in a department-  
 3360 approved substance abuse education course. If the person fails



3361 to complete such education course within 90 days after issuance,  
 3362 the department shall cancel the license. Further, prior to  
 3363 issuing the driver's license the department shall require such  
 3364 person to present proof of financial responsibility as provided  
 3365 in s. 324.031. For the purposes of this paragraph, a previous  
 3366 conviction for violation of former s. 316.028, former s.  
 3367 316.1931, or former s. 860.01 shall be considered a previous  
 3368 conviction for violation of s. 316.193.

3369 Section 65. For the purpose of incorporating the amendment  
 3370 made by this act to section 316.193, Florida Statutes, in a  
 3371 reference thereto, paragraph (a) of subsection (2) of section  
 3372 322.0602, Florida Statutes, is reenacted to read:

3373 322.0602 Youthful Drunk Driver Visitation Program.--

3374 (2) COURT-ORDERED PARTICIPATION IN PROGRAM; PREFERENCE FOR  
 3375 PARTICIPATION.--

3376 (a) If a person is convicted of a violation of s. 316.193,  
 3377 the court may order, as a term and condition of probation in  
 3378 addition to any other term or condition required or authorized  
 3379 by law, that the probationer participate in the Youthful Drunk  
 3380 Driver Visitation Program.

3381 Section 66. For the purpose of incorporating the amendment  
 3382 made by this act to section 316.193, Florida Statutes, in a  
 3383 reference thereto, subsection (8) of section 322.21, Florida  
 3384 Statutes, is reenacted to read:

3385 322.21 License fees; procedure for handling and collecting  
 3386 fees.--

3387 (8) Any person who applies for reinstatement following the  
 3388 suspension or revocation of the person's driver's license shall

3389 pay a service fee of \$35 following a suspension, and \$60  
3390 following a revocation, which is in addition to the fee for a  
3391 license. Any person who applies for reinstatement of a  
3392 commercial driver's license following the disqualification of  
3393 the person's privilege to operate a commercial motor vehicle  
3394 shall pay a service fee of \$60, which is in addition to the fee  
3395 for a license. The department shall collect all of these fees at  
3396 the time of reinstatement. The department shall issue proper  
3397 receipts for such fees and shall promptly transmit all funds  
3398 received by it as follows:

3399 (a) Of the \$35 fee received from a licensee for  
3400 reinstatement following a suspension, the department shall  
3401 deposit \$15 in the General Revenue Fund and \$20 in the Highway  
3402 Safety Operating Trust Fund.

3403 (b) Of the \$60 fee received from a licensee for  
3404 reinstatement following a revocation or disqualification, the  
3405 department shall deposit \$35 in the General Revenue Fund and \$25  
3406 in the Highway Safety Operating Trust Fund.

3407  
3408 If the revocation or suspension of the driver's license was for  
3409 a violation of s. 316.193, or for refusal to submit to a lawful  
3410 breath, blood, or urine test, an additional fee of \$115 must be  
3411 charged. However, only one \$115 fee may be collected from one  
3412 person convicted of violations arising out of the same incident.  
3413 The department shall collect the \$115 fee and deposit the fee  
3414 into the Highway Safety Operating Trust Fund at the time of  
3415 reinstatement of the person's driver's license, but the fee may  
3416 not be collected if the suspension or revocation is overturned.

3417 If the revocation or suspension of the driver's license was for  
 3418 a conviction for a violation of s. 817.234(8) or (9) or s.  
 3419 817.505, an additional fee of \$180 is imposed for each offense.  
 3420 The department shall collect and deposit the additional fee into  
 3421 the Highway Safety Operating Trust Fund at the time of  
 3422 reinstatement of the person's driver's license.

3423 Section 67. For the purpose of incorporating the amendment  
 3424 made by this act to section 316.193, Florida Statutes, in a  
 3425 reference thereto, subsection (5) of section 322.25, Florida  
 3426 Statutes, is reenacted to read:

3427 322.25 When court to forward license to department and  
 3428 report convictions; temporary reinstatement of driving  
 3429 privileges.--

3430 (5) For the purpose of this chapter, the entrance of a  
 3431 plea of nolo contendere by the defendant to a charge of driving  
 3432 while intoxicated, driving under the influence, driving with an  
 3433 unlawful blood-alcohol level, or any other alcohol-related or  
 3434 drug-related traffic offense similar to the offenses specified  
 3435 in s. 316.193, accepted by the court and under which plea the  
 3436 court has entered a fine or sentence, whether in this state or  
 3437 any other state or country, shall be equivalent to a conviction.

3438 Section 68. For the purpose of incorporating the amendment  
 3439 made by this act to section 316.193, Florida Statutes, in a  
 3440 reference thereto, paragraph (a) of subsection (1) of section  
 3441 322.26, Florida Statutes, is reenacted to read:

3442 322.26 Mandatory revocation of license by department.--The  
 3443 department shall forthwith revoke the license or driving  
 3444 privilege of any person upon receiving a record of such person's

3445 conviction of any of the following offenses:

3446 (1) (a) Murder resulting from the operation of a motor  
 3447 vehicle, DUI manslaughter where the conviction represents a  
 3448 subsequent DUI-related conviction, or a fourth violation of s.  
 3449 316.193 or former s. 316.1931. For such cases, the revocation of  
 3450 the driver's license or driving privilege shall be permanent.

3451 Section 69. For the purpose of incorporating the amendment  
 3452 made by this act to section 316.193, Florida Statutes, in  
 3453 references thereto, paragraph (a) of subsection (14) and  
 3454 subsection (16) of section 322.2615, Florida Statutes, are  
 3455 reenacted to read:

3456 322.2615 Suspension of license; right to review.--

3457 (14) (a) The decision of the department under this section  
 3458 or any circuit court review thereof may not be considered in any  
 3459 trial for a violation of s. 316.193, and a written statement  
 3460 submitted by a person in his or her request for departmental  
 3461 review under this section may not be admitted into evidence  
 3462 against him or her in any such trial.

3463 (16) The department shall invalidate a suspension for  
 3464 driving with an unlawful blood-alcohol level or breath-alcohol  
 3465 level imposed under this section if the suspended person is  
 3466 found not guilty at trial of an underlying violation of s.  
 3467 316.193.

3468 Section 70. For the purpose of incorporating the amendment  
 3469 made by this act to section 316.193, Florida Statutes, in  
 3470 references thereto, subsections (15) and (19) of section  
 3471 322.2616, Florida Statutes, are reenacted to read:

3472 322.2616 Suspension of license; persons under 21 years of

3473 age; right to review.--

3474 (15) The decision of the department under this section  
 3475 shall not be considered in any trial for a violation of s.  
 3476 316.193, nor shall any written statement submitted by a person  
 3477 in his or her request for departmental review under this section  
 3478 be admissible into evidence against him or her in any such  
 3479 trial. The disposition of any related criminal proceedings shall  
 3480 not affect a suspension imposed under this section.

3481 (19) A violation of this section is neither a traffic  
 3482 infraction nor a criminal offense, nor does being detained  
 3483 pursuant to this section constitute an arrest. A violation of  
 3484 this section is subject to the administrative action provisions  
 3485 of this section, which are administered by the department  
 3486 through its administrative processes. Administrative actions  
 3487 taken pursuant to this section shall be recorded in the motor  
 3488 vehicle records maintained by the department. This section does  
 3489 not bar prosecution under s. 316.193. However, if the department  
 3490 suspends a person's license under s. 322.2615 for a violation of  
 3491 s. 316.193, it may not also suspend the person's license under  
 3492 this section for the same episode that was the basis for the  
 3493 suspension under s. 322.2615.

