

**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 Budget Committee

BILL: CS./SB 1180

INTRODUCER: Senate Budget Subcommittee on Transportation, Tourism, and Economic Development  
 Appropriations; Transportation Committee; and Senator Latvala

SUBJECT: Transportation

DATE: April 14, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	<b>Fav/CS</b>
2.	Carey	Meyer, R.	BTA	<b>Fav/12 amendments</b>
3.	Carey	Meyer, C.	BC	<b>Premeeting</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input checked="" type="checkbox"/> | Significant amendments were recommended |

**I. Summary:**

SB 1180 makes a number of revisions to statutes addressing the functions and responsibilities of the Florida Department of Transportation (FDOT, or department) and various transportation issues. Specifically, the bill:

- clarifies that the Florida Statewide Passenger Rail Commission has the exclusive authority to monitor all publicly funded passenger rail system in the state;
- allows certain transportation authorities to hold public meetings using communications media technology;
- authorizes a pilot-program to allow bicycles on selected limited-access bridges;
- provides a reduced penalty for operators of commercial motor vehicles who fail to possess a current medical examiner’s certificate as required by federal law;
- revises definitions and FDOT duties relating to road jurisdiction and transfer of public roads between governmental entities;
- delays the date of a new levy or rate change of a local option fuel tax from July 1 to October 1;
- authorizes use of additional forms of financial securities required prior to the installation of military monuments or memorials in rest areas;

- repeals the Florida Intrastate Highway System as a separate statewide highway network and relocates provisions for the designation and function of limited access facilities to provide for Strategic Intermodal System Highway Corridors;
- repeals the Statewide Intermodal Transportation Advisory Council (SITAC);
- repeals federally required planning factors listed in state statute and replaces the factors with a reference to the United States Code containing the factors;
- repeals duplicative reporting requirements;
- establishes Strategic Intermodal System Highway corridors;
- repeals s. 316.2045, F.S., which addresses panhandling on public streets but has been struck down as unconstitutional on First Amendment grounds;
- creates a narrowly tailored, content neutral permitting scheme for pedestrian activities that might obstruct the free flow of traffic;
- prohibits aggressive panhandling and establishes local governmental authority to issue permits for roadside solicitations;
- requires traffic signals to have a minimum yellow interval time;
- exempts operators of farm labor vehicles from hours-of-service requirements during declared agricultural emergencies, such as hard-freezes when fruit needs to be harvested as quickly as possible;
- places a maximum percentage cap on funds to be used by FDOT in landscaping projects;
- establishes legislative intent relating to stormwater management systems associated with state transportation projects, allowing FDOT to use regional systems and removing the department's responsibility for abating pollution entering their system from neighboring properties;
- requires bus stop benches and other street furniture to comply with federal Americans with Disabilities Act requirements;
- establishes legislative intent to allow flexibility in the permitting of stormwater treatment facilities for transportation facilities;
- makes the requirement for FDOT and other authorities to submit environmental impact inventories a voluntary act and allows the release of environmental mitigation funds when the associated transportation project is excluded from the mitigation plan;
- designates Port Citrus in Citrus County as a deepwater port and assign it the same benefits and responsibilities as the other 14 ports;
- conforms various provisions to changes made by the act; and
- provides an effective date.

This bill substantially amends the following sections of the Florida Statutes: 20.23, 163.3180, 286.011, 288.063, 310.002, 311.07, 311.09, 316.075, 316.0083, 316.091, , 316.2122, 316.302, 316.3025, 316.515, 334.03, 334.044, 334.047, 336.021, 336.025, 336.01, 336.021, 336.025, 337.111, 337.403, 337.404, 337.406, 337.408, 338.01, 338.222, 338.227, 338.2275, 338.228, 338.234, 339.155, 339.62, 339.63, 339.64, 339.65, 341.8225, 341.840, 373.413, 373.4137, 374.976, 403.021, 403.061, 403.813, 403.816, 479.01, 479.07, 479.106, 479.16, 479.261, and 479.263.

This bill creates the following sections of the Florida Statutes: 339.65, 316.2046 and 316.2047.

This bill repeals the following section of the Florida Statutes: 316.2045, 338.001

## II. Present Situation:

### **Overlapping responsibility for Passenger Rail Systems**

Section 20.23(2)(b)8., F.S., currently directs the Florida Transportation Commission (FTC) to:

Monitor the efficiency, productivity, and management of the authorities created under chapters 348 and 349, including any authority formed using the provisions of part I of chapter 348 and any authority formed under chapter 343 which is not monitored under subsection (3). The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.

Similarly, s. 20.23(3)(b)1., F.S., currently charges the Florida Statewide Passenger Rail Commission (FSPRC) with the function of:

Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.

### **Public Meetings**

Article I, section 24(b) of the Florida Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken. No resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.<sup>1</sup>

Article I, section 24 of the Florida Constitution, chapter 119, F.S., and chapter 286, F.S., all provide different definitions as to who is subject to the open meeting and public records laws. Under article I, Section 24(a) of the Florida Constitution, "any public body, officer, or employee of the state, or persons acting on their behalf" is subject to the public records law. Under article I, Section 24(b), all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be

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<sup>1</sup> Section 286.011, F.S.

transacted or discussed, is subject to the open meetings law. Under chapter 119, F.S., any agency<sup>2</sup> is subject to the public records laws. Under s. 286.011, F.S., all meetings of any board or commission of any state agency or authority of any agency or authority of any county, municipal corporation, or political subdivision are subject to the open meeting laws.

Section 120.54(5)(b)2., F.S., provides requirements for the Administration Commission's rules for state agencies regarding meetings using "communications media technology" which means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

If a public meeting or hearing is to be conducted by means of communications media technology, or if attendance may be provided by such means, this information must be included in the meeting notice. The notice for public meetings and hearings using communications media technology must also state how persons interested in attending may do so and must name locations, if any, where communications media technology facilities will be available.

### **Operation of Bicycles on Limited Access Highways**

A limited access facility is "a street or highway especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement, or only a limited right or easement, of access" Subsection 316.091(4), F.S., prohibits persons from operating a bicycle on a limited access facility and along the shoulder of a limited access highway, except as provided in statute. Currently, the only exception is the Jacksonville Expressway System, as provided for under s. 349.04(1), F.S. Highways identified with state highway route signs that include the word TOLL are limited access facilities.

### **Commercial Motor Vehicle Medical Certificate**

Federal law (49 CFR 391.41 and 391.43) prohibits a person from operating a commercial motor vehicle (CMV) unless he or she is medically certified as physically qualified to drive a CMV. Federal law also prescribes the form of the medical certificate. Currently, law enforcement officers issue uniform traffic citations for no or improper medical certificate under either s. 316.215(1), F.S., or s. 316.302(1), F.S.

If written under s. 316.215(1), F.S., Florida law specifies that such violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318. Under s. 318.18(2), F.S., the penalty is \$30. The violator pays a total of approximately \$108 after the addition of court costs.

However, if written under s. 316.302(1), F.S., Florida law is not specific as to the penalty. Courts are either dismissing the citations, citing the absence of a specific penalty, or are imposing fines ranging anywhere from \$100 to \$500, plus court costs. If deemed a nonmoving violation, a violator pays \$108 in court costs and, if deemed a moving violation, \$158 for court costs.

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<sup>2</sup> "Agency" is defined as "any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Section 119.011(2), F.S.

**Road System Definitions/Functional Classification/Jurisdiction**

Prior to 1995, the department assigned road jurisdiction over a roadway based on a functional classification system. In 1995, the law was revised to recognize existing road jurisdiction and establish a system whereby any future transfer of public roads would be effectuated by mutual agreement between affected governmental entities. This change was accomplished by revisions to ch. 335, F.S., (State Highway System), in which section s. 335.04, F.S., was repealed and s. 335.0415, F.S., was enacted.

