

**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.)

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Prepared By: The Professional Staff of the Transportation Committee

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BILL: PCB 7014

INTRODUCER: For Consideration by the Transportation Committee

SUBJECT: Transportation

DATE: January 6, 2009

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Eichin  | Meyer          |           | <b>Pre-meeting</b> |
| 2. |         |                |           |                    |
| 3. |         |                |           |                    |
| 4. |         |                |           |                    |
| 5. |         |                |           |                    |
| 6. |         |                |           |                    |

**I. Summary:**

This Proposed Committee Bill (PCB) makes changes to numerous programs administered by or affecting the Florida Department of Transportation (FDOT). The PCB is nearly identical to Senate Bill 682 which was vetoed in 2008. The PCB differs from the vetoed bill in the following ways:

- Language related to Turnpike concession and fuel contracting which was identified in the Governor’s veto message as being objectionable has been removed;
- Sections which were duplicated in other legislation and subsequently adopted in law have been removed;
- A section extending the Strategic Aggregates Review Task Force has been removed since the task force has been dissolved; and
- Date-specific language has been updated by adding one year to each date.

The PCB:

- Directs FDOT to conduct a study examining transportation alternatives for the Interstate 95 travel corridor.
- Provides for the salary and benefits of the executive director of the Florida Transportation Commission (FTC) to be established in accordance with the Senior Management Service.

- Better integrates airport planning and adjacent land use in the local government comprehensive planning process.
- Exempts certain seaport-related projects from development-of-regional-impact (DRI) review if the project is within 3 miles of a seaport.
- Authorizes transportation concurrency backlog authorities to issue bonds and exceed the 25 percent tax increment financing rate upon agreement of all affected taxing authorities.
- Prohibits a county, city, or special district from owning or operating an asphalt plant or concrete batch plant.
- Authorizes FDOT to award stipends to unsuccessful bidders for construction and maintenance contracts and directs FDOT to establish a goal of procuring 25 percent of construction contracts as design-build contracts.
- Revises surety bond recording requirements and includes maintenance contractors in the process used by construction contractors to arbitrate contract disputes.
- Provides additional exemptions to utility companies from utility relocation costs related to transportation projects.
- Authorizes public pay telephones and accompanying advertising to be installed within the right-of-way under certain circumstances.
- Requires all new or replacement electronic toll collection systems installed on toll roads in the state to be interoperable with FDOT's electronic toll collection system.
- Authorizes FDOT to request the issuance of revenue bonds related to HOT/express lanes on I-95 in Broward and Miami-Dade Counties and to implement variable toll rates on the HOT/express lanes.
- Provides for alternative tolling and payment methods including video billing and variable pricing, and eliminates the requirement to maintain a uniform toll rate structure on the turnpike system.
- Increases from \$100 million to \$250 million, the maximum dollar amount for projects which may be added to FDOT's work program when funded by other governmental entities.
- Creates a new reimbursement program for small counties to loan up to \$200 million to FDOT in order to advance projects outside the adopted work program into the work program with repayment agreements of up to 30 years.
- Revises the notification process used by FDOT when amending the work program.
- Revises obsolete statutory requirements related to federal planning requirements.

- Reinstates the Small County Resurfacing Assistance Program in 2013. Certain eligibility criteria relating to ad valorem tax rates are removed.
- Repeals ch. 343, part III, F.S., to abolish the non-functioning Tampa Bay Commuter Transit Authority.
- Requires members of each statutorily-created expressway authority, transportation authority, bridge authority, and toll authority to comply with constitutional financial disclosure requirements.
- Authorizes all expressway authorities to index toll rates to the Consumer Price Index.
- Modernizes the definition of 'automatic changeable facing' as it relates to outdoor advertising and revises the sign permitting process.
- Revises provisions relating to the regulation of wall murals.
- Makes changes to the interstate highway logo sign program.
- Creates a business partnership pilot program which authorizes the Palm Beach County School District to display names of business partners on district property in unincorporated areas.
- Authorizes the use of, but does not appropriate, public funds for certain non-capacity improvements to Old Cutler Road in Miami-Dade County.
- Excludes transportation authorities created under ch. 343, F.S., from the definition of 'agency' for the purposes of ch. 120, F.S., the Administrative Procedure Act.
- Directs FDOT to establish an approved methodology for calculating proportionate share exactions which recognizes that sustainable DRIs will likely achieve an internal capture rate greater than 30 percent.

This bill substantially amends the following sections of the Florida Statutes: 20.23, 120.52, 125.42, 163.3177, 163.3178, 163.3182, 287.055, 337.11, 337.14, 337.16, 337.18, 337.185, 337.403, 337.408, 338.01, 338.165, 338.2216, 338.223, 338.231, 339.12, 339.135, 339.155, 339.2816, 339.2819, 339.285, 348.0003, 348.0004, 479.01, 479.07, 479.08, 479.156, and 479.261.

This bill creates s. 338.166, F.S. and unnumbered sections of Florida Statute.

This bill repeals Part III of ch. 343, F.S.