3494 Section 71. For the purpose of incorporating the amendment  
 3495 made by this act to section 316.193, Florida Statutes, in a  
 3496 reference thereto, paragraph (b) of subsection (1) of section  
 3497 322.264, Florida Statutes, is reenacted to read:

3498 322.264 "Habitual traffic offender" defined.--A "habitual  
 3499 traffic offender" is any person whose record, as maintained by  
 3500 the Department of Highway Safety and Motor Vehicles, shows that

CS/CS/HB 1399

2008

3501 such person has accumulated the specified number of convictions  
 3502 for offenses described in subsection (1) or subsection (2)  
 3503 within a 5-year period:

3504 (1) Three or more convictions of any one or more of the  
 3505 following offenses arising out of separate acts:

3506 (b) Any violation of s. 316.193, former s. 316.1931, or  
 3507 former s. 860.01;

3508  
 3509 Any violation of any federal law, any law of another state or  
 3510 country, or any valid ordinance of a municipality or county of  
 3511 another state similar to a statutory prohibition specified in  
 3512 subsection (1) or subsection (2) shall be counted as a violation  
 3513 of such prohibition. In computing the number of convictions, all  
 3514 convictions during the 5 years previous to July 1, 1972, will be  
 3515 used, provided at least one conviction occurs after that date.  
 3516 The fact that previous convictions may have resulted in  
 3517 suspension, revocation, or disqualification under another  
 3518 section does not exempt them from being used for suspension or  
 3519 revocation under this section as a habitual offender.

3520 Section 72. For the purpose of incorporating the amendment  
 3521 made by this act to section 316.193, Florida Statutes, in  
 3522 references thereto, paragraphs (a) and (c) of subsection (2) and  
 3523 subsection (4) of section 322.271, Florida Statutes, are  
 3524 reenacted to read:

3525 322.271 Authority to modify revocation, cancellation, or  
 3526 suspension order.--

3527 (2) (a) Upon such hearing, the person whose license has  
 3528 been suspended, canceled, or revoked may show that such

CS/CS/HB 1399

2008

3529 suspension, cancellation, or revocation of his or her license  
3530 causes a serious hardship and precludes the person's carrying  
3531 out his or her normal business occupation, trade, or employment  
3532 and that the use of the person's license in the normal course of  
3533 his or her business is necessary to the proper support of the  
3534 person or his or her family. Except as otherwise provided in  
3535 this subsection, the department shall require proof of the  
3536 successful completion of the applicable department-approved  
3537 driver training course operating pursuant to s. 318.1451 or DUI  
3538 program substance abuse education course and evaluation as  
3539 provided in s. 316.193(5). Letters of recommendation from  
3540 respected business persons in the community, law enforcement  
3541 officers, or judicial officers may also be required to determine  
3542 whether such person should be permitted to operate a motor  
3543 vehicle on a restricted basis for business or employment use  
3544 only and in determining whether such person can be trusted to so  
3545 operate a motor vehicle. If a driver's license has been  
3546 suspended under the point system or pursuant to s. 322.2615, the  
3547 department shall require proof of enrollment in the applicable  
3548 department-approved driver training course or licensed DUI  
3549 program substance abuse education course, including evaluation  
3550 and treatment, if referred, and may require letters of  
3551 recommendation described in this subsection to determine if the  
3552 driver should be reinstated on a restricted basis. If such  
3553 person fails to complete the approved course within 90 days  
3554 after reinstatement or subsequently fails to complete treatment,  
3555 if applicable, the department shall cancel his or her driver's  
3556 license until the course and treatment, if applicable, is

3557 | successfully completed, notwithstanding the terms of the court  
3558 | order or any suspension or revocation of the driving privilege.  
3559 | The department may temporarily reinstate the driving privilege  
3560 | on a restricted basis upon verification from the DUI program  
3561 | that the offender has reentered and is currently participating  
3562 | in treatment and has completed the DUI education course and  
3563 | evaluation requirement. If the DUI program notifies the  
3564 | department of the second failure to complete treatment, the  
3565 | department shall reinstate the driving privilege only after  
3566 | notice of completion of treatment from the DUI program. The  
3567 | privilege of driving on a limited or restricted basis for  
3568 | business or employment use shall not be granted to a person who  
3569 | has been convicted of a violation of s. 316.193 until completion  
3570 | of the DUI program substance abuse education course and  
3571 | evaluations as provided in s. 316.193(5). Except as provided in  
3572 | paragraph (b), the privilege of driving on a limited or  
3573 | restricted basis for business or employment use shall not be  
3574 | granted to a person whose license is revoked pursuant to s.  
3575 | 322.28 or suspended pursuant to s. 322.2615 and who has been  
3576 | convicted of a violation of s. 316.193 two or more times or  
3577 | whose license has been suspended two or more times for refusal  
3578 | to submit to a test pursuant to s. 322.2615 or former s.  
3579 | 322.261.

3580 | (c) For the purpose of this section, a previous conviction  
3581 | of driving under the influence, driving while intoxicated,  
3582 | driving with an unlawful blood-alcohol level, or any other  
3583 | similar alcohol-related or drug-related offense outside this  
3584 | state or a previous conviction of former s. 316.1931, former s.



CS/CS/HB 1399

2008

3585 316.028, or former s. 860.01 shall be considered a previous  
3586 conviction for violation of s. 316.193.

3587 (4) Notwithstanding the provisions of s. 322.28(2)(e), a  
3588 person whose driving privilege has been permanently revoked  
3589 because he or she has been convicted of DUI manslaughter in  
3590 violation of s. 316.193 and has no prior convictions for DUI-  
3591 related offenses may, upon the expiration of 5 years after the  
3592 date of such revocation or the expiration of 5 years after the  
3593 termination of any term of incarceration under s. 316.193 or  
3594 former s. 316.1931, whichever date is later, petition the  
3595 department for reinstatement of his or her driving privilege.

3596 (a) Within 30 days after the receipt of such a petition,  
3597 the department shall afford the petitioner an opportunity for a  
3598 hearing. At the hearing, the petitioner must demonstrate to the  
3599 department that he or she:

3600 1. Has not been arrested for a drug-related offense during  
3601 the 5 years preceding the filing of the petition;

3602 2. Has not driven a motor vehicle without a license for at  
3603 least 5 years prior to the hearing;

3604 3. Has been drug-free for at least 5 years prior to the  
3605 hearing; and

3606 4. Has completed a DUI program licensed by the department.

3607 (b) At such hearing, the department shall determine the  
3608 petitioner's qualification, fitness, and need to drive. Upon  
3609 such determination, the department may, in its discretion,  
3610 reinstate the driver's license of the petitioner. Such  
3611 reinstatement must be made subject to the following  
3612 qualifications:

3613           1. The license must be restricted for employment purposes  
3614 for not less than 1 year; and

3615           2. Such person must be supervised by a DUI program  
3616 licensed by the department and report to the program for such  
3617 supervision and education at least four times a year or  
3618 additionally as required by the program for the remainder of the  
3619 revocation period. Such supervision shall include evaluation,  
3620 education, referral into treatment, and other activities  
3621 required by the department.

3622           (c) Such person must assume the reasonable costs of  
3623 supervision. If such person fails to comply with the required  
3624 supervision, the program shall report the failure to the  
3625 department, and the department shall cancel such person's  
3626 driving privilege.

3627           (d) If, after reinstatement, such person is convicted of  
3628 an offense for which mandatory revocation of his or her license  
3629 is required, the department shall revoke his or her driving  
3630 privilege.

3631           (e) The department shall adopt rules regulating the  
3632 providing of services by DUI programs pursuant to this section.

3633           Section 73. For the purpose of incorporating the amendment  
3634 made by this act to section 316.193, Florida Statutes, in  
3635 references thereto, subsection (2), paragraphs (a) and (c) of  
3636 subsection (3), and subsection (4) of section 322.2715, Florida  
3637 Statutes, are reenacted to read:

3638           322.2715 Ignition interlock device.--

3639           (2) For purposes of this section, any conviction for a  
3640 violation of s. 316.193, a previous conviction for a violation

CS/CS/HB 1399

2008

3641 of former s. 316.1931, or a conviction outside this state for  
3642 driving under the influence, driving while intoxicated, driving  
3643 with an unlawful blood-alcohol level, or any other similar  
3644 alcohol-related or drug-related traffic offense is a conviction  
3645 of driving under the influence.