Certain definitions and duties contained in ch. 334, F.S., (Transportation Administration) related to the functional classification/road jurisdiction process formerly contained in ch. 335, F.S., should have been revised or repealed consistent with the 1995 changes, but were not.

**Ninth Cent Fuel Tax**

The Ninth-Cent Fuel Tax is a tax of 1 cent on every gallon of motor and diesel fuel sold within a county. The tax may be authorized by an ordinance adopted by an extraordinary vote of the governing body or voter approval in a county-wide referendum. Generally, the proceeds may be used to fund transportation expenditures.

Pursuant to ss. 206.41(1)(d), 206.87(1)(b), and 336.021 F.S., any county in the state may levy a 1 cent per gallon tax on motor and diesel fuels sold in the county by extraordinary vote of the membership of its governing body or voter approval in a county-wide referendum. However, this tax shall be imposed on diesel fuel in each county as the result of statewide equalization. The tax must be imposed before July 1 in any given year to be effective January 1st of the following year.

**1 to 6 Cents Local Option Fuel Tax**

Local governments are authorized to levy a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold in a county. This tax may be authorized by an ordinance adopted by a majority vote of the governing body or voter approval in a county-wide referendum. Generally, the proceeds may be used to fund transportation expenditures.

Pursuant to ss. 206.41(1)(e), 206.87(1)(c), and 336.025, F.S., this tax may be levied by an ordinance adopted (under one of two sets of circumstances, whichever is applicable) by a majority vote of the county's governing body or upon approval by referendum. If no interlocal agreement or resolution is adopted pursuant to the procedures setting out the two sets of specified circumstances, then municipalities representing more than 50 percent of the county population may, prior to June 20th, adopt uniform resolutions approving the tax, establishing the duration of the levy and the rate, and setting the date for a county-wide referendum on whether or not to levy the tax. A referendum shall be held in accordance with the provisions of such resolution and applicable state law, provided that the county shall bear the costs of such referendum. The tax shall be levied and collected countywide on January 1st, following 30 days after voter approval.

This tax shall be imposed on diesel fuel in each county at the maximum rate of 6 cents per gallon as the result of statewide equalization.

**1 to 5 cents Local Option Fuel Tax**

County governments are authorized to levy a tax of 1 to 5 cents upon every net gallon of motor fuel sold within a county. Diesel fuel is not subject to this tax. Pursuant to ss. 206.41(1)(e) and 336.025, F.S., the tax may be levied by an ordinance adopted (under one of two sets of circumstances) by a majority plus one vote of the county's governing body or upon approval by referendum. The tax proceeds may be used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan. With certain exception, this tax shall be levied before July 1st to be effective January 1st of the following year.

### **Removal or Relocation of Monuments from Rest Areas**

The 2005 Legislature created the “Ellwood Robinson ‘Bob’ Pipping, Jr., Memorial Act” (act), codified in s. 337.111, F.S. The stated purpose of the act was creating “an environment in which state residents and visitors will be reminded of the accomplishments made by military veterans in past conflicts and the continuing sacrifices made by veterans and their families to protect the freedoms we enjoy today.” The act authorizes FDOT to enter into contracts, as approved by a reviewing committee, with not-for-profit groups or organizations, for the installation of monuments and memorials honoring Florida’s military veterans at highway rest areas around the state.

The act requires the group or organization making the proposal to be responsible for all costs of the monument and its installation. The act also requires the group or organization to provide a 10-year bond securing the cost of removal or relocation or necessary modifications of the monument in the event the department determines such actions are necessary.

Following passage of the act, an interested group sought installation of a monument (a replica of the Iwo Jima Memorial) in a department rest area but was unable to obtain a 10-year bond from the bonding industry. It appears that the bonding industry has reservations about issuing such bonds, and the monument has not been installed. As a result, no installations have occurred under the act.

### **Utility Relocations**

Section 337.401, F.S., addresses the use of road and rail corridor right-of-way by utilities, authorizing FDOT and local government entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining of any electric transmission lines along, across, or on any road or publicly-owned rail corridors under their respective jurisdictions.

Section 337.403, F.S., requires utility owners to remove or relocate utilities at their own expense when the utility interferes with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor. The utility, upon 30 days written notice, is required to remove or relocate the utility at its own expense subject to the following 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 the 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;
- When necessary for the construction of a transportation project, the responsibility for relocating a utility falls 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.);
- If the utility has conveyed, subordinated, or relinquished a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation; and
- If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, DOT bears all costs of the relocation.

Generally, the 30-day relocation provision has been construed as a notice provision, and the utility does not need to be removed or relocated within 30 days. Often, an authority and a utility owner negotiate a period of time to reasonably accommodate the relocation and removal of the utility.

### **Florida Intrastate Highway System and the Strategic Intermodal System**

The 1990 Legislature created s. 338.001, F.S. requiring the department to develop a Florida Intrastate Highway System (FIHS) Plan. The department identified candidate routes after reviewing local transportation plans, Metropolitan Planning Organization (MPO) plans, and the results of statewide planning studies. In January 1991, the department submitted the Florida Transportation Plan to the Legislature, including an initial FIHS network map and preliminary standards and formally adopted the standards in 1992. The section also requires a status report on the FIHS Plan be provided annually to the Legislature's transportation committees.

The Strategic Intermodal System Plan (SIS) was established by the Florida Legislature in 2003 to enhance Florida's economic prosperity and competitiveness. FDOT works with its partners to determine investment needs based on the performance of the transportation system relative to the goals and objectives of the SIS. Chapter 339, F.S., includes provisions for developing and updating the SIS. The system encompasses transportation facilities of statewide and interregional significance and is focused on the efficient movement of passengers and freight. The SIS Highway Component was designated using the SIS/Emerging SIS criteria and thresholds and comprises:

- Interstate Highways;
- Florida's Turnpike;

- Selected urban expressways;
- Major arterial highways;
- Intermodal connectors between SIS; and
- Emerging SIS hubs and SIS corridors.

The SIS Highway Component consists of 3,531 miles of SIS Highways and 761 miles of Emerging SIS Highways. In total, the SIS Highway Component is less than 4% of Florida's roads, yet carries almost 30% of all traffic. It carries more than two-thirds of all truck traffic using the State Highway System.

All but a few highway miles in the FIHS are also in the SIS, which is why the 2010 SIS Strategic Plan, developed by the department and its partners, includes a recommendation to sunset the FIHS as a separate statewide highway network to simplify the planning process. Currently, s. 338.001, F.S., only deals with the FIHS, a portion of the SIS highway component. Chapter 339, F.S., defines the entire SIS, including the highway component. The continued planning for and reporting on the FIHS and the SIS highway components as separate systems is redundant.

### **Statewide Intermodal Transportation Advisory Council**

Chapter 339, F.S., also created the Statewide Intermodal Transportation Advisory Council (SITAC) and provided for initial membership appointment in January 2005. This council assisted in developing the initial 2005 SIS Strategic Plan. Subsequent to January 16, 2005, no further appointments to the SITAC have occurred and the council no longer officially convenes; however, all of the members' organizations have been included in the ongoing planning and updating of the SIS plan.

### **Transportation Planning**

Federal law requires states to adhere to certain requirements in the transportation planning process. On occasion, these federal requirements have been amended, and the State of Florida has revised its statutes from time to time in accordance with federal revisions as they have occurred. As to more recent changes, 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. Subsequently, the Transportation Equity Act for the 21st Century (TEA-21) was passed by Congress in June of 1998, which consolidated the statewide and metropolitan planning factors into seven broad areas to be considered. Florida law was amended by the 1999 Legislature (HB 591) to accommodate the TEA-21 revisions, and s. 339.155, F.S., currently reflects the seven broad factors to be considered in the planning process. However, the 2005 federal legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), separated the "safety and security" factor into two separate factors and modified the wording of other factors. Once again, Florida's statutes do not accurately reflect the most recent federal requirements that must be adhered to in statewide transportation planning.

