The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/CS/SB 422
INTRODUCER:	Community Affairs Committee, Transportation Committee, and Senator Gardiner
SUBJECT:	Transportation
DATE:	April 20, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer	TR	**Fav/CS**
2.	Wolfgang	Yeatman	CA	**Fav/CS**
3.			FT	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Committee Substitute (CS) addresses a number of transportation issues. The bill:

- amends the transportation concurrency exception for certain public transit facilities to include hangars used in the manufacture and assembly of aircraft;
- creates a definition for backlog for proportionate share and proportionate fair-share;
- prohibits children under the age of 6 from riding in the back of pick-up trucks at speeds over 35 miles per hour;
- provides an exemption from window sunscreening requirements for vehicles owned by licensed private investigators;
- increases the maximum allowable length of trailers used to transport manufactured buildings and clarifies that such cargo is a non-divisible load;
- increases the maximum gross vehicle weight limit for vehicles operating on non-interstate highways;
- provides a 400 pound weight allowance for trucks using anti-idling devices;
- authorizes counties to enter into public-private partnerships to build, operate, own, or finance toll facilities on the county road system;

- provides a legislative finding that construction aggregates materials mining is an industry of critical importance and in the public interest;
- revises bonding provisions available to the Tampa Hillsborough Expressway Authority to allow the authority to issue bonds without going through the State Board of Administration's Division of Bond Finance;
- states that repairing county bridges, unpaved roads, and drainage improvements are all purposes of the Small County Outreach Program;
- allows the county's pavement management plan to serve as evidence as road maintenance and condition;
- states that leased or rented motor vehicles must have insurance enough to fulfill their obligations under s. 324.021(9), F.S., and are liable for up to the amount of required insurance if they do not get insurance as required by law;
- states that sign owners, advertisers, or property owners can be held liable for the removal of improperly permitted signs;
- states that children between 4 and 5 years of age must have car restraints such as booster seats rather than seat belts; and
- provides explicit authority for public-use airports to dispose of or remove personal property, derelict or abandoned aircraft and derelict or abandoned motor vehicles from the airport's premises.

This bill substantially amends ss. 163.3180, 316.2015, 316.29545, 316.515, 316.535, 316.545, 316.613, 324.021, 337.0261, 339.2818, 348.51, 348.54, 348.545, 348.565, 348.56, 348.57, 348.70, and 705.18, F.S.

This bill creates ss. 336.445, 479.310, 479.311, 479.312, 479.313, 479.314, 705.182, 705.183, and 705.184, F.S.

II. Present Situation:

Transportation Concurrency

Section 163.3180, F.S, requires local governments to use a systematic process to ensure new development does not occur unless adequate public infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available "concurrent" with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing service capacity and scheduled improvements for that period. Certain developments have been statutorily exempted from concurrency requirements, i.e., although the development may impact a transportation system which fails to meet LOS standards, the exempted development may continue without waiting for system improvements or without otherwise mitigating its transportation impacts. For example, s. 163.3180(4)(b), F.S., exempts the following public transportation facilities:

- transit stations and terminals,
- transit station parking,
- park-and-ride lots,
- intermodal public transit connection and transfer facilities,

- fixed bus, guideway, and rail stations,
- public airport passenger terminals and concourses,
- air cargo facilities, and
- aircraft maintenance and storage hangars.

Under the transportation concurrency scheme, new development must mitigate its traffic impacts on roads where the current level of service is met or exceeded. Proportionate-share and proportionate fair-share payments are one option for new development to pay for their impacts. Current law specifies that these payments "shall be limited to ensure that a development meeting the requirements of this section mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating backlog."[1] Transportation concurrency backlog means an identified deficiency where the existing extent of traffic volume exceeds the level of service standard adopted in a local government comprehensive plan for a transportation facility.[2]

Riding on the Exterior of a Motor Vehicle

Under s. 316.2015 (1), F.S., it is unlawful for the operator of any passenger vehicle to permit a person to ride on the bumper, radiator, fender, hood, top, trunk, or running board of a passenger vehicle operated on public roads. Paragraph (2) of s. 316.2015, F.S., prohibits a person from riding on any part of any vehicle not designed or intended for the use of passengers; however, this paragraph does not apply to persons riding within truck bodies in space intended for merchandise. Additionally, it is unlawful for the operator of any pickup or flatbed truck traveling on a limited access highway to permit a person younger than 18 years to ride within the open body of the vehicle without proper restraints. A county may be exempted through a majority vote of the governing body.

Motor Vehicle Window Sunscreening Restrictions

Generally, the provisions of ss. 316.2951 – 316.2957, F.S., prohibit a motor vehicle window from being tinted so darkly that it blocks the transmittance of more than a specified amount of visible light.[3] However, certain medical exclusions and vehicle exceptions apply. Under s. 316. 29545, F.S., law enforcement vehicles used in undercover or canine operations are declared exempt from the prohibition.