3646 (3) If the person is convicted of:

3647 (a) A first offense of driving under the influence under  
3648 s. 316.193 and has an unlawful blood-alcohol level or breath-  
3649 alcohol level as specified in s. 316.193(4), or if a person is  
3650 convicted of a violation of s. 316.193 and was at the time of  
3651 the offense accompanied in the vehicle by a person younger than  
3652 18 years of age, the person shall have the ignition interlock  
3653 device installed for 6 months for the first offense and for at  
3654 least 2 years for a second offense.

3655 (c) A third offense of driving under the influence which  
3656 occurs within 10 years after a prior conviction for a violation  
3657 of s. 316.193, the ignition interlock device shall be installed  
3658 for a period of not less than 2 years.

3659 (4) If the court fails to order the mandatory placement of  
3660 the ignition interlock device or fails to order for the  
3661 applicable period the mandatory placement of an ignition  
3662 interlock device under s. 316.193 or s. 316.1937 at the time of  
3663 imposing sentence or within 30 days thereafter, the department  
3664 shall immediately require that the ignition interlock device be  
3665 installed as provided in this section, except that consideration  
3666 may be given to those individuals having a documented medical  
3667 condition that would prohibit the device from functioning  
3668 normally. This subsection applies to the reinstatement of the

3669 driving privilege following a revocation, suspension, or  
 3670 cancellation that is based upon a conviction for the offense of  
 3671 driving under the influence which occurs on or after July 1,  
 3672 2005.

3673 Section 74. For the purpose of incorporating the amendment  
 3674 made by this act to section 316.193, Florida Statutes, in a  
 3675 reference thereto, subsection (2) of section 322.28, Florida  
 3676 Statutes, is reenacted to read:

3677 322.28 Period of suspension or revocation.--

3678 (2) In a prosecution for a violation of s. 316.193 or  
 3679 former s. 316.1931, the following provisions apply:

3680 (a) Upon conviction of the driver, the court, along with  
 3681 imposing sentence, shall revoke the driver's license or driving  
 3682 privilege of the person so convicted, effective on the date of  
 3683 conviction, and shall prescribe the period of such revocation in  
 3684 accordance with the following provisions:

3685 1. Upon a first conviction for a violation of the  
 3686 provisions of s. 316.193, except a violation resulting in death,  
 3687 the driver's license or driving privilege shall be revoked for  
 3688 not less than 180 days or more than 1 year.

3689 2. Upon a second conviction for an offense that occurs  
 3690 within a period of 5 years after the date of a prior conviction  
 3691 for a violation of the provisions of s. 316.193 or former s.  
 3692 316.1931 or a combination of such sections, the driver's license  
 3693 or driving privilege shall be revoked for not less than 5 years.

3694 3. Upon a third conviction for an offense that occurs  
 3695 within a period of 10 years after the date of a prior conviction  
 3696 for the violation of the provisions of s. 316.193 or former s.

CS/CS/HB 1399

2008

3697 316.1931 or a combination of such sections, the driver's license  
3698 or driving privilege shall be revoked for not less than 10  
3699 years.

3700

3701 For the purposes of this paragraph, a previous conviction  
3702 outside this state for driving under the influence, driving  
3703 while intoxicated, driving with an unlawful blood-alcohol level,  
3704 or any other alcohol-related or drug-related traffic offense  
3705 similar to the offense of driving under the influence as  
3706 proscribed by s. 316.193 will be considered a previous  
3707 conviction for violation of s. 316.193, and a conviction for  
3708 violation of former s. 316.028, former s. 316.1931, or former s.  
3709 860.01 is considered a conviction for violation of s. 316.193.

3710 (b) If the period of revocation was not specified by the  
3711 court at the time of imposing sentence or within 30 days  
3712 thereafter, and is not otherwise specified by law, the  
3713 department shall forthwith revoke the driver's license or  
3714 driving privilege for the maximum period applicable under  
3715 paragraph (a) for a first conviction and for the minimum period  
3716 applicable under paragraph (a) for any subsequent convictions.  
3717 The driver may, within 30 days after such revocation by the  
3718 department, petition the court for further hearing on the period  
3719 of revocation, and the court may reopen the case and determine  
3720 the period of revocation within the limits specified in  
3721 paragraph (a).

3722 (c) The forfeiture of bail bond, not vacated within 20  
3723 days, in any prosecution for the offense of driving while under  
3724 the influence of alcoholic beverages, chemical substances, or

CS/CS/HB 1399

2008

3725 controlled substances to the extent of depriving the defendant  
3726 of his or her normal faculties shall be deemed equivalent to a  
3727 conviction for the purposes of this paragraph, and the  
3728 department shall forthwith revoke the defendant's driver's  
3729 license or driving privilege for the maximum period applicable  
3730 under paragraph (a) for a first conviction and for the minimum  
3731 period applicable under paragraph (a) for a second or subsequent  
3732 conviction; however, if the defendant is later convicted of the  
3733 charge, the period of revocation imposed by the department for  
3734 such conviction shall not exceed the difference between the  
3735 applicable maximum for a first conviction or minimum for a  
3736 second or subsequent conviction and the revocation period under  
3737 this subsection that has actually elapsed; upon conviction of  
3738 such charge, the court may impose revocation for a period of  
3739 time as specified in paragraph (a). This paragraph does not  
3740 apply if an appropriate motion contesting the forfeiture is  
3741 filed within the 20-day period.

3742 (d) When any driver's license or driving privilege has  
3743 been revoked pursuant to the provisions of this section, the  
3744 department shall not grant a new license, except upon  
3745 reexamination of the licensee after the expiration of the period  
3746 of revocation so prescribed. However, the court may, in its  
3747 sound discretion, issue an order of reinstatement on a form  
3748 furnished by the department which the person may take to any  
3749 driver's license examining office for reinstatement by the  
3750 department pursuant to s. 322.282.

3751 (e) The court shall permanently revoke the driver's  
3752 license or driving privilege of a person who has been convicted

3753 four times for violation of s. 316.193 or former s. 316.1931 or  
 3754 a combination of such sections. The court shall permanently  
 3755 revoke the driver's license or driving privilege of any person  
 3756 who has been convicted of DUI manslaughter in violation of s.  
 3757 316.193. If the court has not permanently revoked such driver's  
 3758 license or driving privilege within 30 days after imposing  
 3759 sentence, the department shall permanently revoke the driver's  
 3760 license or driving privilege pursuant to this paragraph. No  
 3761 driver's license or driving privilege may be issued or granted  
 3762 to any such person. This paragraph applies only if at least one  
 3763 of the convictions for violation of s. 316.193 or former s.  
 3764 316.1931 was for a violation that occurred after July 1, 1982.  
 3765 For the purposes of this paragraph, a conviction for violation  
 3766 of former s. 316.028, former s. 316.1931, or former s. 860.01 is  
 3767 also considered a conviction for violation of s. 316.193. Also,  
 3768 a conviction of driving under the influence, driving while  
 3769 intoxicated, driving with an unlawful blood-alcohol level, or  
 3770 any other similar alcohol-related or drug-related traffic  
 3771 offense outside this state is considered a conviction for the  
 3772 purposes of this paragraph.

3773 Section 75. For the purpose of incorporating the amendment  
 3774 made by this act to section 316.193, Florida Statutes, in  
 3775 references thereto, paragraph (a) of subsection (2) of section  
 3776 322.282, Florida Statutes, is reenacted to read:

3777 322.282 Procedure when court revokes or suspends license  
 3778 or driving privilege and orders reinstatement.--When a court  
 3779 suspends or revokes a person's license or driving privilege and,  
 3780 in its discretion, orders reinstatement as provided by s.