## II. Present Situation:

### *Interstate 95 Corridor*

Interstate 95 (I-95) is the predominant interstate highway on the United States (U.S.) eastern seaboard, paralleling the Atlantic Ocean for 1,917 miles from the Canadian border to South Florida. With approximately 1,040 miles traversing through urban areas, I-95 travels near or through some of the largest and most economically important cities in the country including Boston, Baltimore, Philadelphia, New York City, Washington, D.C., and Miami. According to the U.S. Census Bureau, only five counties along the route - two in South Carolina, one in southern Virginia, and two in northern Maine - are completely rural. I-95 is the longest north-south U.S. interstate highway and passes through fifteen states - more than any other.

The Federal Highway Administration (FHWA) estimates without any further improvements to the corridor, virtually 100 percent of the urban segments will be under heavy congestion by 2035. Congestion for non-urban corridors would increase from the current 26 percent impacted to over 55 percent impacted.

Florida’s 382 miles of I-95 comprise the highest number of miles for any state. According to FDOT calculations using 2006 data, 159 miles (42%) fail to meet the adopted minimum level of service standards and may be considered congested.

| County       | Total Length (in miles) | Number of Congested Miles | Percent Congested |
|--------------|-------------------------|---------------------------|-------------------|
| Brevard      | 73                      | 45                        | 62%               |
| Duval        | 38                      | 19                        | 50%               |
| Flagler      | 19                      | 19                        | 100%              |
| Nassau       | 12                      | 0                         | 0%                |
| St. Johns    | 35                      | 0                         | 0%                |
| Volusia      | 46                      | 1                         | 2%                |
| Broward      | 25                      | 25                        | 100%              |
| Miami-Dade   | 17                      | 15                        | 88%               |
| Indian River | 19                      | 0                         | 0%                |
| Martin       | 25                      | 7                         | 28%               |
| Palm Beach   | 46                      | 28                        | 61%               |
| St. Lucie    | 27                      | 0                         | 0%                |
| <b>Total</b> | <b>382</b>              | <b>159</b>                | <b>42%</b>        |

In 2007, Florida joined four other states (Georgia, North Carolina, South Carolina, and Virginia) in a single application for the FHWA’s new “Corridors of the Future” program. The application proposes to reconstruct and expand a 1,054 mile stretch of I-95 from Florida to Washington, D.C., to accommodate future demand, safety, and reliability. The projects proposed in the application offer the potential for moderate to significant congestion reduction and mobility improvements along I-95 from Washington, D.C., to Florida.

Routes paralleling I-95 for long distances in Florida include:

- U.S. Route 1, which closely parallels I-95 from Jacksonville to Miami;

- State Road A1A, along the coastline;
- U.S. Route 17, running through Jacksonville, Palatka, Deland, Orlando, before heading West through Bartow to Punta Gorda;
- U.S. Route 301, from the Georgia line to Interstate 75 in Marion County; and
- The Florida Turnpike, especially from Fort Pierce to Miami.

### ***Florida Transportation Commission***

Section 20.23, F.S., creates the FTC to provide oversight of the FDOT and makes transportation policy recommendations to the Governor and Legislature. The FTC is required to appoint an executive director and assistant executive director who serve under the direction, supervision, and control of the commission. The executive director is authorized to employ staff as necessary and within budgetary limitations.<sup>1</sup> Currently, there are four employees at the FTC and they are classified as Selected Exempt Service personnel for the purposes of salary and benefits.

### ***Proportionate Fair-Share Mitigation***

Section 163.3180 provides a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. This method, called proportionate fair-share mitigation, can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided the improvement satisfies part II of ch. 163, F.S., and:

- the proposed improvement satisfies the significant benefit test; or
- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

### ***Transportation Concurrency Backlog Authorities (TCBAs)***

Local governments are required to use a systematic process to ensure new development does not occur unless adequate infrastructure is in place to support the growth. The requirement for public facilities and infrastructure to be available concurrent with new development is known as concurrency. Transportation concurrency uses a graded scale of roadway level of service (LOS) standards assigned to all public roads. The LOS standards are a proxy for the allowable level of congestion on a given road in a given area. Stringent standards (i.e., fewer vehicles allowed) are applied in rural areas and easier standards (i.e., more vehicles) are allowed in urban areas to help promote compact urban development. FDOT is responsible for establishing LOS standards on the highway component of the Strategic Intermodal System (SIS) and for developing guidelines to be used by local governments on other roads. Local governments, however, have broad discretion in the implementation of transportation concurrency because they designate the concurrency management strategies and exception areas within their boundaries, and control land use decisions within their jurisdictions.

The 2007 Legislature passed HB 985 creating s. 163.3182, F.S., which allows any county or municipality with an identified transportation concurrency backlog to create a TCBA. The governing board of the county or municipality would comprise the authority's membership and

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<sup>1</sup> s. 20.23(2)(h), F.S.

develop and implement a plan to eliminate all backlogs within its jurisdiction. The plan must identify all roads designated as failing to meet concurrency requirements and include a schedule for financing and construction to eliminate the backlog within 10 years of plan adoption. The plan is not subject to the twice-per-year restrictions on comprehensive plan amendments. To fund the plan's implementation, each authority must collect and earmark, in a trust fund, tax increment funds equal to 25 percent of the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created. Upon adoption of the transportation concurrency backlog plan, all backlogs within the jurisdiction are deemed financed and fully financially feasible for purposes of calculating transportation concurrency and a landowner may proceed with development (if all other requirements are met) and no proportionate share or impact fees for backlogs may be assessed. The authority is dissolved upon completion of all backlogs.