Further, the federal requirement that each state have a "Long-Range Transportation Plan" was amended in the SAFETEA-LU legislation to be a "Long-Range Statewide Transportation Plan." Federal legislation has not required a short-range component of the long-range plan or an annual performance report. The department has, in the past, issued a separate Short Range Component of the Florida Transportation Plan and an Annual Performance Report, but most recently



combined those reports into a single report. The Short Range Component is not an annual update of the Florida Transportation Plan but rather documents FDOT's efforts to implement the Florida Transportation Plan. The department and the Florida Transportation Commission conduct extensive performance measurement of Florida's transportation system and FDOT's activities. An annual Long Range Program Plan is also submitted by the department to the Governor and Legislature reflecting state goals, agency program objectives, and service outcomes.

### **Florida Transportation Plan**

The Florida Transportation Plan (FTP) establishes long range goals to provide a policy framework for expenditure of federal and state transportation funds in Florida. Development of the FTP includes local, regional, and state partners who make decisions about future transportation investments. Every five years, FDOT updates this plan to respond to new trends and challenges to meet the future mobility needs of Florida's residents, visitors and businesses. In 2010, FDOT and its partners worked to update the FTP. After six meetings of a 29 member Steering Committee, twenty four web meetings of four advisory groups, one statewide summit, two statewide webinars, twelve regional workshops, nearly three hundred briefings at regularly scheduled meetings of transportation partners, and an interactive website helping to gather input and feedback from more than ten thousand Floridians, the update process is completed. The 2060 FTP establishes Florida's transportation vision and identifies goals, objectives, and strategies to guide transportation decisions and investments over the next 50 years.

### **Florida High Speed Rail Authority/Florida Rail Enterprise**

Chapter 2009-271, L.O.F., repealed the Florida High-Speed Rail Authority Act and related provisions and converted much of the act to establish the Florida Rail Enterprise within the department. However, s. 341.830, F.S., still contains references to the repealed "authority" that should have been changed to the "enterprise" at the time of the repeal/creation. "Enterprise" is now defined in s. 341.8203(2), F.S., to mean the Florida Rail Enterprise.

### **Pedestrian Safety**

Florida was the deadliest state in the nation for pedestrians and bicyclists according to a US News and World Report article for 2010.<sup>3</sup> Similarly, a Transportation for America study stated that four out of the five most dangerous cities in the United States for pedestrians are in Florida.<sup>4</sup> A preliminary study by the Governors Highway Safety Association indicates that Florida is currently the second highest state for pedestrian fatalities.<sup>5</sup>

### **Statutory Restrictions on Solicitations**

Under s. 316.2045, F.S., it is a pedestrian violation punishable under ch. 318, F.S. to willfully obstruct any public street by impeding or restraining traffic by standing or approaching motor vehicles, or endanger the safe movement of vehicles or pedestrians.

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<sup>3</sup> Larry Copeland, Fla. *Deadliest State for Walkers, Cyclists*, U.S. NEWS AND WORLD REPORT (March 1, 2010) available at [http://www.usatoday.com/news/nation/2010-02-28-florida-pedestrians-cyclists-deaths\\_N.htm](http://www.usatoday.com/news/nation/2010-02-28-florida-pedestrians-cyclists-deaths_N.htm).

<sup>4</sup> TRANSPORTATION FOR AMERICA, DANGEROUS BY DESIGN, available at [http://t4america.org/docs/dangerousbydesign/dangerous\\_by\\_design.pdf](http://t4america.org/docs/dangerousbydesign/dangerous_by_design.pdf).

<sup>5</sup> GOVERNORS HIGHWAYS SAFETY ASSOCIATION, PEDESTRIAN TRAFFIC FATALITIES BY STATE 2010 PRELIMINARY DATA, available at [http://www.ghsa.org/html/publications/spotlight/pdf/spotlight\\_ped.pdf](http://www.ghsa.org/html/publications/spotlight/pdf/spotlight_ped.pdf).

However, the local government that has jurisdiction over the road may issue permits, including permits to solicit, for the use of any street, road, or right-of-way not maintained by the state. The statute has exceptions for charitable and political organizations as well as for certain service vehicles. The court in *Bischoff v. Florida* held that this statute was content-based and vague, and therefore violated First Amendment free speech rights.<sup>6</sup> Additionally, the court held that the statute facially preferred the viewpoints expressed by registered charities and political campaigners by allowing ubiquitous and free dissemination of their views, but restricted discussion of all other issues and subjects.<sup>7</sup> As a result, s. 316.2045, F.S., is no longer enforceable in the middle district of Florida.

Similarly, s. 337.406, F.S., makes it unlawful to make any use of the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property from place to place on the transportation facility. An earlier version of this statute was struck down as unconstitutional. *News & Sun-Sentinel Co. v. Cox*<sup>8</sup> stated that public streets and sidewalks are the “archetype of a traditional public forum,”<sup>9</sup> because of their usage for public assembly and debate. The court recognized that the city had significant interests in regulating the conduct of pedestrians in its streets while motor vehicles are present. However, the court determined that it was not “narrowly tailored” to serve the City’s significant governmental interest. The statute was found to be unreasonably restrictive because it “ban[s] newspaper sales by persons of all ages to occupants of all motor vehicles located on public property ... regardless of the time of day or night and regardless of whether the cars are moving, standing, parked or even not in the traffic lanes.”<sup>10</sup> The court noted that it failed to take into account the fact that actual traffic hazards may vary with the level of traffic flow which exists at each of the state roads. The City of Fort Lauderdale argued that safety is its primary concern and that street solicitation is unsafe under any condition, but the court stated that the argument was undermined by the fact that the statute prohibited only “commercial” activity on state-maintained roads.

### **Traffic Signal Yellow Intervals**

Drivers approaching a traffic signal displaying a yellow light face at least four conditions:

1. The vehicle is traveling at a speed where the driver can stop comfortably;
2. The vehicle is too close to the intersection to stop comfortably, and must thus continue at the same speed or accelerate to travel through the intersection before conflicting traffic movements begin;
3. The driver can neither stop comfortably nor continue without encountering a conflicting traffic movement (prevalent with short yellow intervals and/or high approach speeds); or
4. The driver can either stop or proceed safely through the intersection.

The ideal yellow interval accommodates conditions 1 and 2, eliminates condition 3, and minimizes condition 4. To accomplish this, traffic engineers nationwide typically employ the

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<sup>6</sup> 242 F.Supp.2d 1226 (M.D. Fla. 2003).

<sup>7</sup> *Id.*

<sup>8</sup> 702 F.Supp. 891(S.D. Fla. 1988)

<sup>9</sup> *Id.* (quoting *Frisby v. Schultz*, 487 U.S. 474 (1988)).

<sup>10</sup> *Id.*

following formula, which is heavily influenced by vehicle approach speed, and was developed by the Institute of Transportation Engineers (ITE):

$$Y = t + \frac{1.47v}{2(a + Gg)}$$

Where:

Y= length of yellow interval, sec.

t = perception-reaction time, (Use 1 sec.).

v = speed of approaching vehicles, in mph.

a = deceleration rate in response to the onset of a yellow indication. (Use 10 ft/sec<sup>2</sup>)

g = acceleration due to gravity. (Use 32.2 ft/sec<sup>2</sup>)

G = grade, with uphill positive and downhill negative. (percent grade /100)

For Florida traffic signal timing, the FDOT Traffic Engineering Manual (Topic No. 750-000-005) provides required minimum durations for the yellow change interval in the following table which was computed using the ITE formula:

APPROACH SPEED (MPH)	YELLOW INTERVAL (SECONDS)
25	3.0
30	3.2
35	3.6
40	4.0
45	4.3
50	4.7
55	5.0
60	5.4
65	5.8
* For approach grades other than 0%, Use ITE Formula.	