3781 322.28(2)(d) or former s. 322.261(5):  
 3782 (2)(a) The court shall issue an order of reinstatement, on  
 3783 a form to be furnished by the department, which the person may  
 3784 take to any driver's license examining office. The department  
 3785 shall issue a temporary driver's permit to a licensee who  
 3786 presents the court's order of reinstatement, proof of completion  
 3787 of a department-approved driver training or substance abuse  
 3788 education course, and a written request for a hearing under s.  
 3789 322.271. The permit shall not be issued if a record check by the  
 3790 department shows that the person has previously been convicted  
 3791 for a violation of s. 316.193, former s. 316.1931, former s.  
 3792 316.028, former s. 860.01, or a previous conviction outside this  
 3793 state for driving under the influence, driving while  
 3794 intoxicated, driving with an unlawful blood-alcohol level, or  
 3795 any similar alcohol-related or drug-related traffic offense;  
 3796 that the person's driving privilege has been previously  
 3797 suspended for refusal to submit to a lawful test of breath,  
 3798 blood, or urine; or that the person is otherwise not entitled to  
 3799 issuance of a driver's license. This paragraph shall not be  
 3800 construed to prevent the reinstatement of a license or driving  
 3801 privilege that is presently suspended for driving with an  
 3802 unlawful blood-alcohol level or a refusal to submit to a breath,  
 3803 urine, or blood test and is also revoked for a conviction for a  
 3804 violation of s. 316.193 or former s. 316.1931, if the suspension  
 3805 and revocation arise out of the same incident.

3806 Section 76. For the purpose of incorporating the amendment  
 3807 made by this act to section 316.193, Florida Statutes, in a  
 3808 reference thereto, paragraph (a) of subsection (1) of section



3809 322.291, Florida Statutes, is reenacted to read:  
 3810 322.291 Driver improvement schools or DUI programs;  
 3811 required in certain suspension and revocation cases.--Except as  
 3812 provided in s. 322.03(2), any person:  
 3813 (1) Whose driving privilege has been revoked:  
 3814 (a) Upon conviction for:  
 3815 1. Driving, or being in actual physical control of, any  
 3816 vehicle while under the influence of alcoholic beverages, any  
 3817 chemical substance set forth in s. 877.111, or any substance  
 3818 controlled under chapter 893, in violation of s. 316.193;  
 3819 2. Driving with an unlawful blood- or breath-alcohol  
 3820 level;  
 3821 3. Manslaughter resulting from the operation of a motor  
 3822 vehicle;  
 3823 4. Failure to stop and render aid as required under the  
 3824 laws of this state in the event of a motor vehicle crash  
 3825 resulting in the death or personal injury of another;  
 3826 5. Reckless driving; or  
 3827  
 3828 shall, before the driving privilege may be reinstated, present  
 3829 to the department proof of enrollment in a department-approved  
 3830 advanced driver improvement course operating pursuant to s.  
 3831 318.1451 or a substance abuse education course conducted by a  
 3832 DUI program licensed pursuant to s. 322.292, which shall include  
 3833 a psychosocial evaluation and treatment, if referred. If the  
 3834 person fails to complete such course or evaluation within 90  
 3835 days after reinstatement, or subsequently fails to complete  
 3836 treatment, if referred, the DUI program shall notify the

3837 department of the failure. Upon receipt of the notice, the  
3838 department shall cancel the offender's driving privilege,  
3839 notwithstanding the expiration of the suspension or revocation  
3840 of the driving privilege. The department may temporarily  
3841 reinstate the driving privilege upon verification from the DUI  
3842 program that the offender has completed the education course and  
3843 evaluation requirement and has reentered and is currently  
3844 participating in treatment. If the DUI program notifies the  
3845 department of the second failure to complete treatment, the  
3846 department shall reinstate the driving privilege only after  
3847 notice of completion of treatment from the DUI program.

3848 Section 77. For the purpose of incorporating the amendment  
3849 made by this act to section 316.193, Florida Statutes, in a  
3850 reference thereto, paragraph (a) of subsection (9) of section  
3851 322.34, Florida Statutes, is reenacted to read:

3852 322.34 Driving while license suspended, revoked, canceled,  
3853 or disqualified.--

3854 (9)(a) A motor vehicle that is driven by a person under  
3855 the influence of alcohol or drugs in violation of s. 316.193 is  
3856 subject to seizure and forfeiture under ss. 932.701-932.707 and  
3857 is subject to liens for recovering, towing, or storing vehicles  
3858 under s. 713.78 if, at the time of the offense, the person's  
3859 driver's license is suspended, revoked, or canceled as a result  
3860 of a prior conviction for driving under the influence.

3861 Section 78. For the purpose of incorporating the amendment  
3862 made by this act to section 316.193, Florida Statutes, in a  
3863 reference thereto, subsection (3) of section 322.62, Florida  
3864 Statutes, is reenacted to read:

3865           322.62 Driving under the influence; commercial motor  
3866 vehicle operators.--

3867           (3) This section does not supersede s. 316.193. Nothing in  
3868 this section prohibits the prosecution of a person who drives a  
3869 commercial motor vehicle for driving under the influence of  
3870 alcohol or controlled substances whether or not such person is  
3871 also prosecuted for a violation of this section.

3872           Section 79. For the purpose of incorporating the amendment  
3873 made by this act to section 316.193, Florida Statutes, in  
3874 references thereto, paragraph (d) of subsection (2) and  
3875 subsection (6) of section 322.63, Florida Statutes, are  
3876 reenacted to read:

3877           322.63 Alcohol or drug testing; commercial motor vehicle  
3878 operators.--

3879           (2) The chemical and physical tests authorized by this  
3880 section shall only be required if a law enforcement officer has  
3881 reasonable cause to believe that a person driving a commercial  
3882 motor vehicle has any alcohol, chemical substance, or controlled  
3883 substance in his or her body.

3884           (d) The administration of one test under paragraph (a),  
3885 paragraph (b), or paragraph (c) shall not preclude the  
3886 administration of a different test under paragraph (a),  
3887 paragraph (b), or paragraph (c). However, a urine test may not  
3888 be used to determine alcohol concentration and a breath test may  
3889 not be used to determine the presence of controlled substances  
3890 or chemical substances in a person's body. Notwithstanding the  
3891 provisions of this paragraph, in the event a Florida licensee  
3892 has been convicted in another state for an offense substantially

3893 similar to s. 316.193 or to s. 322.62, which conviction was  
 3894 based upon evidence of test results prohibited by this  
 3895 paragraph, that out-of-state conviction shall constitute a  
 3896 conviction for the purposes of this chapter.

3897 (6) Notwithstanding any provision of law pertaining to the  
 3898 confidentiality of hospital records or other medical records,  
 3899 information relating to the alcohol content of a person's blood  
 3900 or the presence of chemical substances or controlled substances  
 3901 in a person's blood obtained pursuant to this section shall be  
 3902 released to a court, prosecuting attorney, defense attorney, or  
 3903 law enforcement officer in connection with an alleged violation  
 3904 of s. 316.193 or s. 322.62 upon request for such information.