Delivery of Manufactured Buildings

Under s. 316.515 (14), F.S., the Florida Department of Transportation (FDOT) may issue a special permit to allow for the transportation of manufactured buildings using truck tractor-semitrailer combinations which would otherwise violate the maximum trailer overwidth dimensions established in paragraph (1) of the section. Provided it is not contrary to the public interest, FDOT may use its discretion to issue such a permit when doing so would reduce the total number of deliveries made using overwidth trailers, and a trailer no longer than 54 feet is used.

[1] Section 163.3180(12)(d) and (16)(c), F.S.
[2] Section 163.3182(1)(d), F.S.
[3] *See* ss. 316.2951 – 316.2957, F.S. for detailed percentages applying to side windows, rear windows, and additional details regarding louvers, privacy drapes, and installation tolerances.

Truck Weights

Federal regulations and s. 315.535, F.S., require the overall gross weight of any vehicle or combination of vehicles may not exceed 80,000 pounds, including all enforcement tolerances, for both the Interstate and non-interstate highway system. However, some roads and bridges have lower weight limits due to their age, condition, or design.[4] A vehicle's weight limit is based on factors such as the number of axles and the distance between two or more consecutive axles, thus, depending on the number of axles and their distribution on the vehicle, a vehicle's maximum allowable gross weight may be less than 80,000 pounds. The published weight limits include a 10 percent enforcement tolerance to allow for a difference in scale accuracy. Except as provided within the section, no vehicle or combination of vehicles exceeding the gross weights specified shall be permitted to travel on the public highways within the state. All vehicles exceeding the maximum weight limits are presumed to have damaged the highways of the state and are subject to economic sanctions. Section 315.545, F.S., provides penalties for vehicles exceeding the maximum allowable weight limit.

Truck Idling

Section 316.302, F.S., provides a person who operates a commercial motor vehicle may not drive more than 12 hours following 10 consecutive hours off duty or for any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty. Due to these statutory requirements, truck drivers have long off-hour rest periods, which they often spend inside the cab of their trucks. Cab power is essential in order to control the temperature inside the cab and keep the drivers comfortable during the long rest periods. The most common way drivers power their cabs is to idle, which means to continuously operate the vehicle's main drive engine while the vehicle is stopped. Idling functions to keep the fuel and engine warm; helps to keep the driver alert; mask out noises and smells; and provides safety. While idling helps keep the driver comfortable, it has a negative economic and environmental impact. Idling requires a great deal of fuel, increases emissions of greenhouse gases and other pollutants (which contribute to smog formation), and it generates a great deal of noise. As an alternative power source for trucks, idling reduction technology has been explored and Auxiliary Power Units (APUs) were developed. An APU is a portable, truck-mounted system that can provide climate control and power for trucks without idling. Most APUs are small diesel engines with their own cooling and heating systems, generator or alternator system and air conditioning compressor, mounted to a frame rail. The benefits of APUs are numerous and include:

- Providing heating and cooling;
- Generating enough electricity to power laptop computers, televisions, and microwaves;
- Reducing fuel consumption, by using about half of the fuel as regular diesel-engine idling;
- Improving air quality;
- Reducing emissions of carbon dioxide and other pollutants;
- Reducing maintenance, parts wear on the engine and oil change intervals;
- Reducing operating expenses for fleet and truck owners by decreasing both fuel and maintenance, allowing operators to conserve fuel when fuel is at a high price; and
- Low cost of installation and maintenance for the APU units, themselves.

[4] FDOT, *Commercial Motor Vehicle Manual*, p. 14 http://www.dot.state.fl.us/mcco/downloads/TruckingManual%20-%206th%20Edition%202006%20english.pdf

However, while APUs provide great advantages, they add weight to the vehicle. Thus, vehicles must carry less revenue-producing cargo weight in order to compensate for the weight the APU adds to the vehicle, or risk violating state and federal maximum weight limits.

The Florida Statutes are silent on the issue of idle-reduction technology and do not provide a maximum weight exemption for any vehicles having installed an anti-idling device, such as an APU.

Section 756 of the Energy Policy Act of 2005, "Idle Reduction and Energy Conservation Deployment Program," amended Title 23 USC 127(a) to allow for a national 400-pound exemption on the maximum weight limit on the interstate system for the additional weight of idling reduction technology on heavy-duty vehicles. In order to be eligible for the exemption, the operator of the vehicle must be able to prove by demonstration or certification that: (1) the idle reduction technology is fully functional at all times and (2) the 400-pound gross weight increase is not used for any purpose other than the use of idle reduction technology. This certification must be available to law enforcement officers if the vehicle is found in violation of applicable weight laws. A memo from the Federal Highway Administration's Size and Weight Division indicates the exemption in s. 756 of the Energy Policy Act is not a mandate and does not preempt state regulations or compel states to grant the increased weight tolerance. Thus, federal law allows for the waiver of 400 pounds, but does not require it. Each state may determine whether they will honor the exemption. Thus far, approximately 22 states allow the 400-pound APU exemption.[5]

Public Private Partnerships (PPPs)

Since 1991, s. 334.30, F.S., has allowed FDOT to contract for the building or construction of privately owned and operated roads. Although, no agreements have been entered under this law, FDOT received two proposals submitted for review but both were eventually unable to secure adequate financial backing to produce a project. Section 334.30, F.S., was amended in 2004 to clarify FDOT's authority for the building and financing of transportation facilities by private entities. The section provides FDOT may receive or solicit proposals and, with legislative approval (via approval of the FDOT Work Program), enter into agreements with private entities for the building, operation, ownership, or financing of transportation facilities. Section 348.0004, F.S., provides essentially the same authority to Florida's expressway, bridge, and other authorities created under that chapter.