**Panhandling**

Panhandling has been labeled as a symptom of deeper societal problems. However, it is generally considered a nuisance and can undermine the positive character of a community. State and local governments have struggled with how to minimize the secondary effects of panhandling on a community. Regulation in this area is complicated by the fact that begging can carry with it constitutional protections. *Smith v. Fort Lauderdale*<sup>11</sup> upheld an ordinance that proscribed begging on a five-mile strip of beach and two attendant sidewalks. The court determined that, like other charitable solicitations, begging is speech entitled to First Amendment protection. The court noted that even in a public forum, the government may enforce regulations of the time, place, and manner of expression which: (1) are content-neutral; (2) are narrowly tailored to serve

<sup>11</sup> 177 F.3d 954 (11th Cir. 1999). See also *Chad v. Ft. Lauderdale*, 66 F.Supp.2d 1242 (N.D. Fla. 1998). For a general discussion about the legal challenges of regulating panhandling, see William L. Mitchell, "Secondary Effects" Analysis: A Balanced Approach to the Problem of Prohibitions on Aggressive Panhandling, UNIV. OF BALTIMORE LAW REV., 1995.

a significant government interest; and (3) leave open ample alternative channels of communication. The court held that the ordinance was narrowly tailored to serve the city's significant government interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach. The city had determined that begging in such areas adversely impacted tourism. The court stated that the ordinance did not need to be the least restrictive or least intrusive means of serving the city's interest in order to qualify as narrowly tailored.

### **Hours of Service for Operators of Commercial Motor Vehicles**

Section 316.302(2)(b), F.S., provides that except as provided in federal regulations,<sup>12</sup> a person operating a commercial motor vehicle (CMV) solely in intrastate commerce and not transporting hazardous material may not drive:

- More than 12 hours following 10 consecutive hours of duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.

### **FDOT Landscaping and Highway Beautification Projects**

By policy, FDOT strives to conserve, protect, restore, and enhance Florida's natural resources and scenic beauty. Consistent with s. 334.044(26), F.S., the department allocates no less than 1.5% of the amount contracted for construction projects in each fiscal year to beautification programs. In implementing the policy and the statute, FDOT:

- Integrates highway beautification into the processes that are used to plan, design, construct and maintain roadways;
- Uses color, texture, pattern, and form to develop naturally beautiful and enjoyable transportation facilities that are context sensitive, and conserve scenic, aesthetic, historic, and environmental resources while maintaining safety and mobility;
- Makes use of innovative design strategies to minimize costs of high quality vegetation management; and
- Uses innovative vegetation management practices and measures to maintain safety, improve aesthetics and environmental quality, while reducing life cycle costs.

In 2009, FDOT allocated \$41,819,034 comprising 2.44% of the amount contracted for construction projects.

### **Americans with Disabilities Act (ADA)**

The ADA is a federal civil rights law that requires pedestrian facilities to be accessible to and usable by all people, including those with disabilities. Local jurisdictions, and other entities covered by the ADA, must ensure that the facilities they build or alter comply with ADA requirements.

The ADA accessibility guidelines specify the minimum level of accessibility in new construction and alteration projects and serve as the basis for enforceable standards maintained by other agencies. The guidelines focus mainly on facilities and certain features common to public sidewalks, such as curb ramps, signs, street furniture (including bus stops and shelters), and

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<sup>12</sup> 49.C.F.R. s. 395.1

landscaping that may obstruct the walking path or become protruding objects if located within, adjacent to, or above a sidewalk.

### **Bus Stops and Transit Shelters on State Roads**

Local governments are authorized to install bus benches and transit shelters at designated stops on official bus routes including within the right-of-way of state roads (except limited-access facilities.) FDOT is currently authorized to direct the immediate removal or relocation of any bench or transit shelter, but only if life or property are endangered or deemed a roadway safety hazard. FDOT currently does not have the authority to deny installation of bus stops, bus benches, or transit shelters within the right-of-way for failure to comply with the ADA. However, FDOT may be liable for such non-compliance and subject to legal action as a result of its jurisdiction over the State Highway System. FDOT has been named in an ADA suit in Pinellas County because the local government has permitted the installation of bus stops in inaccessible locations, with non-compliant benches and shelters, on state roads.

### **Control of Outdoor Advertising**

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-Aid Primary, Interstate and National Highway System (NHS) roads. The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the Highway Beautification Act include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all Interstates, Federal-Aid Primaries, and other highways that are part of the National Highway System;
- States have the discretion to remove legal nonconforming signs<sup>13</sup> along highways. However, the payment of just (monetary) compensation is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads;
- States and localities may enact stricter laws than stipulated in the HBA; and
- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in segmented areas deemed un-scenic on those routes.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.

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<sup>13</sup> A "legal nonconforming sign" is a sign that was legally erected according to the applicable laws or regulations of the time, but which does not meet current laws or regulations.

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT) incorporating the HBA's required controls, FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices". Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations, and the 1972 agreement.

*Vegetation Management and View Zones for Outdoor Advertising*

Section 479.106, F.S., addresses vegetation management and establishes "view zones" for lawfully permitted outdoor advertising signs on the interstates, expressways, federal-aid primary highways, and the State Highway System, excluding privately or other publicly owned property. The intent of the section is to create partnering relationships which will have the effect of improving the appearance of Florida's highways and creating a net increase in the vegetative habitat along the roads.<sup>14</sup>

The section requires anyone desiring to remove, cut, or trim trees or vegetation on public right-of-way to improve the visibility or future visibility of a sign or future sign, to obtain written permission from FDOT. To receive a permit to remove vegetation, the applicant must provide a plan for the removal and for the management of any vegetation planted as the result of a mitigation plan. Rule 14-40.030, F.A.C., requires mitigation where:

- Cutting, trimming, or damaging vegetation permanently detracts from the appearance or health of trees, shrubs, or herbaceous plants, or where such activity is not done in accordance with published standard practices. This does not apply to invasive exotic and other noxious plants;
- Trees taller than the surrounding shrubs and herbaceous plants are permanently damaged or destroyed;
- Species of trees or shrubs not likely to grow to interfere with visibility are damaged or destroyed;
- Trees that are likely to interfere with visibility are trimmed improperly, permanently damaged, or removed; or
- Herbaceous plants are permanently damaged.

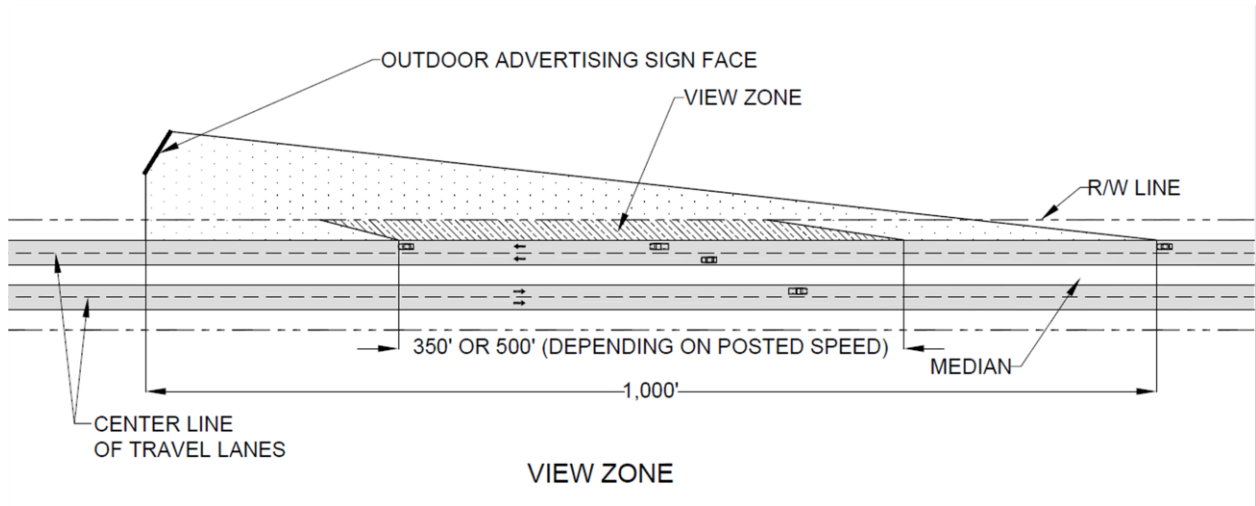
When the installation of a new sign requires the removal, cutting, or trimming of existing trees or vegetation on public right-of-way, FDOT may only grant a permit for the new sign when the sign owner has removed at least two non-conforming signs of comparable size and surrendered those signs' permits.