3905 Section 80. For the purpose of incorporating the amendment  
 3906 made by this act to section 316.193, Florida Statutes, in  
 3907 references thereto, subsections (1) and (2), paragraph (a) of  
 3908 subsection (7), paragraph (b) of subsection (8), and subsections  
 3909 (14) and (15) of section 322.64, Florida Statutes, are reenacted  
 3910 to read:

3911 322.64 Holder of commercial driver's license; driving with  
 3912 unlawful blood-alcohol level; refusal to submit to breath,  
 3913 urine, or blood test.--

3914 (1)(a) A law enforcement officer or correctional officer  
 3915 shall, on behalf of the department, disqualify from operating  
 3916 any commercial motor vehicle a person who while operating or in  
 3917 actual physical control of a commercial motor vehicle is  
 3918 arrested for a violation of s. 316.193, relating to unlawful  
 3919 blood-alcohol level or breath-alcohol level, or a person who has  
 3920 refused to submit to a breath, urine, or blood test authorized

3921 by s. 322.63 arising out of the operation or actual physical  
 3922 control of a commercial motor vehicle. Upon disqualification of  
 3923 the person, the officer shall take the person's driver's license  
 3924 and issue the person a 10-day temporary permit for the operation  
 3925 of noncommercial vehicles only if the person is otherwise  
 3926 eligible for the driving privilege and shall issue the person a  
 3927 notice of disqualification. If the person has been given a  
 3928 blood, breath, or urine test, the results of which are not  
 3929 available to the officer at the time of the arrest, the agency  
 3930 employing the officer shall transmit such results to the  
 3931 department within 5 days after receipt of the results. If the  
 3932 department then determines that the person was arrested for a  
 3933 violation of s. 316.193 and that the person had a blood-alcohol  
 3934 level or breath-alcohol level of 0.08 or higher, the department  
 3935 shall disqualify the person from operating a commercial motor  
 3936 vehicle pursuant to subsection (3).

3937 (b) The disqualification under paragraph (a) shall be  
 3938 pursuant to, and the notice of disqualification shall inform the  
 3939 driver of, the following:

3940 1.a. The driver refused to submit to a lawful breath,  
 3941 blood, or urine test and he or she is disqualified from  
 3942 operating a commercial motor vehicle for a period of 1 year, for  
 3943 a first refusal, or permanently, if he or she has previously  
 3944 been disqualified as a result of a refusal to submit to such a  
 3945 test; or

3946 b. The driver violated s. 316.193 by driving with an  
 3947 unlawful blood-alcohol level and he or she is disqualified from  
 3948 operating a commercial motor vehicle for a period of 6 months

3949 | for a first offense or for a period of 1 year if he or she has  
 3950 | previously been disqualified, or his or her driving privilege  
 3951 | has been previously suspended, for a violation of s. 316.193.

3952 |         2. The disqualification period for operating commercial  
 3953 | vehicles shall commence on the date of arrest or issuance of  
 3954 | notice of disqualification, whichever is later.

3955 |         3. The driver may request a formal or informal review of  
 3956 | the disqualification by the department within 10 days after the  
 3957 | date of arrest or issuance of notice of disqualification,  
 3958 | whichever is later.

3959 |         4. The temporary permit issued at the time of arrest or  
 3960 | disqualification will expire at midnight of the 10th day  
 3961 | following the date of disqualification.

3962 |         5. The driver may submit to the department any materials  
 3963 | relevant to the arrest.

3964 |         (2) Except as provided in paragraph (1) (a), the law  
 3965 | enforcement officer shall forward to the department, within 5  
 3966 | days after the date of the arrest or the issuance of the notice  
 3967 | of disqualification, whichever is later, a copy of the notice of  
 3968 | disqualification, the driver's license of the person arrested,  
 3969 | and a report of the arrest, including, if applicable, an  
 3970 | affidavit stating the officer's grounds for belief that the  
 3971 | person arrested was in violation of s. 316.193; the results of  
 3972 | any breath or blood test or an affidavit stating that a breath,  
 3973 | blood, or urine test was requested by a law enforcement officer  
 3974 | or correctional officer and that the person arrested refused to  
 3975 | submit; a copy of the citation issued to the person arrested;  
 3976 | and the officer's description of the person's field sobriety

3977 test, if any. The failure of the officer to submit materials  
 3978 within the 5-day period specified in this subsection or  
 3979 subsection (1) shall not affect the department's ability to  
 3980 consider any evidence submitted at or prior to the hearing. The  
 3981 officer may also submit a copy of a videotape of the field  
 3982 sobriety test or the attempt to administer such test.

3983 (7) In a formal review hearing under subsection (6) or an  
 3984 informal review hearing under subsection (4), the hearing  
 3985 officer shall determine by a preponderance of the evidence  
 3986 whether sufficient cause exists to sustain, amend, or invalidate  
 3987 the disqualification. The scope of the review shall be limited  
 3988 to the following issues:

3989 (a) If the person was disqualified from operating a  
 3990 commercial motor vehicle for driving with an unlawful blood-  
 3991 alcohol level in violation of s. 316.193:

3992 1. Whether the arresting law enforcement officer had  
 3993 probable cause to believe that the person was driving or in  
 3994 actual physical control of a commercial motor vehicle in this  
 3995 state while he or she had any alcohol, chemical substances, or  
 3996 controlled substances in his or her body.

3997 2. Whether the person was placed under lawful arrest for a  
 3998 violation of s. 316.193.

3999 3. Whether the person had an unlawful blood-alcohol level  
 4000 as provided in s. 316.193.

4001 (8) Based on the determination of the hearing officer  
 4002 pursuant to subsection (7) for both informal hearings under  
 4003 subsection (4) and formal hearings under subsection (6), the  
 4004 department shall:

4005 (b) Sustain the disqualification for a period of 6 months  
 4006 for a violation of s. 316.193 or for a period of 1 year if the  
 4007 person has been previously disqualified from operating a  
 4008 commercial motor vehicle or his or her driving privilege has  
 4009 been previously suspended as a result of a violation of s.  
 4010 316.193. The disqualification period commences on the date of  
 4011 the arrest or issuance of the notice of disqualification,  
 4012 whichever is later.

4013 (14) The decision of the department under this section  
 4014 shall not be considered in any trial for a violation of s.  
 4015 316.193, s. 322.61, or s. 322.62, nor shall any written  
 4016 statement submitted by a person in his or her request for  
 4017 departmental review under this section be admissible into  
 4018 evidence against him or her in any such trial. The disposition  
 4019 of any related criminal proceedings shall not affect a  
 4020 disqualification imposed pursuant to this section.

4021 (15) This section does not preclude the suspension of the  
 4022 driving privilege pursuant to s. 322.2615. The driving privilege  
 4023 of a person who has been disqualified from operating a  
 4024 commercial motor vehicle also may be suspended for a violation  
 4025 of s. 316.193.

4026 Section 81. For the purpose of incorporating the amendment  
 4027 made by this act to section 316.193, Florida Statutes, in a  
 4028 reference thereto, paragraph (f) of subsection (4) of section  
 4029 323.001, Florida Statutes, is reenacted to read:

4030 323.001 Wrecker operator storage facilities; vehicle  
 4031 holds.--

4032 (4) The requirements for a written hold apply when the



4033 following conditions are present:

4034 (f) The vehicle is impounded or immobilized pursuant to s.  
4035 316.193 or s. 322.34; or

4036 Section 82. For the purpose of incorporating the amendment  
4037 made by this act to section 316.193, Florida Statutes, in  
4038 references thereto, section 324.023, Florida Statutes, is  
4039 reenacted to read:

4040 324.023 Financial responsibility for bodily injury or  
4041 death.--In addition to any other financial responsibility  
4042 required by law, every owner or operator of a motor vehicle that  
4043 is required to be registered in this state, or that is located  
4044 within this state, and who, regardless of adjudication of guilt,  
4045 has been found guilty of or entered a plea of guilty or nolo  
4046 contendere to a charge of driving under the influence under s.  
4047 316.193 after October 1, 2007, shall, by one of the methods  
4048 established in s. 324.031(1), (2), or (3), establish and  
4049 maintain the ability to respond in damages for liability on  
4050 account of accidents arising out of the use of a motor vehicle  
4051 in the amount of \$100,000 because of bodily injury to, or death  
4052 of, one person in any one crash and, subject to such limits for  
4053 one person, in the amount of \$300,000 because of bodily injury  
4054 to, or death of, two or more persons in any one crash and in the  
4055 amount of \$50,000 because of property damage in any one crash.  
4056 If the owner or operator chooses to establish and maintain such  
4057 ability by posting a bond or furnishing a certificate of deposit  
4058 pursuant to s. 324.031(2) or (3), such bond or certificate of  
4059 deposit must be in an amount not less than \$350,000. Such higher  
4060 limits must be carried for a minimum period of 3 years. If the

CS/CS/HB 1399

2008

4061 owner or operator has not been convicted of driving under the  
4062 influence or a felony traffic offense for a period of 3 years  
4063 from the date of reinstatement of driving privileges for a  
4064 violation of s. 316.193, the owner or operator shall be exempt  
4065 from this section.