Before approval, the FDOT or authority must determine a proposed project:

- is in the public's best interest;
- does not require state funds to be used unless the project is on the State Highway System;
- would have adequate safeguards to ensure no additional costs or service disruptions by the traveling public;

[5] A federal survey dated July, 2008, revealed the following results: 22 states allow the 400-pound APU exemption: Arkansas, Idaho, Indiana, Iowa, Kansas, Maryland, Minnesota, Missouri, Mississippi, Montana, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Washington, and Wisconsin. 11 states do NOT allow the 400-pound APU exemption: Alabama, California, Colorado, Florida, Georgia, Kentucky, Maine, North Carolina, Ohio, Rhode Island, and Wyoming. The remaining 17 states are not yet accounted for in the survey.

- would have adequate safeguards to ensure the FDOT, authority, or private entity may add capacity to the project or other facilities serving similar origins and destinations; and
- would be owned by the FDOT or the authority at the completion of the agreement.

Both sections require all reasonable costs for the project to be borne by the private entity. However, state resources may be used on projects on the State Highway System when provided for by in the department's enabling legislation.

Agreements between the FDOT or authority and the private entity may authorize the private entity to impose tolls; however, the amount of tolls and use of toll revenues must be regulated by the FDOT or the authority. Each private transportation facility constructed pursuant to this section must comply with all requirements of federal, state, and local laws; state, regional and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions which the FDOT determines to be in the public's best interest.

The following specific provisions apply to FDOT PPP agreements:

- With the exception of the Florida Turnpike System, FDOT may lease existing toll facilities or develop new toll facilities to be operated by private entities in accordance with FDOT standards and subject to legislative approval.
- The private entity must provide a traffic and revenue study and finance plan.
- FDOT must provide an independent analysis demonstrating cost-effectiveness and overall public benefit.
- PPP agreements may not exceed 75 years without approval of the Legislature.

Construction Aggregates

Construction aggregate materials provide one of the basic materials needed for concrete, asphalt, and road base. In Florida, approximately 143 million tons of crushed stone, limestone, dolomite, limerock, shell rock, and high quality sand were used as construction aggregate in 2007. Most, about 120 million tons, was mined in Florida; however, about 13 million tons were imported and 10 million tons of recycled aggregates were used. Housing and commercial construction account for approximately 86 million tons used and roads and other infrastructure used about 42 million tons. FDOT is the largest single user of construction aggregates, accounting for 10 percent of the supply. Aggregate materials are located in various deposits around the state. FDOT estimates the long-term availability of indigenous aggregate is insufficient to maintain recent consumption rates beyond a 10 year period.

Tampa Hillsborough County Expressway Authority (THEA)

The THEA was established in 1963 under Part IV ch. 348, F.S., to build, operate, and maintain toll-financed expressways in Hillsborough County. The THEA owns the Lee Roy Selmon Crosstown Expressway (including the elevated reversible lanes), currently the only expressway operated by the THEA. The THEA originally planned the neighboring Veterans Expressway which was transferred to, and is operated by the Florida Department of Transportation (FDOT). The governing body of the THEA consists of seven board members comprising:

- Four members appointed by the Governor and subject to confirmation by the Senate, each serving one four-year term;

- The mayor, or mayor's designee, of Hillsborough County's most populous city (Tampa) and serving as a member ex officio;
- A member of the Hillsborough Board of County Commissioners appointed by that board and serving as a member ex officio; and
- The FDOT District Seven Secretary.

Under the State Bond Act discussed in chs. 215 and 348, F.S., the Division of Bond Finance (DBF) issues revenue bonds for THEA's projects on behalf of the authority. Pursuant to its statutory authority, the DBF independently reviews the recommendations of a paid financial adviser retained by the THEA. The DBF's review does not focus solely upon the current transaction; it also reviews the issuance in light of the entire bonded indebtedness of the State of Florida. The DBF also maintains its own independent in-house legal staff to assist with issues which may arise during the financing. All financings issued through the DBF must receive the approval of the Governor and Cabinet. Additional state oversight is currently provided by FDOT, which may participate through financial contributions to the construction, operation and maintenance of THEA's expressways. The revenue bonds issued by the DBF on behalf of THEA pledge the toll revenues generated by the authority's expressway system as repayment. These revenue bonds are not backed by the full faith and credit of the State of Florida. In addition to existing facilities, the authority is authorized to issue bonds to finance:

- Brandon area feeder roads,
- capital improvements to the expressway system including the toll collection equipment,
- the widening of the Lee Roy Selmon Crosstown Expressway System, and
- the Crosstown Connector linking I-4 and the Selmon Crosstown Expressway.