### ***Design-Build Contracting***

Section 337.11, F.S., provides that if the secretary of FDOT determines it is in the best interests of the public, FDOT may combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract. Such contract is referred to as a design-build contract. In traditional contracting for transportation projects, the conventional process results in a linear progression of design-bid-build. In design-build contracts, the design and construction phases occur concurrently conserving considerable amounts of time. Design-build contracts may be advertised and awarded based on FDOT rule and procedures for administering design-build contracts. FDOT must receive at least three letters of interest in order to proceed with a request for design-build proposals. FDOT must request proposals from no fewer than three of the design-build firms submitting letters of interest. If a design-build firm withdraws from consideration after the FDOT requests proposals, the evaluation process may continue if at least two proposals are received.

### ***Contractor Surety Bonds***

Section 337.18, F.S., requires a surety bond of the successful bidder in an amount equal to the awarded contract price. Current law provides that upon execution of the contract, and prior to beginning any work under the contract, the contractor shall record in the public records of the county where the improvement is located the payment and performance bond required under this section. Any claimant shall have a right of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract.

### ***State Arbitration Board***

Section 337.185, F.S., establishes a State Arbitration Board to facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between FDOT and the various contractors with whom it contracts. The section requires that every contractual claim in an amount up to \$250,000 per contract or, at the claimant's option, up to \$500,000 per contract or, upon agreement of the parties, up to \$1 million per contract, that cannot be resolved by negotiation between FDOT and the contractor be arbitrated by the board. Either party may request the claim be submitted to binding private arbitration. FDOT and contractors have used this dispute resolution process to resolve many claims arising out of construction contracts. Most frequently, matters are presented without active legal representation by either party, little or no formal discovery is taken and the costs of the proceeding are substantially less than those that would be expected in a civil judicial proceeding. The process benefits both FDOT and

construction contractors by facilitating prompt claim settlement and reducing or eliminating litigation costs. Maintenance contracts are not included in this process. Routine maintenance contracts include:

- pavement patching
- shoulder repair
- cleaning and repair of drainage ditches
- traffic signs, and structures
- mowing
- bridge inspection and maintenance
- pavement striping
- litter cleanup
- other similar activities

### ***Relocation of Utilities***

Section 337.403, F.S., requires utility owners to remove or relocate utilities at their own expense when necessary for the construction of a publicly-owned transportation project. There are three exceptions:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, the FDOT pays for the removal or relocation with federal funds.
- Where the cost of the utility improvement, installation, or removal exceeds the FDOT's official cost estimates for such work by 10 percent, FDOT participation is limited to the difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract.
- When relocation of the utility takes place before construction commences, FDOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the relocation.

### ***Toll Collection Systems***

In addition to cash deposit toll collections, FDOT currently maintains one Electronic toll collection (ETC) system, SunPass, statewide on the turnpike and at other FDOT toll facilities. Although there is currently no statutory requirement for FDOT and any other transportation authority to use interoperable ETC systems, SunPass is compatible with the systems of most independent toll agencies within Florida. Interoperability of ETC systems enhances their usefulness and generally makes the concept of ETC more desirable. ETC is more cost effective and provides improved mobility and enhanced traffic flow when compared to cash toll collection. FDOT estimates more than \$450 million of costs have been avoided by not having to expand toll facilities for increased cash transactions since the 2001 deployment of the SunPass program. Currently, 65 percent of turnpike customers pay through electronic toll collection. FDOT has established a goal to increase the number of customers paying electronically to 75 percent. As ETC continues to increase, FDOT intends to modify its toll collection process to provide more payment options to customers and improve mobility by eliminating cash toll collection at the roadside.

Today, SunPass accounts are replenished via credit card payments. Emerging technology will soon give customers the option of cash replenishment so that customers who wish to pay with cash and remain anonymous (i.e. not provide customer information) may do so. This cash payment method will be maintained off the roadway, so these cash customers will enjoy the same non-stop travel as traditional SunPass customers. The department is also anticipating the deployment of a video billing system. This method of payment will allow customers to use the roadway without a transponder or other device, instead using their license plate for identification and billing. Video billing, as this is called, provides for pre-payment and post-payment opportunities. Customers who pre-pay with video billing will call a customer service center and establish an account with license plate and credit card information to allow for payment. Customers who post-pay may establish the account after the fact; however, this payment option is more expensive to administer and would result in a higher cost. Finally, customers who do not register for video billing will be identified based on their license plate information and will be billed through the mail for their toll activity. This method of toll collection has significant backroom processing costs, and therefore, will require additional administrative fees. FDOT currently lacks authorization to impose and recover certain administrative amounts in connection with the collection of tolls.