The measurements of a view zone are 350 feet, in areas where the posted speed limit is 35 m.p.h. or less, and 500 feet, where the speed limit is over 35 m.p.h. These view zones are to be within

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<sup>14</sup> Section 479.106(8), F.S.

the first 1,000 feet as measured along the edge of the pavement in the direction of approaching traffic from a point on the edge of the pavement perpendicular to the sign's edge facing the highway unless interrupted by naturally occurring vegetation. The following illustration taken from agency rule (Rule 14-40.030, F.A.C.) depicts a view zone for signs on one side of a roadway.



Section 479.106, F.S., allows FDOT and sign owners to enter into agreements identifying the specific location of an outdoor advertising sign's view zone, and if no agreement is reached, then the view zone shall be measured as described above. For some signs viewed across the median (cross readers), part of the view zone may include the highway median.

**Rural Areas of Critical Economic Concern**

Rural Areas of Critical Economic Concern (RACEC) are defined in s. 288.0656, F.S., as rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. The Governor may designate up to three RACECs, which allows the Governor to waive criteria of any economic development incentive. Florida's three designated RACECs include:

- Northwest Rural Area of Critical Economic Concern: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Washington counties, and the City of Freeport in Walton County;
- South Central Rural Area of Critical Economic Concern: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County); and
- North Central Rural Area of Critical Economic Concern: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

**Florida's Public Seaports**

Florida has 14 public seaports:

- Port of Fernandina
- Port of Fort Pierce

Jacksonville (JaxPort)  
Port of Key West  
Port of Miami  
Port of Palm Beach  
Port Panama City  
Port of Pensacola  
Port Canaveral  
Port Everglades  
Port Manatee  
Port St. Joe  
Port of St. Petersburg  
Port of Tampa

These seaports<sup>15</sup> are considered significant economic drivers and compete for a minimum of \$8 million a year<sup>16</sup> in grants from the State Transportation Trust Fund under s. 311.07, F.S. The grants are used for projects to improve the “movement and intermodal transportation” of cargo and passengers. The projects are recommended annually by the Florida Seaport Transportation and Economic Development (FSTED) Council and approved by the Florida Department of Transportation. Most years, the Legislature appropriates more than \$8 million to the seaports; for FY 2009-2010, for example, FDOT was directed to spend \$21.9 million on seaport grants and \$25.6 million in FY 10-11.<sup>17</sup> The ports also benefit from an additional \$25 million in debt service paid with motor vehicle license fees<sup>18</sup> from the State Transportation Trust Fund.

The Citrus County Board of County Commissioners recently voted to move toward developing Port Citrus, a publicly run port to be developed on the Cross Florida Barge Canal, putting the county in line for state funding for a port study. Although no port currently exists, Citrus County has had a private port authority since 1984. One concept being considered is the development of accommodations for a new type of vessel, a trans-sea lifter (TSL), which would deploy container-laden barges offshore, which are then floated to docking facilities. The shallow-draft barges eliminate the need for deep draft berthing used by conventional container ships.

### III. Effect of Proposed Changes:

Section 1: Amends s. 20.23(3)(b)1., F.S., to provide that the FSPRC has the primary and exclusive function of monitoring all publicly funded passenger rail systems in the state. Further, the bill removes current law providing that the FTC is not precluded from conducting its performance and work program monitoring activities. As a result, the FSPRC would be the only entity statutorily authorized to monitor all publicly funded passenger rail systems in the state.

Section 2: Amends s. 286.011, F.S., to allow transportation authorities created under chs. 343, 348, and 349, F.S., to conduct public meetings and workshops by means of communications

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<sup>15</sup> Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: [http://flaports.org/Sub\\_Content2.aspx?id=3](http://flaports.org/Sub_Content2.aspx?id=3). Last visited Feb. 28, 2011.

<sup>16</sup> Since FY 2005-2006, FDOT by agreement with FSTED has earmarked at least \$15 million for FSTED projects.

<sup>17</sup> In 2007, the Legislature appropriated an additional \$50 million for port projects as a line-item.

<sup>18</sup> Section 320.20(3) and (4), F.S.



media technology, i.e., the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video. the authorities affected are:

*Ch. 343, F.S.*

- South Florida Regional Transportation Authority (SFRTA/Tri-Rail)
- Central Florida Regional Transportation Authority (CFRTA/LYNX)
- Northwest Florida Transportation Corridor Authority (NWFTCA)
- Tampa Bay Area Regional Transportation Authority (TBARTA)

*Ch. 348, F.S.*

- Miami-Dade Expressway Authority (MDX)
- Tampa-Hillsborough Expressway Authority (THEA)
- Orlando-Orange County Expressway Authority (O-OCEA)
- Santa Rosa Bay Bridge Authority (SRBBA)

*Ch. 349, F.S.*

- Jacksonville Transportation Authority (JTA)

Section 3: Amends s. 316.091, F.S., to create a 2-year Limited Access Facilities Pilot Program under FDOT. The program would provide access to bicycles and other human-powered vehicles to select limited access bridges when no other non-limited access alternative is located within two miles. The department will select three such bridges or approaches in conjunction with the Federal Highway Administration under specified criteria. Upon completion, the department will present the results of the pilot program to the Governor and Legislature.

Section 4: Amends s. 316.3025(3)(b), F.S., to specify a reduced, uniform civil penalty of \$100 for a violation of the requirement to possess a proper medical certificate when operating a CMV as required by 49 CFR 391.41 and 391.43.

Section 5: Amends s. 334.03, F.S., deleting definitions for the following terms:

- arterial road;
- collector road;
- local road;
- urban minor arterial road;
- urban principal arterial road; and
- Florida Intrastate Highway System.

At one time, these terms were used to determine the functional classification of roads under s. 335.04, F.S., which was instrumental in determining a road's jurisdiction, i.e., whether the state, a county, or a municipality was responsible for the facility. However, the repeal of s. 335.04, F.S., and the adoption of s. 335.0415, F.S., rendered the use of these terms for functional classification obsolete. These terms are not used in chs. 334 or 335, F.S., except in s. 335.04(11), and in s. 334.047, F.S., which this bill also amends.

The bill also revises the following definitions contained in s. 334.03, F.S.:

- City street system;

- county road system;
- functional classification; and
- State Highway System.

The definitions are revised to remove conflict with s. 334.0415, F.S. and s. 335.188(3)(c)1, F.S., clarifying these definitions to be:

- Roads under the appropriate jurisdiction on June 10, 1995;
- Roads constructed by the city, county, or state for the appropriate jurisdiction; and
- Roads subsequently transferred to that jurisdiction, but not roads transferred from the appropriate jurisdiction.

The bill amends the definition of “functional classification” to link the usage of “functional classification” in state statute to the functional classification that is done according to federal procedures, rather than what FDOT previously used for jurisdictional requirements. The only reference to this term in state statute relates to the access management classification system.