Specific projects by the THEA must be approved by the Legislature, by amending s. 348.565, F.S.

Some local-government transportation entities, such as the Miami-Dade County Expressway Authority, the Orlando-Orange County Expressway Authority and the Mid Bay Bridge Authority, have specific authority to issue their own revenue bonds, independently of the DBF.

Abandoned Property at Airports

The Florida Airports Council estimates over 100 aircraft and 500 motor vehicles are abandoned on Florida airport property each year. Florida's 124 public airports are owned and operated by various cities, counties, and special districts which results in airports using a variety of statutes and local ordinances to remove derelict or abandoned aircraft and motor vehicles. The disposal of personal property lost or abandoned at public use airports is marginally addressed in s. 705.18, F.S. However, the section primarily addresses personal property, directing all moneys realized from the sale, following associated expenses, to be deposited into the state school fund.

The Small County Outreach Program

The purpose of the Small County Outreach Program is to assist small county governments in resurfacing or reconstructing county roads or in constructing capacity or safety improvements to county roads. A small county means any county that has a population of 150,000 or less. Small counties shall be eligible to compete for funds that have been designated for the Small County Outreach Program for projects on county roads. The department shall fund 75 percent of the cost

of projects on county roads funded under the program. In determining a county's eligibility for assistance under this program, the department may consider whether the county has attempted to keep county roads in satisfactory condition.

The primary criterion for determining whether a road project will receive funding is the physical condition of the road as measured by the department. As secondary criteria, the department may consider:

- Whether a road is used as an evacuation route.
- Whether a road has high levels of agricultural travel.
- Whether a road is considered a major arterial route.
- Whether a road is considered a feeder road.
- Other criteria related to the impact of a project on the public road system or on the state or local economy as determined by the department.

The Graves Amendment

The Graves Amendment is a federal law that generally preempts all state statutory and common law to the extent those laws hold owners in the business of renting or leasing motor vehicles vicariously liable for the negligence of drivers, except when there is negligence or criminal wrongdoing on the part of the owner.[6] The law explicitly does not preempt a state from imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.[7]

In *Garcia v. Vanguard Car Rental USA, Inc.*, the 11th Circuit Court of Appeals upheld the constitutionality of the Graves Amendment and further held that Florida's vicarious liability regime is not part of the financial responsibility scheme so as to fall within Graves Amendment's savings clause. Several state cases have also held that s. 324.021, F.S., is preempted by the Graves Amendment.[8]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3180, F.S., to clarify hangars used for the assembly and manufacturing of aircraft are also included in the public transportation facility types exempted from transportation concurrency requirements. A definition for backlog is created for purposes of assessing proportionate-share and proportionate fair-share payments. Backlog means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review which are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. The number of trips for the project are to be calculated based on the particular stage or phase of the development.

[6] 49 U.S.C. § 30106.
[7] *Id*.
[8] *Vargas v. Enterprise Leasing Co*., 993 So.2d 614 (Fla. 4th DCA 2008); *Tocha v. Richardson*, 995 So.2d 1100, 1101+ (Fla. 4th DCA 2008); *Kumarsingh v. PV Holding Corp*., 983 So.2d 599, 599+ (3d DCA 2008); Dupuis *v. Vanguard Car Rental USA, Inc*., 510 F.Supp.2d 980, 981+ (M.D.Fla. 2007).

Section 2 amends s. 316.2015, F.S., to make it illegal to allow a child aged 5 years or under, to ride in the open back of a pickup truck or flatbed truck traveling at more than 35 miles per hour. Exemptions are included to accommodate:

- trucks modified to include secure seating and safety restraints.
- medical emergencies if the child is accompanied in the truck by an adult.
- drivers and immediate family whose only vehicle is a pickup truck.

A county may opt out of the provisions of the paragraph by majority vote of the governing body.

Section 3 amends s. 316.29545, F.S., to create an additional class of vehicles exempted from the motor vehicle window sunscreening restrictions. The bill makes any vehicle owned or leased by an investigative agency licensed under ch. 493, F.S. exempt from window tinting regulations, if the vehicle is used in any of the following ways:

- Homeland security functions on behalf of federal, state, or local authorities;
- Executive protection activities;
- Undercover, covert, or surveillance operations in cases involving
    - Child abductions,
    - Convicted sex offenders,
    - Insurance fraud,
    - Missing persons or property; or
- Other activities in which evidence is being obtained for civil or criminal proceedings.

Section 4 amends s. 316.515, F.S., to clarify multiple units of manufactured buildings, *i.e.*, an otherwise divisible load, may be transported on a single trailer with a special permit. Maximum trailer length for such purposes is increased from 54 to 80 feet.

Section 5 amends s. 316.535, F.S., to clarify the use of scale tolerances in the computation of fines for overweight vehicles operated on non-interstate highways. Essentially, the amendment adds 10% to the maximum allowable gross weight for vehicles. Maximum axle weights are not affected.