### ***High-occupancy Toll/Express Lanes***

FDOT is currently engaged in a pilot project to provide ‘managed lanes’ on the existing I-95 corridor from I-395 to the Golden Glades Interchange in Miami-Dade County. The project has converted High Occupancy Vehicle Lanes (HOV) to managed lanes, also known as HOT lanes. By restriping the existing road and shoulder into narrower lanes, the existing single HOV lane has been replaced by two HOT/managed lanes. Buses and HOVs with three or more occupants (HOV-3) may use the HOT/managed lanes at no cost while single occupant vehicles (SOVs) pay a variable toll based on the operating speed of the managed lanes. HOT/managed lanes have variable congestion pricing, i.e., tolls fluctuate with increased congestion so that a minimum operating speed of 50 MPH may be maintained at all times. Previously, transit (buses) and vehicles with a minimum occupancy of two persons (HOV-2) were permitted to use the HOV lanes. Operational changes to shoulders on I-95 allows for provision of additional HOT lanes south of the Golden Glades Interchange. Phase II of the I-95 Express project would extend the lanes to I-595 in Broward County.

### ***Toll Facilities Bonding***

The Florida Constitution requires legislative authorization in order to bond a revenue project. Current law (s. 338.165, F.S.) authorizes FDOT to request issuance of bonds secured by excess toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the adopted work program. These facilities, although being toll facilities, are not part of the turnpike system.

### ***Local Government Reimbursement Program***

Section 339.12, F.S., provides any governmental entity may aid in any project or project phase included in FDOT’s five-year adopted work program by contributions of cash, bond proceeds, time warrants, or other goods or services of value. Prior to accepting a contribution, FDOT must enter into agreements with the governmental entity for the project or project phases. FDOT may not under any circumstance receive contributions in excess of the actual cost of the project or



project phase. By specific provisions in the written agreement between the FDOT and the governmental entity, FDOT is authorized to reimburse the governmental entity for the actual amount of the contribution on a highway project or project phases that are not revenue producing and are contained in FDOT's adopted work program, or any public transportation project contained in the adopted work program. Subject to appropriation of funds by the Legislature, FDOT may commit state funds for reimbursement of projects or project phases. Reimbursement to the governmental entity for these projects or project phase must be made from funds appropriated by the Legislature, and reimbursement for the cost of the projects or project phase is to begin in the year the project or project phase is scheduled in the work program. Funds advanced pursuant to this section, which were originally designated for transportation purposes and reimbursed to a county or municipality, must be used by the county or municipality for any transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. Expenditures related to routine maintenance of roads are excluded from the eligible projects in which these reimbursements can be used to fund. In addition, FDOT may enter into agreements for projects or project phases not included in the five-year adopted work program. These advancements include only projects or project phases for acquisition of rights-of-way, construction, construction inspection, and related support phases. Agreements for advancement of projects or project phases from outside the five-year work program shall only include high priorities of the governmental entity. The total amount of project agreements for projects or project phases not included in the adopted work program may not at any time exceed the existing FDOT cap of \$100 million statewide.

***Transportation Planning Regulations and Duplicative Reporting Requirements***

Section 339.155, F.S., requires the department to develop and annually update the Florida Transportation Plan (FTP). The FTP is a long-range plan addressing the needs of the entire state transportation system and identifies the goals and objectives for the next 20 years. The FTP is intended to guide Florida's transportation decisions and investments based upon the prevailing principles of: preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility. In conformance with federal law, the section requires the transportation planning process used in developing the FTP to provide consideration of seven specific planning factors which are established in the United States Code. These federal requirements are occasionally amended, and the Legislature has, from time to time been required to revise s. 339.155, F.S., to maintain accordance with federal revisions. For example, the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) contained 23 planning factors to be considered in the statewide planning process and 16 planning factors to be included in the metropolitan planning process. The subsequent reauthorization, the Transportation Equity Act for the 21st Century (TEA-21) passed by Congress in 1998, consolidated the statewide and metropolitan planning factors into seven broad areas. Florida statutes were amended by the 1999 Legislature (HB 591) to accommodate the TEA-21 revisions. Currently, s. 339.155, F.S., reflects the seven broad planning factors and is once again nonconforming with federal law due to the 2005 reauthorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which separated the "safety and security" factor into two separate factors and modified the wording of the other factors.

Separate from the requirements of federal law, s. 339.155, F.S., requires the department to issue two additional documents: a Short Range Component of the FTP and an Annual Performance Report. The Short Range Component of the FTP documents the department's short-term objectives and strategies for implementing the FTP and specifies how those objectives are being measured. The Annual Performance Report includes a summary of how well the adopted work program meets the short-term objectives in the Short Range Component. In recent years, the department has combined the Short Range Component and the Annual Performance reports into a single report.

Over time, revisions to various sections of the Florida Statutes have resulted in duplicative reporting and planning requirements. For example, an annual Long Range Program Plan (LRPP), required of each state agency by s. 216.013, F.S., is also developed by the department to measure state goals, agency program objectives and service outcomes. The LRPP is submitted to the Governor and Legislature. Additionally, the Florida Transportation Commission annually evaluates and reports the department's performance and productivity to the Governor and the Legislature.