Section 6: Amends ss. 344.044(11) and (13), F.S., relating to department powers and duties, removing references to assigning jurisdictional responsibility and designating facilities as part of the State Highway System.

Section 7: Amends s. 334.047, F.S., to remove a prohibition against FDOT establishing a maximum number of miles of urban principal arterial roads, as defined in s. 334.03, F.S. Since the definition of the term “urban principal arterial road” is being deleted, the prohibition will become obsolete.

Section 8: Amends s. 336.021, F.S., to revise from July 1 to October 1 the date on which the ninth-cent fuel tax will be levied, to be effective January 1 of the following year. This aligns the levy or rate change with the local government’s fiscal year.

Section 9: Amends s. 336.025(1)(a) and (b), F.S., to revise from July 1 to October 1 the date on which impositions or rate changes of the local option fuel tax will be levied, to be effective January 1 of the following year. This aligns the levy or rate change with the local government’s fiscal year.

Section 10: Amends s. 337.111(4), F.S., to provide for other forms of security (besides a 10-year bond) an annual bond, irrevocable letter of credit, or other form of security approved by the FDOT comptroller which could be provided by groups installing monuments and memorials in rest areas. The bill also removes language requiring the automatic renewal of the 10-year bond upon its expiration.

Sections 11 and 12: Amend ss. 337.403 and 337.404, F.S., to provide that upon 30 days written notice, the utility is required to initiate the work to alleviate the interference with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor. The bill requires the work to be completed within the time stated in the notice or in the time agreed to by the authority and the utility owner. The bill amends various subsections to s. 337.403, F.S., and s. 337.404, F.S., to conform to changes made to the notice provision and to change the terms “improvements, relocation, and removal” to “utility work.”

Section 13: Repeals s. 338.001, F.S., which directed the department to plan and develop the “Florida Intrastate Highway System Plan.” The proposed changes eliminate the FIHS designation and extract the FIHS Plan components from ch. 338, F.S. The provisions are re-established in ch. 339, F.S., (see Section 22 of the bill), thereby grouping FDOT’s highway planning provisions with the majority of SIS provisions.

Section 14: Amends s. 338.01(1), F.S., relocating language relating to FDOT’s authority to establish limited access facilities from the repealed s. 338.001, F.S.

Sections 15 through 19 correct various cross-references:

- *Section 15* amends s. 338.227(4), F.S., relating to Turnpike Revenue Bonds, to replace a reference to the “Florida Intrastate Highway System Plan” with a reference to the “Strategic Intermodal System Plan developed pursuant to s. 339.64, F.S.”;
- *Section 16* amends s. 338.2275, F.S., relating to approved Turnpike projects, to replace a reference to the repealed s. 338.001, F.S., with the new s. 339.65, F.S.;
- *Section 17* amends s. 338.228, relating to Turnpike bonds, to replace a reference to the repealed s. 338.001, F.S., with the new s. 339.65, F.S.;
- *Section 18* amends s. 338.234(2), F.S., relating to concessions on the Turnpike, to replace a reference to the FIHS with a reference to the SIS; and
- *Section 19* amends s. 339.62, F.S., to replace a reference to the FIHS with a reference to “highway corridors,” which are required to be established under newly created s. 339.65, F.S.

Section 20 Amends s. 339.63(2), F.S., to add military access facilities to the types of facilities included in the SIS and Emerging SIS.

Section 21: Amends s. 339.64, F.S., to repeal the obsolete SITAC and related provisions.

Section 22: Creates s. 339.65, F.S., to establish SIS “highway corridors” provisions, including planning and policy language, and to continue necessary functions previously included in the FIHS Plan. Essentially, this newly-created section maintains the substantive provisions applicable to FIHS facilities but applies them to SIS highway corridors instead. Both limited and controlled access facilities established as components of the FIHS are designated as components within the SIS. All facility descriptions, designations, and other definitions provided within the FIHS have been included within the SIS highway component. However, while the FIHS plan required consistency with the FTP, this requirement was omitted from the provisions of this bill.

Section 23: Amends s. 339.155, F.S., to provide a reference to that portion of the United States Code in which the planning factors are contained and avoid the need to modify state law to match the federal requirements each time the planning factors are changed. This proposal would also delete the short-range component of the long-range plan and the annual performance report

requirements from state law, as these reports duplicate information provided in other required reports and are not required by federal law.

Sections 24 through 36 correct various cross-references:

- *Section 24* amends s. 341.840, F.S., to replace references to the now repealed High Speed Rail Authority to the new Florida Rail Enterprise;
- *Section 25* amends a cross-reference in s. 163.3180, F.S., relating to concurrency, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 26* amends a cross-reference in s. 288.063(3), F.S., relating to contracts for transportation projects, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 27* amends a cross-reference in s. 311.07(3)(b), F.S., relating to Florida Seaport Transportation and Economic Development funding, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 28* amends a cross-reference in s. 311.09(7), F.S., relating to the Florida Seaport Transportation and Economic Development Council, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 29* repeals cross-references to s. 334.03, F.S., in s. 316.2122, F.S., made obsolete by the road system definitions revisions.
- *Section 30* amends a cross-reference in s. 316.515(5)(c), F.S., relating to implements of husbandry, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 31* amends a cross-reference in s. 336.01, F.S., relating to designation of a county road system, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 32* amends a cross-reference in s. 338.222(2), F.S., relating to Turnpike projects, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 33* amends a cross-reference in s. 341.8225(2), F.S., relating to high-speed rail projects, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 34* amends a cross-reference in s. 479.01(27), F.S., relating to urban areas, resulting from the road system definitions revisions in s. 334.03, F.S.;
- *Section 35* amends a cross-reference in s. 479.07(1), F.S., relating to sign permits, resulting from the road system definitions revisions in s. 334.03, F.S.; and

- *Section 36* amends a cross-reference in s. 479.261(5), F.S., relating to the logo sign program, resulting from the road system definitions revisions in s. 334.03, F.S.

Sections 37, 38, and 50 – 54: Amend various sections of statute which collectively identify the state's deepwater ports to include Port Citrus in those sections' provisions.

Specifically, the bill amends:

- Section 310.002, F.S., to add Port Citrus to the definition of the term "port";
- Section 311.09, F.S., to include a representative of Port Citrus as a member of the Florida Seaport Transportation and Economic Development Council;
- Section 374.976, F.S., to conform provisions relating to include Port Citrus in provisions relating to the authority of inland navigation districts;
- Section 403.021, F.S., to conform provisions to include Port Citrus in legislative declarations relating to environmental control;
- Section 403.061, F.S., to conform provisions to include Port Citrus in provisions relating to powers of the Department of Environmental Protection;
- Section 403.813, F.S., to conform provisions to include Port Citrus in provisions relating to permits issued at Department of Environmental Protection district centers; and
- Section 403.816, F.S., to conform provisions to include Port Citrus in provisions relating to certain maintenance projects at deepwater ports and beach restoration projects.

Section 39: Amends s. 316.0083, F.S., to require the department to establish a minimum yellow light change interval time for use in traffic signals. The minimum time is set in accordance with nationally-recognized engineering standards.

Section 40: Amends s. 316.0083, F.S., relating to red light camera enforcement. The bill prohibits the issuance of a violation notice and traffic citation for violations committed at intersections where the traffic signals does not meet the requirements of s. 316.0083, F.S., including yellow light change interval minimum time. Any notice or citation issued is rendered unenforceable and must be dismissed by the court.

Panhandling Sections (Sections 41, 42, 43, and 46)

The bill contains a number of "whereas" clauses addressing the public safety concerns associated with certain pedestrian activities on or adjacent to roadways. Additionally, the bill describes problematic forms of panhandling that the bill attempts to regulate. Sections 41, 42, 43, and 46 address panhandling and the obstruction of public streets.