Section 6 amends s. 316.545. F.S., to provide for an increase in the vehicle's maximum gross vehicle weight of up to 400 pounds to compensate for the additional weight of APUs installed, thus implementing s. 756 of the federal Energy Policy Act in Florida. The bill will create greater uniformity between federal and state law, which is especially important for truck drivers doing interstate business and would also assist regulatory officials by preventing enforcement ambiguities that could cause problems for drivers during inspections.

If a vehicle is found to be overweight, but is equipped with idle-reduction technology, then the penalty will be calculated by reducing the actual gross vehicle weight or the internal bridge weight by the certified weight of the idle-reduction technology, or 400 pounds, whichever is less. The 400 pound exemption will not be assessed on axle weight. FDOT cannot increase the axle weight because Florida's maximum allowable axle weight was grandfathered in at 22,000 pounds; ten percent greater than the federally allowed 20,000 pounds. Furthermore, each qualifying vehicle will not get an automatic exemption of 400 pounds by virtue of having an

installed anti-idling device, unless the actual weight of the anti-idling device is 400 pounds or more. The weight limit exemption will depend on the certified weight of the anti-idling device.

The bill has two proof requirements identical to those found in the federal law. If drivers are questioned by a law enforcement or regulatory officer, the driver must: (1) prove the unit is fully functional at all times and (2) present written certification of the weight of the idle-reduction technology.

The bill excludes vehicles described in s. 316.535(6), F.S., from qualifying for the 400 pound exemption. These vehicles, typically called straight trucks, include: dump trucks; concrete mixing trucks; trucks engaged in waste collection and disposal; and fuel oil and gasoline trucks designed and constructed for special type work. These vehicles typically do not carry idle-reduction equipment and the addition of 400 pounds would exceed the weight limit on many state and local bridges.

Section 7 amends s. 316.613, F.S., to replace the option of having a child between the age of 4 and 5 transported in a motor vehicle be restrained by a seat belt to the option of placing the child in a booster seat. Other options that exist in current law are to restrain the 4 to 5 year old in a separate carrier or an integrated child seat.

Section 8 amends s. 324.021, F.S., to specifically require insurance for rental vehicles that is sufficient to cover the owner or operator's liability. The statute is changed to specify that the owner or operator is "financially responsible" up to the designated amounts. Several sections of the statute are revised to use the term "financially responsible" rather that liable in order to track the language of the exception to preemption for the Graves Amendment. The statute provides that the lessor shall be liable for failure to meet the financial responsibility and liability insurance requirements of the paragraphs of the statute.

Section 9 creates a statement of legislative intent that states that the amendments in section 8 are intended to clarify that Florida law as it existed at the time of the enactment of the Graves Amendment imposed financial responsibility and imposed liability on business entities engaged in renting or leasing motor vehicles for failure to meet financial responsibility and liability insurance requirements.

Section 10 creates a new section in ch. 336 allowing counties to enter agreements to engage in Public-Private Partnerships for the construction, operation, ownership, or financing of county toll roads. Any such PPP may not be contrary to the public interest or require state funds and the agreement must have safeguards to protect the public from additional costs and service disruptions. The agreement must also ensure the county or private entity may add capacity to the project or other facilities serving similar origins and destinations. The agreement must also address toll rate regulation and the provision of a financial plan. The provisions do not specifically address the leasing or purchase of existing facilities by private entities.

Section 11 amends s. 337.0261, F.S., to provide a legislative finding that construction aggregates materials mining is an industry of critical importance and in the public interest.

Section 12 amends s. 339.2818, F.S., to state that repairing county bridges, unpaved roads, and drainage improvements are all purposes of the Small County Outreach Program. The bill also allows counties to show that they have tried to maintain their roads in satisfactory condition through an established pavement management plan. The condition of the road can be determined either by the department or through an established pavement management plan

Sections 13-21 amend ss. 348.51, 348.54, 348.545, 348.56, 348.565, 348.57, 348.70, F.S., to give the THEA authority to issue its own bonds, without having to seek the state's review and approval as is currently required by s. 215.73, F.S. The State Bond Act, ss. 215.57-215.83, F.S., includes a number of requirements to ensure the integrity and fiscal sufficiency of bonds issued on behalf of the state. The bill would authorize the Board of the THEA to approve the issuance of bonds. The cumulative effect of these changes would be to shift the final decision from the state-wide perspective of the Governor and Cabinet to a local perspective. THEA would retain the option of going through the DBF. The bill amends s. 348.54, F.S., to provide the THEA shall not have the power to pledge the credit or taxing power of the state, the City of Tampa, or Hillsborough County, meaning none of these entities would be legally liable for repaying the bonds. While a default upon the bonds of THEA would not result in a legal obligation to pay off the bonds, the state or another party may determine it has a moral obligation to do so. In addition, it is possible the bond rating of the State of Florida or of other Florida bond issuers may suffer adversely from default upon the THEA's obligations.

These sections also make statutory changes to consolidate the authority of public airports to dispose of unclaimed, abandoned, or derelict property. Specifically, the bill amends ch. 705.18, F.S., relating to the disposal of personal property lost or abandoned on university and community college campuses or certain public-use airports to remove references to abandoned property at public use airports and creates new sections to address the disposal of three different types of property located on airport property: personal property, vehicles, and aircraft.