4066 Section 83. For the purpose of incorporating the amendment  
4067 made by this act to section 316.193, Florida Statutes, in a  
4068 reference thereto, section 324.131, Florida Statutes, is  
4069 reenacted to read:

4070 324.131 Period of suspension.--Such license, registration  
4071 and nonresident's operating privilege shall remain so suspended  
4072 and shall not be renewed, nor shall any such license or  
4073 registration be thereafter issued in the name of such person,  
4074 including any such person not previously licensed, unless and  
4075 until every such judgment is stayed, satisfied in full or to the  
4076 extent of the limits stated in s. 324.021(7) and until the said  
4077 person gives proof of financial responsibility as provided in s.  
4078 324.031, such proof to be maintained for 3 years. In addition,  
4079 if the person's license or registration has been suspended or  
4080 revoked due to a violation of s. 316.193 or pursuant to s.  
4081 322.26(2), that person shall maintain noncancelable liability  
4082 coverage for each motor vehicle registered in his or her name,  
4083 as described in s. 627.7275(2), and must present proof that  
4084 coverage is in force on a form adopted by the Department of  
4085 Highway Safety and Motor Vehicles, such proof to be maintained  
4086 for 3 years.

4087 Section 84. For the purpose of incorporating the amendment  
4088 made by this act to section 316.193, Florida Statutes, in a

4089 reference thereto, subsection (6) of section 327.35, Florida  
 4090 Statutes, is reenacted to read:

4091 327.35 Boating under the influence; penalties; "designated  
 4092 drivers".--

4093 (6) With respect to any person convicted of a violation of  
 4094 subsection (1), regardless of any other penalty imposed:

4095 (a) For the first conviction, the court shall place the  
 4096 defendant on probation for a period not to exceed 1 year and, as  
 4097 a condition of such probation, shall order the defendant to  
 4098 participate in public service or a community work project for a  
 4099 minimum of 50 hours. The court must also, as a condition of  
 4100 probation, order the impoundment or immobilization of the vessel  
 4101 that was operated by or in the actual control of the defendant  
 4102 or any one vehicle registered in the defendant's name at the  
 4103 time of impoundment or immobilization, for a period of 10 days  
 4104 or for the unexpired term of any lease or rental agreement that  
 4105 expires within 10 days. The impoundment or immobilization must  
 4106 not occur concurrently with the incarceration of the defendant.  
 4107 The impoundment or immobilization order may be dismissed in  
 4108 accordance with paragraph (e) or paragraph (f). The total period  
 4109 of probation and incarceration may not exceed 1 year.

4110 (b) For the second conviction for an offense that occurs  
 4111 within a period of 5 years after the date of a prior conviction  
 4112 for violation of this section, the court shall order  
 4113 imprisonment for not less than 10 days. The court must also, as  
 4114 a condition of probation, order the impoundment or  
 4115 immobilization of the vessel that was operated by or in the  
 4116 actual control of the defendant or any one vehicle registered in

CS/CS/HB 1399

2008

4117 the defendant's name at the time of impoundment or  
4118 immobilization, for a period of 30 days or for the unexpired  
4119 term of any lease or rental agreement that expires within 30  
4120 days. The impoundment or immobilization must not occur  
4121 concurrently with the incarceration of the defendant. The  
4122 impoundment or immobilization order may be dismissed in  
4123 accordance with paragraph (e) or paragraph (f). At least 48  
4124 hours of confinement must be consecutive.

4125 (c) For the third or subsequent conviction for an offense  
4126 that occurs within a period of 10 years after the date of a  
4127 prior conviction for violation of this section, the court shall  
4128 order imprisonment for not less than 30 days. The court must  
4129 also, as a condition of probation, order the impoundment or  
4130 immobilization of the vessel that was operated by or in the  
4131 actual control of the defendant or any one vehicle registered in  
4132 the defendant's name at the time of impoundment or  
4133 immobilization, for a period of 90 days or for the unexpired  
4134 term of any lease or rental agreement that expires within 90  
4135 days. The impoundment or immobilization must not occur  
4136 concurrently with the incarceration of the defendant. The  
4137 impoundment or immobilization order may be dismissed in  
4138 accordance with paragraph (e) or paragraph (f). At least 48  
4139 hours of confinement must be consecutive.

4140 (d) The court must at the time of sentencing the defendant  
4141 issue an order for the impoundment or immobilization of a  
4142 vessel. Within 7 business days after the date that the court  
4143 issues the order of impoundment, and once again 30 business days  
4144 before the actual impoundment or immobilization of the vessel,

CS/CS/HB 1399

2008

4145 the clerk of the court must send notice by certified mail,  
4146 return receipt requested, to the registered owner of each  
4147 vessel, if the registered owner is a person other than the  
4148 defendant, and to each person of record claiming a lien against  
4149 the vessel.

4150 (e) A person who owns but was not operating the vessel  
4151 when the offense occurred may submit to the court a police  
4152 report indicating that the vessel was stolen at the time of the  
4153 offense or documentation of having purchased the vessel after  
4154 the offense was committed from an entity other than the  
4155 defendant or the defendant's agent. If the court finds that the  
4156 vessel was stolen or that the sale was not made to circumvent  
4157 the order and allow the defendant continued access to the  
4158 vessel, the order must be dismissed and the owner of the vessel  
4159 will incur no costs. If the court denies the request to dismiss  
4160 the order of impoundment or immobilization, the petitioner may  
4161 request an evidentiary hearing.

4162 (f) A person who owns but was not operating the vessel  
4163 when the offense occurred, and whose vessel was stolen or who  
4164 purchased the vessel after the offense was committed directly  
4165 from the defendant or the defendant's agent, may request an  
4166 evidentiary hearing to determine whether the impoundment or  
4167 immobilization should occur. If the court finds that either the  
4168 vessel was stolen or the purchase was made without knowledge of  
4169 the offense, that the purchaser had no relationship to the  
4170 defendant other than through the transaction, and that such  
4171 purchase would not circumvent the order and allow the defendant  
4172 continued access to the vessel, the order must be dismissed and

4173 the owner of the vessel will incur no costs.

4174 (g) All costs and fees for the impoundment or  
 4175 immobilization, including the cost of notification, must be paid  
 4176 by the owner of the vessel or, if the vessel is leased or  
 4177 rented, by the person leasing or renting the vessel, unless the  
 4178 impoundment or immobilization order is dismissed.

4179 (h) The person who owns a vessel that is impounded or  
 4180 immobilized under this paragraph, or a person who has a lien of  
 4181 record against such a vessel and who has not requested a review  
 4182 of the impoundment pursuant to paragraph (e) or paragraph (f),  
 4183 may, within 10 days after the date that person has knowledge of  
 4184 the location of the vessel, file a complaint in the county in  
 4185 which the owner resides to determine whether the vessel was  
 4186 wrongfully taken or withheld from the owner or lienholder. Upon  
 4187 the filing of a complaint, the owner or lienholder may have the  
 4188 vessel released by posting with the court a bond or other  
 4189 adequate security equal to the amount of the costs and fees for  
 4190 impoundment or immobilization, including towing or storage, to  
 4191 ensure the payment of the costs and fees if the owner or  
 4192 lienholder does not prevail. When the bond is posted and the fee  
 4193 is paid as set forth in s. 28.24, the clerk of the court shall  
 4194 issue a certificate releasing the vessel. At the time of  
 4195 release, after reasonable inspection, the owner or lienholder  
 4196 must give a receipt to the towing or storage company indicating  
 4197 any loss or damage to the vessel or to the contents of the  
 4198 vessel.