Section 41: Repeals s. 316.2045, F.S., which has been struck down as unconstitutional on First Amendment grounds.

Section 42: Creates s. 316.2046, F.S., to create a narrowly tailored, content-neutral permitting scheme for pedestrian activities that might obstruct the free flow of traffic. Specifically, the bill makes it a pedestrian violation of ch. 318, F.S., for any person or persons to willfully and without a permit obstruct the free, convenient, and normal use of any public street, highway, or road by standing or approaching motor vehicles while on or immediately adjacent to the street, highway, or road in a manner that could endanger

the safe movement of vehicles or pedestrians traveling thereon. The bill specifies that soliciting funds or engaging in a commercial exchange with a person who is in a vehicle that is not stopped in a driveway or a designated parking area endangers the safe movement of vehicles. To solicit means to request employment, business, contributions, donations, sales or exchanges of any kind. In addition to the fine for the pedestrian fine, ten dollars will be levied and allotted to the Department of Children and Family Services' Office on Homelessness to support programs designed to assist in housing the homeless.

Cities and counties shall have in place the requisite permitting schemes unless they opt out by a majority vote of the members of the local governing authority. Local governments may also make the permit program more restrictive so long as it is narrowly tailored to serve an important public purpose.

The bill specifies a number of the required characteristics of the permit program. The bill contains a number of exceptions including festivals, fairs, etc. where the streets are blocked off and where emergency or service vehicles are road adjacent.

The bill explicitly authorizes and directs the Department of Highway Safety and Motor Vehicles and other law enforcement agencies to enforce the statute.

Section 43: Creates s. 316.2047, F.S., which would make it illegal to engage in unlawful panhandling, fraudulent panhandling, or panhandling in certain specified locations. Under the provisions of the bill:

Aggressive panhandling occurs when a person knowingly requests money, gifts, or donations:

- by unwanted touching, detaining, impeding, or intimidation;
- under circumstances that warrant justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity;
- when the panhandler follows the solicited person after that person has made a negative response; or
- by using obscene or abusive language or gestures that are reasonably likely to intimidate or cause fear of bodily harm.

It is unlawful to panhandle:

- At a bus stop;
- Within 20 feet of an automated teller machine or the entrance to a bank;
- While blocking the entrance to a building or motor vehicle; or
- In a parking garage owned or operated by a county, a municipality, the state government, or the federal government.

Fraudulent panhandling occurs when a person knowingly makes any false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:

- Stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet that need and does not disclose that fact;

- Stating that the solicitor is from out of town and stranded, when such is not true;
- Wearing a military uniform or other indication of military service when the solicitor is neither a present nor former member of the service indicated;
- Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;
- Use of any makeup or device to simulate any deformity; or
- Stating that the solicitor is homeless, when he or she is not.

Panhandling is defined to mean:

- Solicit, request, or beg for an immediate donation of money or something else of value; or
- Offer an individual an item of little or no monetary value in exchange for money or another gratuity under circumstances that would cause a reasonable individual to understand that the transaction is only a donation.

Counties and municipalities may increase the restrictions on panhandling so long as those restrictions are content neutral and narrowly tailored to serve an important public purpose. A county or municipality may opt out of the provisions of this section by a majority vote of the members of the county or municipal governing authority. This section does not preempt any existing ordinances that are consistent with this section.

Any person or persons who violate the provisions of this section, upon conviction, shall be cited for a pedestrian violation, punishable as provided in ch. 318. An additional ten dollars shall be added to the fine and deposited into the Grants and Donations Trust Fund of the Department of Children and Family Services to be used by the State Office on Homelessness

The bill explicitly authorizes and directs the Department of Highway Safety and Motor Vehicles and other law enforcement agencies to enforce the statute.

Section 46: Deletes provisions in current law which authorize FDOT to regulate activities that interfere with the safe and efficient movement of people and property on state transportation facilities, instead directing local governments to regulate the use of facilities within their jurisdiction. However, the bill explicitly retains FDOT's authority to regulate limited access highways, rest areas, and welcome centers.

Section 44: Amends s. 316.302, F.S., to exempt the operators of Farm Labor Vehicles from hour-of-service limits during declared agricultural emergencies (such as hard freezes when fruit needs to be harvested as quickly as possible.)

Section 45: Amends s. 334.044, F.S., to limit the amount of funds allocated for the purchase of plant materials used in landscaping and highway beautification projects statewide. The bill replaces the current floor of not less than 1.5% of the amount contracted for construction

projects, with a cap of not more than 1.5% of the amount contracted for capacity-adding construction projects, up to \$1 million per project.

Section 47: Amends s. 337.408, F.S., to provide that the installation of bus stops and transit shelters on the right-of-way must comply with all applicable laws and rules including, without limitation, the ADA. Municipalities or counties are required to indemnify, defend, and hold FDOT harmless from any suits, damages, liabilities, attorney fees, and court costs relating to the installation, removal, or relocation of these installations. The bill gives FDOT the authority to direct the immediate relocation of any bus stop, bench, transit shelter, waste disposal receptacle, public pay telephone, or modular news rack that either endangers life or property, or that is otherwise not in compliance with applicable laws and rules.<sup>19</sup>

If a municipality or county fails to comply with the department's direction, FDOT is required to remove the noncompliant installation, charge the cost of removal to the municipality or county, and may deduct or offset such cost from any other funding available to the municipality or county from FDOT.

Section 48: Amends s. 373.413, F.S., establishing legislative intent to allow flexibility in the permitting of stormwater treatment facilities for transportation facilities due to their linear nature. The bill also releases the department from the responsibility of abating pollutants that enter transportation stormwater facilities.

Section 49: Amends s. 373.4137, F.S., clarifying that environmental mitigation options available to the department allow the use of any mitigation options that satisfy state and federal law. The revisions make the requirement for FDOT and other authorities to submit environmental impact inventories a voluntary act, and allow the release of environmental mitigation escrow funds when the associated transportation project is excluded from the mitigation plan.

Sections 50-54: (See Port Citrus designation above.)

Section 55: Amends multiple subsections of s. 479.106, F.S., relating to the management of vegetation affecting visibility of signs.

*Subsection 479.106 (2), F.S.*, is amended to delete an existing provision mandating the submission of a management plan when applying for a vegetation management permit. The bill replaces the mandate with an allowance for one of the following:

- submission of a vegetation management plan consisting of a depiction of the vegetation to be removed, cut, or trimmed and a description of the existing conditions and the work to be performed;
- a mitigation contribution to the tree planting program administered by the Department of Agriculture and Consumer Services' Division of Forestry under s. 589.277, F.S.; or
- a combination of a vegetation management plan and mitigation contribution.

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<sup>19</sup>Except for transit bus benches placed into service before April 1, 1992, DOT currently has the authority to direct the immediate relocation or removal of benches, transit shelters, waste disposal receptacles, public pay telephones, or modular news racks that endanger life or property.



The decision to submit a management plan, mitigation contribution, or combination of both is to be made by the applicant.

*Subsection 479.106(3), F.S.*, is amended to require FDOT to take into consideration the existing condition of the vegetation being affected by the plan when evaluating a vegetation management plan. The current requirement for a plan to include plantings to screen a sign's structural support, where applicable, is made permissive.

The bill provides that only herbicides approved by the Department of Agriculture and Consumer Services may be used in the management of vegetation.

Permit applications for vegetation management or mitigation must be acted on by FDOT within 30 days. An approved permit is valid for five years and may be renewed for an additional five years upon payment of the application fee.

*Subsection 479.106(5), F.S.*, is amended to reduce the number of nonconforming signs that must be removed prior to the department issuing a permit for a new sign that requires vegetation to be cleared, from at least two to one.