#### ***Tampa Bay Commuter Transit Authority***

The Tampa Bay Commuter Rail Authority (TBCTA) was created by the Florida Legislature in 1990 for the purposes of developing and operating a commuter rail or ferry system. The authority board comprises elected and citizen representatives from Hernando, Hillsborough, Pasco, Pinellas, and Polk Counties, as well as the affected FDOT District Secretaries or their designees, and an appointee of the Governor. Representatives from each of the five counties' local transit authorities serve as ex officio members. The authority has directed some organizational work and feasibility studies; however, the authority has been dormant for several years due to a lack of consensus among local authorities regarding the funding of a system, routes and design features.

#### ***Outdoor Advertising***

Chapter 479, F.S., provides for the control and permitting of signs adjacent to the highways of the state. Signs on the State Highway System which are outside of an incorporated area require a permit from the department. The department-issued permit tag currently must be posted on the sign face. After a permit has been issued, an applicant must be provided 30 days to make corrections if it is determined the application for the permit contained knowingly false or misleading information. A service fee of \$3 is currently required for a replacement tag.

The department has noted the boundaries of incorporated areas change frequently, often without notice to the department, making the control area difficult to define for both the department and the regulated industry. Also, with the advent vinyl sign wraps and the use of digital displays, it is often impractical to affix the permit to the sign face. The result is that tags are posted in many different locations, making it difficult for FDOT to determine whether the tag is properly posted. The department has also noted the \$3 fee for a replacement permit tag is well below the cost to provide the tag.

#### ***Logo Program***

Signs on the interstate highway system are regulated and approved by the Federal Highway Administration (FHWA). Section 479.261(1), F.S., requires FDOT to establish a Logo Sign Program for the interstate highway system rights of way. The program provides information to

motorists about available gas, food, lodging, camping, and attraction services at interstate interchanges. From time to time, FHWA approves new categories of signs; however, the statute as currently written does not allow the addition of other categories of services as they achieve federal approval.

Permits for participation in the gas, food, lodging, and camping categories are based only on a set annual fee. However, participation in the attractions category is unique in that an admission fee for entry to the attraction is required, and permits must be awarded annually by the department to the highest bidder.

The department is required to establish permit fees in an amount sufficient to offset the total cost of administering the logo sign program, but the permit fee is capped at \$1,250 by law. The annual fee is currently set at \$1,000 by department rule. The program is implemented and operated through a privatized consultant contract which expired on December 31, 2008.

The existing logo program is essentially based on a first-come, first-served priority with the option for qualifying businesses to renew participation on an annual basis. This has resulted in the generation of extensive waiting lists of other businesses desiring to participate in the program for several interchanges on the interstate system where the structure displaying the particular business category is full. The proposal provides for the implementation of a 3-year rotation of participating businesses at those interchanges where wait lists exist.

### **III. Effect of Proposed Changes:**

#### Section 1 - Interstate 95: Alternative Routes Study

A new section of law is created directing FDOT, in consultation with the Department of Law Enforcement, the Division of Emergency Management of the Department of Community Affairs, and the Office of Tourism, Trade, and Economic Development, to study transportation alternatives for the I-95 corridor. The study is to consider state needs relating to:

- transportation,
- emergency management,
- homeland security, and
- economic development.

The report must identify cost-effective measures for;

- alleviating congestion on I-95,
- facilitating emergency and security responses, and
- fostering economic development.

The report must be completed by June 30, 2009. FDOT is required to send the report to:

- the Governor,
- the President of the Senate,
- the Speaker of the House of Representatives, and
- each affected metropolitan planning organization (MPO).

#### Section 2 - Florida Transportation Commission

Section 20.23, F.S., is amended to set the salary and benefits of the executive director of the Florida Transportation Commission in accordance with the Senior Management Service.

Section 3 - Conforming Revision

Section 125.42, F.S., is amended to conform with revisions made to s. 337.403, F.S.

Section 4 - Airport Planning

Section 163.3177, F.S., is amended to include airport planning provisions in local government comprehensive planning requirements. Local governments addressing compatibility of lands adjacent to airports in their future land use plan element must do so by June 30, 2012.

Section 5 - Coastal Management

Section 163.3178, F.S., is amended, providing that facilities determined by the Department of Community Affairs and the applicable general purpose local government to be port-related industrial or commercial projects are not considered to be a development of regional impact provided they are located within 3 miles of a port and rely upon the utilization of port and intermodal transportation facilities or are in a port master plan area.

Section 6 - TCBA's

Section 163.3182, F.S., is amended establishing the legislative findings that inadequate transportation facilities and deficiencies affect the health, safety, and welfare of the state's residents, and adversely affect economic development and growth of the tax base. Elimination of the deficiencies and inadequacies and satisfaction of transportation concurrency standards are paramount public purposes for the state, counties, and municipalities. TCBA's are authorized to issue bonds and other similar debt instruments. The maturity date of any debt may be no more than 40 years provided, however, all projects eliminating the concurrency backlog are scheduled within the first 10 years. Transportation concurrency trust funds must remain funded and the TCBA must remain in existence until all projects are completed or all debts defeased. The tax increment to be earmarked for the transportation concurrency trust fund, *i.e.*, the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created, is raised from 25 percent to 50 percent. Upon agreement by all taxing authorities included in the interlocal agreement creating the TCBA, the percentage may exceed 50 percent.

Section 7.

Amends s. 287.055, F.S., to correct a cross-reference.