Section 22 creates part II of chapter 479 to provide for a liability scheme that requires the sign owner, advertiser, or owner of the property where the sign is located to be liable for removal of the sign if it is an unpermitted sign or its permit is revoked. Sections 479.310, 479.311, 479.312, 479.313, and 479.314, F.S., to provide for a liability scheme and jurisdiction.

Section 23 revises s. 705.18, F.S., to delete the specifications on dealing with lost or abandoned property at a public use airport.

Section 24 creates s. 705.182, F.S., relating to the disposal of personal property found on the premises of public-use airports to address property, except for motor vehicles and aircraft, found at these airports. The bill requires the airport's director or designee to take charge of the property and make a record of the date it was found. If, within 30 calendar days from when the property is found, or a longer period as deemed appropriate under the circumstances, the owner does not claim the property, the director or designee may:

- Retain the property for use by the airport or for use by the state or unit of local government owning or operating the airport;
- Trade the property to another unit of local government or state agency;
- Donate the property to a charitable organization;
- Sell the property; or

- Dispose of the property through an appropriate refuse removal or salvage company that provides salvage service for the type of personal property found.

Prior to disposing of the property, the bill requires the airport to notify the owner, if known, that the property was found at the airport and that the airport intends to dispose of it. If the airport decides to sell the property, it must be sold at a public auction either on the Internet or at a specified physical location. At least 10 days prior to the sale, the airport must provide notice of the time and place of the sale in a publication of general circulation within the county where the airport is located. This is done after written notice, via certified mail, return receipt requested, is provided to the property owner, if known. This notice is considered sufficient if it refers to the airport's intention to sell all of its then-accumulated found property, and it is not required to identify each individual item that will be sold. At any time prior to the sale, the owner may reclaim the property by presenting acceptable evidence of ownership to the airport's director or designee. The proceeds from the sale of property are retained by the airport to be used by the airport in any lawfully authorized manner. The bill does not preclude the airport from allowing a domestic or international air carrier or other airport tenant from establishing its own lost and found procedures for personal property and from disposing of such personal property. The bill provides that the purchaser or recipient in good faith of the personal property sold or obtained takes the property free of the rights of persons then holding any legal or equitable interest in the property, whether or not the interest is recorded.

Section 25 creates s. 705.183, F.S., relating to the disposal of derelict or abandoned aircraft on the premises of public use airports, whether or not the premises is under lease or license to a third party. When one of these aircraft is found, the airport director or designee must make a record of the date the aircraft was found or determined to be present on airport property. The bill defines "abandoned aircraft" as an aircraft that has been disposed of in a public-use airport in a wrecked, inoperative, or partially dismantled condition or an aircraft that has remained in an idle state on the premises owned or controlled by the operator of a public-use airport for 45 consecutive calendar days. The bill defines "derelict aircraft" as any aircraft that is not in flyable condition, does not have a current certificate of air worthiness issued by the Federal Aviation Administration (FAA) and/or is not in the process of actively being repaired. The bill requires the airport director or designee to contact the FAA Aircraft Registration Branch in order to determine the name and address of the last registered aircraft owner. The bill also requires a diligent search of the appropriate records, or contact with an aircraft title search company to determine the name and address of any person having an equitable or legal interest in the aircraft. Within 10 business days of receiving information related to persons with interest in the aircraft, the director or designee must notify all persons having an equitable or legal interest in the aircraft by certified mail, return receipt requested. This notice must advise them of the location of the derelict or abandoned aircraft, that fees and charges for the use of the airport by the aircraft have accrued and the amount of these fees, that the aircraft is subject to a lien for the accrued fees and charges for use of the airport and for the transportation, storage, and removal of the aircraft, that the lien is subject to enforcement pursuant to law, and that the airport may cause the use, trade, sale, or removal of the aircraft. The notice may require the removal of the aircraft in less than 30 calendar days if the director or designee determines that the aircraft poses a danger to the health and safety of airport users. If the owner of the aircraft is unknown, or cannot be found, the director or designee is required to place a laminated notice, in a specific form, on the aircraft. This notice provides the same information that was provided in the notice mailed to those with

an equitable or legal interest in the aircraft. The notice must be at least 8 inches by 10 inches and weatherproofed. If, after 30 calendar days from the date of receipt of the notice or the posting of the notice on the aircraft, the owner or any person with an interest in the aircraft has not removed the aircraft from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, or shown reasonable cause for failure to do so, the director or designee may cause the use, trade, sale, or removal of the aircraft. If the airport elects to sell the aircraft, it must do so at a public auction after giving notice of the time and place of the sale at least 10 calendar days prior to the date of the sale. This notice must be in a publication of general circulation within the county where the airport is located and after providing written notice to all parties known to have an interest in the aircraft. If the airport elects to dispose of the aircraft, the airport is entitled to negotiate with the refuse or removal company for the price to be received from the company as payment for the aircraft, or if circumstances warrant, a price to be paid to the company for the costs of disposing of the aircraft. All information pertaining to the establishment of the price and the justification for the prices shall be prepared and maintained by the airport, and the negotiated price shall be deemed a reasonable price. If the sale or negotiated price is less than the airport's then current charges and costs against the aircraft, or the airport is required to pay a salvage company for its services, the owner of the aircraft remains liable for the airport's costs that are not offset by the sale or negotiated price, in addition to the owner's liability for payment to the airport of the price the airport was required to pay any salvage company. All costs incurred by the airport in the removal, storage, and sale of any aircraft shall be recoverable against the aircraft's owner. The bill provides that the airport shall have a lien on derelict or abandoned aircraft for all fees and charges for the use of the airport by the aircraft and for all fees and charges incurred by the airport for the transportation, storage, and removal of the aircraft. Prior to perfecting the lien, the director or designee must serve notice of the lien on the last registered owner and all persons having an equitable or legal interest in the aircraft. The serving of the notice does not dispense with recording the claim of lien. This claim of lien must contain the following information:

- The name and address of the airport.
- The name of the last registered aircraft owner and all persons having a legal or equitable interest in the aircraft.
- The fees and charges incurred by the aircraft for the use of the airport, and the fees and charges for the transportation, storage, and removal of the aircraft.
- A description of the aircraft is sufficient for identification.

The bill requires the claim of lien to be signed and sworn to by the airport director or director's designee. The claim of lien is sufficient if it is substantially the form provided in the bill. However, the bill provides that the negligent inclusion or omission of any information in the claim of lien, which does not prejudice the last registered owner, does not constitute a default that operates to defeat an otherwise valid lien. The bill requires the claim of lien to be served on the aircraft's last registered owner and all persons having an equitable or legal interest in the aircraft. The claim of lien shall be served before it is recorded. The bill requires the claim of lien to be recorded with the clerk of court in the county where the airport is located. This recording is constructive notice to all persons of the contents and effect of such claim. The lien attaches when it is recorded and takes priority at that time. The bill provides that a purchaser or recipient in good faith of an aircraft sold or obtained under this section takes the aircraft free of the rights of persons then holding any legal or equitable interest in the aircraft, whether or not the interest is recorded. The purchaser is required to notify the FAA of the change in the registered owner of

the aircraft. If the aircraft is sold at a public sale, the bill requires the airport to deduct from the proceeds of the sale the costs of transportation, storage, publication of notice, and all other costs reasonably incurred by the airport. The balance of the proceeds are deposited into an interest-bearing account no later than 30 calendar days after the airport receives the proceeds and the funds must be held for one year. The aircraft's rightful owner may claim the balance of the proceeds within one year from the date of the deposit by making application to the airport and presentation to the airport's director or designee of acceptable written evidence of ownership. If no rightful owner comes forward to claim the proceeds within one year, the balance of the proceeds is retained by the airport to be used in any legally authorized manner. The bill provides that any person acquiring legal interest in an aircraft that is caused to be sold by an airport is the lawful owner of the aircraft and all other legal or equitable interest in the aircraft is divested with no further force and effect, provided that the holder of such interest was notified of the intended disposal of the aircraft. The bill authorizes the airport to issue documents of disposition to the purchaser or recipient of an aircraft disposed of under this section.

Section 26 creates s. 705.184, F.S., relating to the disposal of derelict or abandoned motor vehicles on the premises of public-use airports. When one of these vehicles is found, the airport's director or designee must make a record of the date the vehicle was found or determined to be present on airport property. The bill defines "abandoned motor vehicle" as a motor vehicle that has been disposed of in a public-use airport in a wrecked, inoperative, or partially dismantled condition or a motor vehicle that has remained in an idle state on the premises owned or controlled by the operator of a public-use airport for 45 consecutive calendar days. The bill defines "derelict motor vehicle" as any motor vehicle that is not in drivable condition. After information relating to the derelict or abandoned motor vehicle is recorded in the airport's records, the bill permits the airport's director or designee to have the motor vehicle removed from the airport's premises by the airport's own wrecker or by a licensed independent wrecking company to be stored at a suitable location on or off the airport premises. If the vehicle is removed by the airport's own wrecker, the provisions below apply. However, if the vehicle is removed by a licensed independent wrecker company, current laws for the disposal of vehicles by wrecker companies apply and the procedures below do not apply. The bill requires the airport director or designee to contact the Department of Highway Safety and Motor Vehicles (DHSMV) to notify DHSMV it has possession of the motor vehicles to determine the name and address of the last registered vehicle owner, the insurance company insuring the vehicle, and any person who has filed a lien on the motor vehicle. Within seven business days of receiving this information, the airport's director or designee must notify the owner of the vehicle, the insurance company insuring the vehicle, and all persons claiming a lien against the vehicle by certified mail, return receipt requested. This notice shall state the fact of possession of the vehicle, that charges for a reasonable towing, storage, and parking, have accrued and the amount of those fees, that a lien will be claimed, that the lien is subject to enforcement pursuant to law, and that the owner or lienholder, if any, has the right to a hearing to contest the airport's possession. If, after 30 calendar days from the date of receipt of the notice the vehicle has not been removed from the airport upon payment in full of all accrued charges for reasonable tow, storage, and parking fees, the vehicle may be disposed of, including, but not limited to, the vehicle being sold free of all prior liens that are more than five years of age, or after 50 calendar days from the time the motor vehicle is stored if any prior liens are five years or less. If attempts to notify the owner and/or lienholder prove unsuccessful, the requirement of notice will be considered met and the vehicle may be disposed of in the manner provided for all abandoned vehicles. The bill gives the