A new *s. 479.106(6), F.S.*, is created to revise view zone requirements. Under the bill's provisions, the current dimensions for view zones are established as minimum dimensions. The current exception for view zone disruption, *i.e.*, allowable natural vegetation, is reduced to allow only vegetation that:

- has established historical significance,
- is protected by state law, or
- has a circumference of 70% or more of the circumference of the Florida Champion of that species when both are measured at 4 and ½ feet above grade.

Renumbered *subsection 479.106(7), F.S.* is amended, allowing the specific location of a sign's view zone may be designated by the sign owner and the department must notify the owner within 90 days of any planting or beautification project that may affect a view zone. No less than 60 days are to be afforded to such affected sign owners to designate the view zone. Vegetation management plans and permits are not required due to implementation of beautification projects.

Section 56: Amends *s. 479.16, F.S.*, which establishes the conditions and criteria under which a sign does not require a permit. The revisions provide that signs installed under the tourist-oriented commerce sign pilot program do not require permitting and allow signs no larger than 32 square feet to be temporarily installed by a farm operation during harvest season denoting the distance or direction of the farm operation. The temporary harvest sign provision may not be implemented if it would result in federal penalties.

Section 57: Creates *s. 479.263, F.S.*, to establish the tourist-oriented commerce signs pilot program in rural areas of critical economic concern as defined by *ss. 288.0656(2)(d) and (e)*,

F.S.<sup>20</sup> Signs created under the section do not require permits provided the sign advertises a small business as defined in s. 288.703, F.S.<sup>21</sup> and:

- is not more than 8 square feet in size or 4 feet in height;
- is located in a rural area but not along a limited-access highway;
- is located within 2 miles of the business location and not less than 500 feet from another sign advertising the same business; and
- contains only the name of the business or the merchandise or services sold or furnished at the business.

Businesses placing such signs must be not be located closer than 4 miles from another business placing such signs. Also, the business may not participate in both the tourist-oriented commerce signs pilot program created in this section and the logo sign program created in s. 479.261, F.S. Businesses conducted in building primarily used for residential purposes are ineligible. Any business participating in the program must notify the department prior to installing signs. The department is directed to maintain statistics related to the program. If the Federal Highway Administration notifies FDOT in writing that the program constitutes a loss of effective control of outdoor advertising (thereby jeopardizing the receipt of federal funds), the program will not be implemented.

Section 58: Provides an effective date of July 1, 2011.

### **Other Potential Implications:**

Section 2 makes revisions to s. 286.011, F.S., the Sunshine Law, to allow certain transportation authorities to conduct public meetings and workshops by means of communications media technology. This change will subject those transportation authorities to different standards than the standards governing other similarly situated public bodies that are subject to the provisions of the Sunshine Law. Generally, public bodies may only meet electronically for workshops and meetings at which no formal action will be taken.<sup>22</sup> For meetings at which formal decisions will be made, a quorum of the public body's members must be present at a physical location, and

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<sup>20</sup> "Rural area of critical economic concern" means a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

"Rural community" means:

1. A county with a population of 75,000 or fewer.
2. A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer.
3. A municipality within a county described in subparagraph 1. or subparagraph 2.
4. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in paragraph (c) and verified by the Office of Tourism, Trade, and Economic Development.

<sup>21</sup> "Small business" means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

<sup>22</sup> *see* 2005 WL 3262434 (Fla.A.G.)

electronic participation of an absent member should be permitted only in extraordinary circumstances.<sup>23</sup>

Section 19 proposes to reference federal law as it relates to planning factors would eliminate the need for repeated statutory revisions to accommodate changes in federal planning factors. Florida is required to follow the federal requirements, even if state law is not amended to reflect the new planning factors. The department acknowledges the responsibility to seek reenactment of the reference any time the federal requirements change but suggests re-enactment of the reference is more efficient than revising the current list of factors in state statute with each round of federal changes.

#### **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:

Section 4: The provisions effecting a reduced penalty for certain CMV violations will result in unquantifiable but positive fiscal impact to the trucking industry.

Section 8: The provisions expanding the type of financial instruments securing the removal or relocation of monuments at rest areas will result in unquantifiable fiscal assistance to interested participants by facilitating use of other appropriate forms of security for the protection of the public.

C. Government Sector Impact:

Section 1: Currently, the only state funded passenger rail system in the state (Tri-Rail) is operated by the South Florida Regional Transportation Authority. Any administrative expense to the department associated with conducting the required monitoring activities is expected to be absorbed within existing department resources.

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<sup>23</sup> *see* AGO 2003-41

Section 2: The provisions effecting a reduced penalty for certain CMV violations will result in insignificant but negative fiscal impacts. Approximately 2,000 citations were issued statewide for the subject violations in the last fiscal year. The clerks of court, using the highest possible assessment of \$158 in court costs in each of the 2,000 cases, would receive \$316,000 less than under the current situation -- spread over the state's 67 counties, a reduction of approximately \$4,716.42 per county -- offset by the reduced burden on the clerks and the court system, as uniform traffic citations would no longer be issued for such violations.

Sections 39 and 40. The provisions requiring FDOT to establish minimum yellow light change interval times for traffic control devices and nullifying notices of violation or traffic citations issued at intersections where the traffic signal device does not meet the requirements, may result in a revenue loss to local governments and the state General Revenue Fund (up to \$70 million) due to a reduction in the number of citations issued.

**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 Transportation Committee on March 29, 2011:**

The committee adopted five amendments at its meeting and incorporated them into the original bill as a committee substitute. The amendments:

- allow expressway authorities to use electronic media to fulfill open meeting requirement in ch. 120, F.S;
- allow flexibility in the time allotted for the relocation of utilities due to transportation construction projects;
- incorporate the provisions of SB 1966;
- authorize a pilot program allowing bicyclists to use certain limited-access bridges when no other bridge is located nearby; and
- make several changes to outdoor advertising regulations.

- B. **Amendments:**

**Barcode 629586** by Sen. Margolis—establishes how the proceeds of the Charter County and Regional Transportation Surtax will be distributed to newly created municipalities.

**Barcode 237118** by Sen. Latvala—defines “Launch Support Facilities” within the Transportation Code (ch. 334, F.S.) to allow the allocation of SIS funds to such projects without a federal funding match being necessary.

**Barcode 733970** by Sen. Latvala—clarifies the definitions of the words “commercial or industrial zone,” “unzoned commercial or industrial area,” and “urban area” within ch. 479, F.S.

**Barcode 328518** by Sen. Latvala— requires affirmation of compliance with traffic signal yellow light interval timing standards as part of red light camera enforcement.

**Barcode 273090** by Sen. Latvala—allows FDOT to consider conservation and mitigation plans when approving vegetation management plans for removing growth obscuring billboards.

**Barcode 769968** by Sen. Diaz de la Portilla—expands the items for which local option fuel tax revenues may be expended to include installation, operation, maintenance, and repair expenses for road lighting and traffic signs.

**Barcode 784582** by Sen. Latvala—allows local governments regulating vehicles for hire to create a property right in the license of such vehicles.

**Barcode 367484** by Sen. Margolis—allows local governments to prohibit the operation of electric personal assistive mobility devices (Segways) on sidewalks. Currently, local governments may regulate EPAMs/Segways on roads, streets, and bicycle paths.

**Barcode 720910** by Sen. Latvala—clarifies FDOT representatives serve as non-voting advisers, as opposed to members, of the MPOs and allows the MPOs to appoint additional non-voting advisers.

**Barcode 853702** by Sen. Margolis—clarifies the fees a rental car agency may legally impose in addition to the electronic toll in relation to collecting the toll.

**Barcode 266068** by Sen. Latvala—removes Section 4 of the bill relating to Commercial Motor Vehicle operators medical certification and the penalties for non-compliance.

**Barcode 603466** (as amended) by Sen Diaz de la Portilla—exempts signs promoting the official sponsor of events held in certain publicly-owned and privately-operated professional sports arenas, from the permitting requirements of ch. 479, F.S.