Section 8 - Asphalt/Concrete Plant Prohibition

A new section of the Florida Statutes is created to prohibit counties, municipalities, and special districts from owning or operating an asphalt or concrete batch plant. The prohibition does not apply to any entity owning or under contract to own a plant as of April 15, 2009, and supplies material for government projects within the county. However, asphalt produced in excepted plants may not be sold to private entities or local governments outside of the county in which the plant is located.

Section 9 - Design-Build Contracts

Section 337.11, F.S., is amended to authorize FDOT to award a monetary stipend to unsuccessful bidders for construction and maintenance contracts to compensate for proposal development costs. The revisions also establish a goal for FDOT to procure up to 25 percent of capacity construction projects as design-build contracts by 2013.

Section 10 – Contractor Restrictions

Section 337.14, F.S., is amended to correct a cross-reference.

Section 11 – Disqualification of Delinquent Contractors

Section 337.16, F.S., is amended to correct a cross-reference.

Section 12 - Surety Bond Posting

Section 337.18, F.S., is amended allow contractors to maintain copies of any surety or performance bond at its principal place of business or jobsite office rather than in the public records of the county in which the contracted work is being performed. A copy of the bond may also be obtained from FDOT by request under ch. 119, F.S.

Section 13 – State Arbitration Board

Section 337.185, F.S., is amended to include maintenance contracts in the existing State Arbitration Board process.

Section 14 - Relocation of Utilities

Section 337.403, F.S., is amended to add a fourth exception to the requirement for utility owners to remove or relocate utilities at their own expense, when necessary for the construction of a transportation project. The bill places the responsibility for relocating a utility on the authority having jurisdiction over the transportation facility if the utility was initially installed to serve only the authority, its tenants, or both. For example, if a power line originally installed to supply electricity to a toll plaza must be relocated due to widening the toll road, the toll authority, not the power company, must pay the cost of moving the line. However, if the power line was subsequently expanded to serve a nearby development, the power company would be responsible for the costs of relocating the expanded portion of the line.

If any future agreements do not expressly address future responsibilities for removal or relocation, the authority will bear the costs. When an electric facility is relocated underground in order to enhance vehicular, bicycle, or pedestrian safety, and when the facility has been transferred from a private to a public utility within the past 5 years, then FDOT is responsible for the relocation costs.

Section 15 – Regulation of Street Furniture

Section 337.408, F.S., is amended to permit the installation of pay telephones and accompanying advertising inside the public right-of-way of certain roadways and to include pay telephones in the list of street furniture, receptacles, and other items within the right-of-way over which FDOT has authority to direct the immediate relocation or removal.

Section 16 – Interoperability of ETC Systems

A new paragraph (6) is added to s. 338.01, F.S., requiring all operators of limited access toll facilities to maintain interoperability with FDOT's ETC when providing new, or replacing existing systems.

#### Sections 17 and 18 – HOT and Express Lanes Revenue Bonding

Section 338.165, F.S., is amended to clarify this section does not apply to HOT and express lane facilities. A new section (s. 338.166, F.S.) is created relating only to HOT or express lanes which:

- allows FDOT to request bonds to be issued which are secured by toll revenues from the I-95 Express project in Miami-Dade and Broward Counties;
- authorizes the department to charge variable tolls on HOT or express lanes;
- authorizes the department to continue to collect tolls on the HOT or express lanes after the bonds are discharged;
- directs the department to use any remaining toll revenue for the construction, maintenance, or improvement of other roads on the State Highway System;
- extends the prohibition on the charging of tolls on interstate highways except where tolls were being charged on July 1, 1997 or on HOT or express lanes; and
- provides the section does not apply to the turnpike system.

#### Section 19 – Turnpike Toll Collection

Section 338.2216, F.S., is amended directing the Florida Turnpike Enterprise to implement new toll collection technologies and processes including video billing and variable pricing. Additional payment methods, such as video billing and cash replenishment would provide drivers with more flexibility for payment options without compromising the other benefits of non-stop travel. Drivers will still have the flexibility to pay tolls with cash but will no longer have to stop on the roadway to do so.

Section 20 updates a cross-reference in s. 338.223, F.S.

#### Section 21 – Toll Rates and Administration Costs

Section 338.231, F.S., is amended to delete language comprising subsection (1) which requires a system wide equivalent-cost-per-mile toll structure. The deletion of subsection (1), including the only statutory reference to a “uniform system rate,” allows the Florida Turnpike Enterprise to provide innovative methods of toll collection, such as variable pricing. New language is added allowing the Florida Turnpike Enterprise to temporarily establish a toll-rate lower than the rate established through FDOT's rule-making process. These changes provide flexibility for additional toll payment options and allow the administrative costs of such additional customer options to be allocated fairly among the customers selecting such payment options.

#### Section 22 - Local Government Reimbursement Program

Section 339.12, F.S., is amended to raise the \$100 million cap on projects advanced into the work program by contributions from local governments to \$250 million. Additionally, a new paragraph is added to authorize FDOT to enter long-term repayment agreements with counties having populations of 150,000 or fewer persons, for the purpose of advancing transportation projects not already included in the five-year work program. Any project so advanced must be a high priority of the governmental entity, be included in the local comprehensive plan, and may only be reimbursed using funds appropriated by the Legislature through the work program

process under s. 339.135(5), F.S. No more than \$200 million worth of projects may be advanced under this program at any given time.