owner of, or any person claiming a lien on the motor vehicle 10 calendar days after receiving knowledge of the location of the motor vehicle to file a complaint in the county court of the county in which the motor vehicle is stored, to determine if the property was wrongfully taken or withheld. Upon the filing of the complaint, the owner or lienholder may have the vehicle released upon posting with the court a cash or surety bond or other adequate security equal to the amount of fees for towing, storage, and accrued parking to ensure the payment of the fees if the vehicle owner does not prevail. Once the security is posted and any applicable fees are paid, the clerk of the court is required to issue a certificate notifying the airport that the security was posted and directing the airport to release the vehicle. When the vehicle is released, after reasonable inspection, the owner or lienholder must give receipt to the airport reciting any claims for loss or damage to the vehicle or its contents. If after 30 calendar days from receiving the notice the owner or any person claiming a lien has not removed the vehicle and paid the fees or shown reasonable cause for failure to do so, the director or designee may dispose of the vehicle in any manner provided. If the airport elects to sell the vehicle, it may be sold free in clear of all prior liens after 35 calendar days from the time the motor vehicle is stored if any of the prior liens are more than five years old, or after 50 calendar days from the time the motor vehicle is stored if any prior lines are five years old or less. The vehicle must be sold at public auction, either on the Internet or at a specified location. If the date of the sale was not included in the previously required notice, notice of the of the sale, sent by certified mail, return receipt requested, must be given to the owner and to all persons claiming a lien on the vehicle. The notice must be mailed not less than 10 days before to the date of the sale. Additionally, a public notice must be in a publication of general circulation within the county where the sale is to be held at least 10 calendar days prior to the date of the sale. The proceeds of the sale must be used to recover the airport's costs incurred for towing, storage, and the sale of the vehicle, as well as any accrued parking fees. Any proceeds exceeding these costs are retained by the airport for use in any authorized manner. The airport or, if used, a licensed independent wrecking company, pursuant to s. 713.78, F.S., has a lien on the derelict or abandoned vehicle for a reasonable tow fee, a reasonable storage fee, and or accrued parking fees, except that no storage fee shall be charged if the vehicle is stored for less than six hours. Prior to perfecting a lien, the director or designee must serve notice of the lien on the owner, the insurance company, and all persons of record claiming a lien against the vehicle. If attempts to notify the owner, insurance company, and lienholders are unsuccessful, the notice requirement will be considered met. The serving of the notice does not dispense with recording the claim of lien. This claim of lien must contain the following information:

- The name and address of the airport.
- The name of the owner of the vehicle, the insurance company insuring the motor vehicle, and all persons of record claiming a lien against the vehicle.
- The fees incurred for a reasonable tow, reasonable storage, and parking, if any.
- A description of the motor vehicle sufficient for identification.

The bill requires the claim of lien to be signed and sworn to by the airport director or director's designee. The claim of lien is considered sufficient if it is substantially the form provided in the bill. However, the bill provides that the negligent inclusion or omission of any information in the claim of lien, which does not prejudice the owner, does not constitute a default that operates to defeat an otherwise valid lien. The bill requires the claim of lien to be served on the owner, the insurance company, and all recorded lienholders. If attempts at notification prove unsuccessful, the requirement of notification will be considered met. The claim of lien shall be served before it

is recorded with the clerk of court in the county where the airport is located. The bill provides a purchaser or recipient in good faith of a vehicle sold or obtained under this section takes the vehicle fee of the rights of persons then holding any legal or equitable interest in the vehicle, regardless of whether this interest is recorded.

Section 27 provides an effective date of July, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Revisions to s. 316.545, F.S., eliminate potential negative impact due to the inability of trucks employing idle-reduction technology from transporting a full cargo load.

C. Government Sector Impact:

Revisions to s. 316.545, F.S., will result in minimal, negligible impacts for the reprogramming of computer systems at weigh stations that calculate overweight limits and changes in enforcement and training for law enforcement and regulatory officers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 20, 2009:
The CS:

- creates a definition for backlog for proportionate share and proportionate fair-share;
- states that repairing county bridges, unpaved roads, and drainage improvements are all purposes of the Small County Outreach Program;
- allows the county's pavement management plan to serve as evidence as road maintenance and condition;
- states that leased or rented motor vehicles must have insurance enough to fulfill their obligations under s. 324.021(9), F.S., and are liable for up to the amount of required insurance if they do not get insurance as required by law;
- states that children between 4 and 5 years of age must have car restraints such as booster seats rather than seat belts; and
- states that sign owners, advertisers, or property owners can be held liable for the removal of improperly permitted signs.

CS by Transportation on April 1, 2009:
The previous version of the bill was a shell bill. All substantive material was added by the committee substitute.

B. Amendments:

None.