4199 (i) A defendant, in the court's discretion, may be  
 4200 required to serve all or any portion of a term of imprisonment

4201 to which the defendant has been sentenced pursuant to this  
 4202 section in a residential alcoholism treatment program or a  
 4203 residential drug abuse treatment program. Any time spent in such  
 4204 a program must be credited by the court toward the term of  
 4205 imprisonment.

4206  
 4207 For the purposes of this section, any conviction for a violation  
 4208 of s. 316.193, a previous conviction for the violation of former  
 4209 s. 316.1931, former s. 860.01, or former s. 316.028, or a  
 4210 previous conviction outside this state for driving under the  
 4211 influence, driving while intoxicated, driving with an unlawful  
 4212 blood-alcohol level, driving with an unlawful breath-alcohol  
 4213 level, or any other similar alcohol-related or drug-related  
 4214 traffic offense, is also considered a previous conviction for  
 4215 violation of this section.

4216 Section 85. For the purpose of incorporating the amendment  
 4217 made by this act to section 316.193, Florida Statutes, in a  
 4218 reference thereto, subsection (1) of section 337.195, Florida  
 4219 Statutes, is reenacted to read:

4220 337.195 Limits on liability.--

4221 (1) In a civil action for the death of or injury to a  
 4222 person, or for damage to property, against the Department of  
 4223 Transportation or its agents, consultants, or contractors for  
 4224 work performed on a highway, road, street, bridge, or other  
 4225 transportation facility when the death, injury, or damage  
 4226 resulted from a motor vehicle crash within a construction zone  
 4227 in which the driver of one of the vehicles was under the  
 4228 influence of alcoholic beverages as set forth in s. 316.193,

4229 | under the influence of any chemical substance as set forth in s.  
 4230 | 877.111, or illegally under the influence of any substance  
 4231 | controlled under chapter 893 to the extent that her or his  
 4232 | normal faculties were impaired or that she or he operated a  
 4233 | vehicle recklessly as defined in s. 316.192, it is presumed that  
 4234 | the driver's operation of the vehicle was the sole proximate  
 4235 | cause of her or his own death, injury, or damage. This  
 4236 | presumption can be overcome if the gross negligence or  
 4237 | intentional misconduct of the Department of Transportation, or  
 4238 | of its agents, consultants, or contractors, was a proximate  
 4239 | cause of the driver's death, injury, or damage.

4240 |       Section 86. For the purpose of incorporating the amendment  
 4241 | made by this act to section 316.193, Florida Statutes, in a  
 4242 | reference thereto, paragraph (c) of subsection (17) of section  
 4243 | 440.02, Florida Statutes, is reenacted to read:

4244 |       440.02 Definitions.--When used in this chapter, unless the  
 4245 | context clearly requires otherwise, the following terms shall  
 4246 | have the following meanings:

4247 |       (17)

4248 |       (c) "Employment" does not include service performed by or  
 4249 | as:

4250 |       1. Domestic servants in private homes.

4251 |       2. Agricultural labor performed on a farm in the employ of  
 4252 | a bona fide farmer, or association of farmers, that employs 5 or  
 4253 | fewer regular employees and that employs fewer than 12 other  
 4254 | employees at one time for seasonal agricultural labor that is  
 4255 | completed in less than 30 days, provided such seasonal  
 4256 | employment does not exceed 45 days in the same calendar year.



4257 The term "farm" includes stock, dairy, poultry, fruit, fur-  
 4258 bearing animals, fish, and truck farms, ranches, nurseries, and  
 4259 orchards. The term "agricultural labor" includes field foremen,  
 4260 timekeepers, checkers, and other farm labor supervisory  
 4261 personnel.

4262 3. Professional athletes, such as professional boxers,  
 4263 wrestlers, baseball, football, basketball, hockey, polo, tennis,  
 4264 jai alai, and similar players, and motorsports teams competing  
 4265 in a motor racing event as defined in s. 549.08.

4266 4. Labor under a sentence of a court to perform community  
 4267 services as provided in s. 316.193.

4268 5. State prisoners or county inmates, except those  
 4269 performing services for private employers or those enumerated in  
 4270 s. 948.036(1).

4271 Section 87. For the purpose of incorporating the amendment  
 4272 made by this act to section 316.193, Florida Statutes, in a  
 4273 reference thereto, paragraph (b) of subsection (7) of section  
 4274 440.09, Florida Statutes, is reenacted to read:

4275 440.09 Coverage.--

4276 (7)

4277 (b) If the employee has, at the time of the injury, a  
 4278 blood alcohol level equal to or greater than the level specified  
 4279 in s. 316.193, or if the employee has a positive confirmation of  
 4280 a drug as defined in this act, it is presumed that the injury  
 4281 was occasioned primarily by the intoxication of, or by the  
 4282 influence of the drug upon, the employee. If the employer has  
 4283 implemented a drug-free workplace, this presumption may be  
 4284 rebutted only by evidence that there is no reasonable hypothesis

4285 that the intoxication or drug influence contributed to the  
 4286 injury. In the absence of a drug-free workplace program, this  
 4287 presumption may be rebutted by clear and convincing evidence  
 4288 that the intoxication or influence of the drug did not  
 4289 contribute to the injury. Percent by weight of alcohol in the  
 4290 blood must be based upon grams of alcohol per 100 milliliters of  
 4291 blood. If the results are positive, the testing facility must  
 4292 maintain the specimen for a minimum of 90 days. Blood serum may  
 4293 be used for testing purposes under this chapter; however, if  
 4294 this test is used, the presumptions under this section do not  
 4295 arise unless the blood alcohol level is proved to be medically  
 4296 and scientifically equivalent to or greater than the comparable  
 4297 blood alcohol level that would have been obtained if the test  
 4298 were based on percent by weight of alcohol in the blood.  
 4299 However, if, before the accident, the employer had actual  
 4300 knowledge of and expressly acquiesced in the employee's presence  
 4301 at the workplace while under the influence of such alcohol or  
 4302 drug, the presumptions specified in this subsection do not  
 4303 apply.

4304 Section 88. For the purpose of incorporating the amendment  
 4305 made by this act to section 316.193, Florida Statutes, in a  
 4306 reference thereto, paragraph (d) of subsection (1) of section  
 4307 493.6106, Florida Statutes, is reenacted to read:

4308 493.6106 License requirements; posting.--

4309 (1) Each individual licensed by the department must:

4310 (d) Not be a chronic and habitual user of alcoholic  
 4311 beverages to the extent that her or his normal faculties are  
 4312 impaired; not have been committed under chapter 397, former

4313 chapter 396, or a similar law in any other state; not have been  
 4314 found to be a habitual offender under s. 856.011(3) or a similar  
 4315 law in any other state; and not have had two or more convictions  
 4316 under s. 316.193 or a similar law in any other state within the  
 4317 3-year period immediately preceding the date the application was  
 4318 filed, unless the individual establishes that she or he is not  
 4319 currently impaired and has successfully completed a  
 4320 rehabilitation course.

4321 Section 89. For the purpose of incorporating the amendment  
 4322 made by this act to section 316.193, Florida Statutes, in a  
 4323 reference thereto, paragraph (a) of subsection (2) of section  
 4324 627.7275, Florida Statutes, is reenacted to read:

4325 627.7275 Motor vehicle liability.--

4326 (2)(a) Insurers writing motor vehicle insurance in this  
 4327 state shall make available, subject to the insurers' usual  
 4328 underwriting restrictions:

4329 1. Coverage under policies as described in subsection (1)  
 4330 to any applicant for private passenger motor vehicle insurance  
 4331 coverage who is seeking the coverage in order to reinstate the  
 4332 applicant's driving privileges in this state when the driving  
 4333 privileges were revoked or suspended pursuant to s. 316.646 or  
 4334 s. 324.0221 due to the failure of the applicant to maintain  
 4335 required security.