Section 23 - Work Program Deferral and Deletion Notification

Section 339.135, F.S., is amended to revise requirements for FDOT to notify affected counties and cities when deleting or deferring a construction phase for certain transportation projects from the work program. FDOT must transmit a written notification to the chief elected official in each affected county or city and the chair of each affected Metropolitan Planning Organization. Each notification recipient shall have 14 days to respond to the department with the anticipated effect on their respective concurrency management system. FDOT shall include any written responses in the proposed work program amendment.

Section 24 - Planning Regulations: Conformance with Federal Law

Section 339.155, F.S., is amended to remove transportation planning factors made obsolete by changes to federal law and to remove duplicative reporting requirements.

Section 25 - Small County Resurfacing Assistance Program

Section 339.2816, F.S., is amended to reauthorize the Small County Resurfacing Assistance Program (SCRAP) beginning again in fiscal year 2013-2014. Program eligibility requirements are revised to eliminate ad valorem taxation as a prerequisite for eligibility. FDOT is directed to consider whether a road is located in a fiscally-constrained county when prioritizing projects.

Section 26 makes conforming revisions to s. 339.2819, F.S., for the purpose of updating citations.

Section 27 makes conforming revisions to s. 339.285, F.S., for the purpose of updating citations.

Section 28 – Tampa Bay Commuter Transit Authority

Part III of chapter 343, Florida Statutes is repealed effectively abolishing the Tampa Bay Commuter Transit Authority.

Section 29 - Expressway Authority Financial Disclosure Requirements

Section 348.0003, F.S., is amended to extend the constitutional financial reporting requirements applicable to Miami-Dade Expressway Authority members to all expressway authority members in the state.

Section 30 - Expressway Tolls Indexing

Section 348.0004, F.S., is amended to require expressway authorities to index toll rates to the Consumer Price Index (CPI).

Sections 31 – 34 – Outdoor Advertising

Several technical revisions are made to ch. 479, F.S., to resolve known problems.

Section 479.01(1), F.S., is amended to update the definition of “automatic changeable facing.” The new definition recognizes signs and billboards may be changed by other than mechanical means, e.g., electronic or digital display.

Section 479.07(1), F.S., which requires permits for signs on the State Highway System outside of *incorporated* areas, is revised to require permits for signs outside of *urban* areas. The urban area boundaries, which are designated using U.S. Census Bureau and Federal Highway Administration guidelines, change much less frequently than those of incorporated areas. Designated urban areas are typically larger than incorporated areas.

Section 479.07(5)(a), F.S., is amended to define the specific placement of sign permit tags on sign structures. The provision affords the industry 2 years within which to comply.

The bill amends s. 479.07(5)(b), F.S., directing the department to establish by rule, a fee for replacement tags in an amount covering the actual cost. A permittee may also provide its own replacement tag if it conforms to department specifications established by rule.

Section 479.08, F.S., is amended to clarify the department's ability to revoke any sign permit for violating the requirements of the chapter. Under the revision, knowingly false or misleading information must be corrected immediately in order to maintain compliance with the permit. When notifying a permittee of a revocation, the department must describe in detail the alleged violation and any necessary corrective action. The existing provision allowing aggrieved persons to apply for an administrative hearing under ch. 120, F.S., is not changed.

Section 479.11(2), F.S., is amended to conform to the definition of "controlled area" in s. 479.01, F.S.

Section 479.156, F.S., is amended to direct FDOT to accept a local government's determination of customary use in lieu of controls established by previous agreement between the state and the United States Department of Transportation.

#### Section 35 – Logo Sign Program

A number of changes are made to s. 479.261, F.S., relating to the interstate highway Logo Sign Program:

- The program is revised to include logo signs for other services approved by FHWA thereby eliminating the need for repetitive statutory changes as the service categories achieve federal approval.
- The requirement for attractions to charge admission fees in order to be eligible for the program is removed.
- The requirement for a competitive bidding process for permits, unique to the attractions category of services, is removed, making the attractions category consistent with the annual permit fees of the other logo categories.
- The \$1,250 cap on the annual permit fee for business participants is deleted and FDOT is directed to adopt rules establishing reasonable fee rates not to exceed \$5000 in urban areas or \$2500 in rural areas. Proceeds, taking into account costs, are deposited in the State Transportation Trust Fund to be used for transportation purposes.
- The department is authorized to implement a 3-year rotation for program participants who will provide for the eventual replacement of participating businesses at interchanges where waiting lists exist.



- Obsolete language dealing with reimbursement for privately funded signs has been deleted.

#### Section 36 – School Signs

A new unnumbered section creates a business partnership pilot program which authorizes the Palm Beach County School District to display names of business partners on district property in unincorporated areas.

#### Section 37 – Old Cutler Road

A new unnumbered section authorizes the use of, but does not appropriate, public funds for certain non-capacity improvements to Old Cutler Road in Miami-Dade County.