4336 2. Coverage under policies as described in subsection (1),  
 4337 which also provides liability coverage for bodily injury, death,  
 4338 and property damage arising out of the ownership, maintenance,  
 4339 or use of the motor vehicle in an amount not less than the  
 4340 limits described in s. 324.021(7) and conforms to the

4341 requirements of s. 324.151, to any applicant for private  
 4342 passenger motor vehicle insurance coverage who is seeking the  
 4343 coverage in order to reinstate the applicant's driving  
 4344 privileges in this state after such privileges were revoked or  
 4345 suspended under s. 316.193 or s. 322.26(2) for driving under the  
 4346 influence.

4347 Section 90. For the purpose of incorporating the amendment  
 4348 made by this act to section 316.193, Florida Statutes, in a  
 4349 reference thereto, subsection (4) of section 627.758, Florida  
 4350 Statutes, is reenacted to read:

4351 627.758 Surety on auto club traffic arrest bond;  
 4352 conditions, limit; bail bond.--

4353 (4) Notwithstanding the provisions of s. 626.311 or  
 4354 chapter 648, any surety insurer identified in a guaranteed  
 4355 traffic arrest bond certificate or any licensed general lines  
 4356 agent of the surety insurer may execute a bail bond for the  
 4357 automobile club or association member identified in the  
 4358 guaranteed traffic arrest bond certificate in an amount not in  
 4359 excess of \$5,000 for any violation of chapter 316 or any similar  
 4360 traffic law or ordinance except for driving under the influence  
 4361 of alcoholic beverages, chemical substances, or controlled  
 4362 substances, as prohibited by s. 316.193.

4363 Section 91. For the purpose of incorporating the amendment  
 4364 made by this act to section 316.193, Florida Statutes, in  
 4365 references thereto, paragraph (f) of subsection (2) and  
 4366 paragraph (f) of subsection (10) of section 790.06, Florida  
 4367 Statutes, are reenacted to read:

4368 790.06 License to carry concealed weapon or firearm.--

4369 (2) The Department of Agriculture and Consumer Services  
 4370 shall issue a license if the applicant:

4371 (f) Does not chronically and habitually use alcoholic  
 4372 beverages or other substances to the extent that his or her  
 4373 normal faculties are impaired. It shall be presumed that an  
 4374 applicant chronically and habitually uses alcoholic beverages or  
 4375 other substances to the extent that his or her normal faculties  
 4376 are impaired if the applicant has been committed under chapter  
 4377 397 or under the provisions of former chapter 396 or has been  
 4378 convicted under s. 790.151 or has been deemed a habitual  
 4379 offender under s. 856.011(3), or has had two or more convictions  
 4380 under s. 316.193 or similar laws of any other state, within the  
 4381 3-year period immediately preceding the date on which the  
 4382 application is submitted;

4383 (10) A license issued under this section shall be  
 4384 suspended or revoked pursuant to chapter 120 if the licensee:

4385 (f) Is convicted of a second violation of s. 316.193, or a  
 4386 similar law of another state, within 3 years of a previous  
 4387 conviction of such section, or similar law of another state,  
 4388 even though the first violation may have occurred prior to the  
 4389 date on which the application was submitted;

4390 Section 92. For the purpose of incorporating the amendment  
 4391 made by this act to section 316.193, Florida Statutes, in a  
 4392 reference thereto, subsection (2) of section 903.36, Florida  
 4393 Statutes, is reenacted to read:

4394 903.36 Guaranteed arrest bond certificates as cash bail.--

4395 (2) The execution of a bail bond by a licensed general  
 4396 lines agent of a surety insurer for the automobile club or

4397 association member identified in the guaranteed traffic arrest  
 4398 bond certificate, as provided in s. 627.758(4), shall be  
 4399 accepted as bail in an amount not to exceed \$5,000 for the  
 4400 appearance of the person named in the certificate in any court  
 4401 to answer for the violation of a provision of chapter 316 or a  
 4402 similar traffic law or ordinance, except driving under the  
 4403 influence of alcoholic beverages, chemical substances, or  
 4404 controlled substances, as prohibited by s. 316.193. Presentation  
 4405 of the guaranteed traffic arrest bond certificate and a power of  
 4406 attorney from the surety insurer for its licensed general lines  
 4407 agents is authorization for such agent to execute the bail bond.

4408 Section 93. For the purpose of incorporating the amendment  
 4409 made by this act to section 316.193, Florida Statutes, in  
 4410 references thereto, paragraph (c) of subsection (4) of section  
 4411 907.041, Florida Statutes, is reenacted to read:

4412 907.041 Pretrial detention and release.--

4413 (4) PRETRIAL DETENTION.--

4414 (c) The court may order pretrial detention if it finds a  
 4415 substantial probability, based on a defendant's past and present  
 4416 patterns of behavior, the criteria in s. 903.046, and any other  
 4417 relevant facts, that any of the following circumstances exists:

4418 1. The defendant has previously violated conditions of  
 4419 release and that no further conditions of release are reasonably  
 4420 likely to assure the defendant's appearance at subsequent  
 4421 proceedings;

4422 2. The defendant, with the intent to obstruct the judicial  
 4423 process, has threatened, intimidated, or injured any victim,  
 4424 potential witness, juror, or judicial officer, or has attempted

4425 or conspired to do so, and that no condition of release will  
 4426 reasonably prevent the obstruction of the judicial process;

4427 3. The defendant is charged with trafficking in controlled  
 4428 substances as defined by s. 893.135, that there is a substantial  
 4429 probability that the defendant has committed the offense, and  
 4430 that no conditions of release will reasonably assure the  
 4431 defendant's appearance at subsequent criminal proceedings; or

4432 4. The defendant is charged with DUI manslaughter, as  
 4433 defined by s. 316.193, and that there is a substantial  
 4434 probability that the defendant committed the crime and that the  
 4435 defendant poses a threat of harm to the community; conditions  
 4436 that would support a finding by the court pursuant to this  
 4437 subparagraph that the defendant poses a threat of harm to the  
 4438 community include, but are not limited to, any of the following:

4439 a. The defendant has previously been convicted of any  
 4440 crime under s. 316.193, or of any crime in any other state or  
 4441 territory of the United States that is substantially similar to  
 4442 any crime under s. 316.193;

4443 b. The defendant was driving with a suspended driver's  
 4444 license when the charged crime was committed; or

4445 c. The defendant has previously been found guilty of, or  
 4446 has had adjudication of guilt withheld for, driving while the  
 4447 defendant's driver's license was suspended or revoked in  
 4448 violation of s. 322.34;

4449 5. The defendant poses the threat of harm to the  
 4450 community. The court may so conclude, if it finds that the  
 4451 defendant is presently charged with a dangerous crime, that  
 4452 there is a substantial probability that the defendant committed

CS/CS/HB 1399

2008

4453 such crime, that the factual circumstances of the crime indicate  
4454 a disregard for the safety of the community, and that there are  
4455 no conditions of release reasonably sufficient to protect the  
4456 community from the risk of physical harm to persons.

4457 6. The defendant was on probation, parole, or other  
4458 release pending completion of sentence or on pretrial release  
4459 for a dangerous crime at the time the current offense was  
4460 committed; or

4461 7. The defendant has violated one or more conditions of  
4462 pretrial release or bond for the offense currently before the  
4463 court and the violation, in the discretion of the court,  
4464 supports a finding that no conditions of release can reasonably  
4465 protect the community from risk of physical harm to persons or  
4466 assure the presence of the accused at trial.

4467 Section 94. Except as otherwise expressly provided in this  
4468 act, this act shall take effect upon becoming a law.