#### Section 38 – Expressway Authority Exemption

Section 120.52, F.S., is amended to exclude transportation authorities created under ch. 343, F.S., from the definition of 'agency' for the purposes of ch. 120, F.S., the Administrative Procedure Act.

#### Section 39 - Proportionate Share for Transportation Impacts

The proportionate-share contribution provisions for DRIs under subsections (9) and (12) of s. 163.3180, F.S. are revised to direct FDOT to establish a methodology recognizing internal capture rates greater than 30 percent for certain developments. The term “backlogged transportation facility” is defined as one on which the existing level of service plus committed trips exceeds the adopted level of service. A developer may not be required to fund or construct a transportation improvement as proportionate share mitigation which is more extensive than necessary to solely mitigate the impacts of the proposed development because the improvement is on a backlogged transportation facility. The term "present value" is defined and additional language allows mitigation for subsequent development phases to include a credit for earlier mitigation provided by the developer at the present value of the earlier mitigation.

#### Section 40 – Effective Date

The provisions of the bill take effect upon becoming law.

### **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:**

Increased toll charges are authorized to fund state transportation projects. Variable toll rates may be charged on HOT lanes or express lanes. The bill increases fees for replacing permit tags affixed to roadside signs. The maximum fee authorized for logo signs placed near interchanges is increased.

**B. Private Sector Impact:**

The provisions adding maintenance contracts to the State Arbitration Board process may result in indeterminate reduced costs for maintenance contractors because of reduced litigation costs. The general public benefits from increased efficiency in the delivery of maintenance projects.

Utility owners can see reduced costs from the utility relocation cost provision.

According to FDOT, removing stop and go cash collection in the travel lanes will:

- reduce congestion on the roadway;
- significantly improve safety at tolling points for both drivers and personnel;
- reduce carbon emissions from idling vehicles by an estimated 185 tons per year; and
- save 24 million gallons of fuel.

Revisions facilitating alternative payment methods and toll collection technologies will ensure the amount paid by drivers relates fairly to the payment option selected by the individual.

The potential need to relocate sign permits and an increase in replacement tag fees will have an indeterminate negative cost impact on outdoor advertisers. The impact will be spread over two years and may be partially offset by enhanced specificity in the statutory description of permit placement.

The provisions relating to the Logo Sign Program may result in increased annual costs for participating businesses. The implementation of participant rotation at wait-listed locations may result in additional businesses participating while also temporarily denying participation to others during the rotation period. Participants in the attractions category may experience savings due to the elimination of the competitive bid requirement.

**C. Government Sector Impact:**

Section 13.

The provisions adding maintenance contracts to the State Arbitration Board process may result in indeterminate positive administrative cost reductions to FDOT because of reduced litigation costs.

Section 14.

FDOT, local governments, and other authorities will experience indeterminate increases in construction project costs due to the cost of relocating some utilities during the construction of some transportation projects.

Section 16.

The required interoperability of ETC systems may result in transportation authorities experiencing limited alternatives when implementing toll technology solutions.

Section 17 & 18.

Increased toll revenues may be applied to state transportation projects. The estimated construction cost for Phase 2 of the I-95 Express project is approximately \$213.5 million, with an estimated annual operations and maintenance cost of approximately \$10.6 million. FDOT's very preliminary estimate of gross toll revenues expected on this segment of the project amounts to approximately \$8 to \$9 million annually, well short of fully funding Phase 2.

Section 19.

The department estimates the provisions facilitating all-electronic toll collection could eventually result in the elimination of 142 state positions and approximately \$8,000,000 in supporting budget authority.

Section 21.

The efficiencies created by additional toll payment options will result in indeterminate but positive fiscal impacts.

Section 22.

Indeterminate since the number of applicants and terms are unknown.

Section 23.

Minimal administrative expenses.

Section 24.

Minimal administrative cost savings due to the elimination of duplicative reporting requirements.

Section 25.

Currently, up to \$25 million per year may be programmed to SCRAP projects. Inasmuch as the SCRAP program was to be terminated in 2009-2010, no funds have been programmed beyond that year. Revisions in the bill will result in future programming of up to \$25 million per year.

Section 30.

Indeterminate but likely significant increase in revenues to expressway authorities.

Sections 31 - 34.

Minimal positive impact from increased fees for replacement permit tags will remove a negative impact stemming from current fees which do not currently cover costs to FDOT.

Section 35.

Using a maximum fee of \$5,000 urban and \$2,500 rural with adjustments for market conditions and traffic counts, and assuming that actual average permit fees will be about 80% of the maximum fee allowed with no significant increase in the number of signed interchanges or in the average number of businesses displaying signs at each interchange, FDOT expects an increase of approximately \$6 million per year before costs

**VI. Technical Deficiencies:**

A number of drafting issues require attention:

- The subject of the bill should be changed to “An act related to transportation.”
- Line 162: Affected Metropolitan Planning Organizations were inadvertently omitted from the list of parties to be consulted and should be added.
- Lines 956 through 982 were edited and should be returned to the original language from SB 682 to statutorily authorize bonding of toll revenues.
- Line 1262: insert “and” after the comma.
- Lines 1855-1856: The sentence “Such annual permit fee shall not exceed \$1,250.” should be stricken.

**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.)

None.

- B. **Amendments:**

None.