HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1399 Transportation
SPONSOR(S): Transportation & Economic Development Appropriations Subcommittee, Transportation & Highway Safety Subcommittee and Brandes
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	15 Y, 0 N, As CS	Johnson	Kruse
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 4 N, As CS	Proctor	Davis
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill is a comprehensive bill related to transportation. Among other things, the bill:

- Increases funding for the Florida Seaport Transportation and Economic Development (FSTED) program, creates a Strategic Port Investment Initiative and an Intermodal Logistics Center Infrastructure Program.
- Allows for the mailing of toll violation citations by first-class mail, authorizes tolls on new facilities, allows the use of excess tolls for public transit, authorizes DOT to send tolls to collections, authorizes DOT to collect tolls for other entities and authorizes a maintenance fee on certain dormant toll accounts.
- Authorizes the use of the shoulder of limited access facilities for certain transit traffic.
- Authorizes a pilot program for bicycles on limited access facilities.
- Authorizes participation in the Federal Aviation Administration's Airport Privatization Pilot Program.
- Caps the amount DOT may spend on landscaping.
- Authorizes DOT to post notice of load, weight, or speed limits or close local bridges.
- Revises the imposition date and the uses for the local option fuel tax.
- Revises provisions related to noise abatement, disadvantaged business enterprises, and transportation planning to conform to federal law.
- Requires certain facilities on the right-of-way to be compliant with the Americans with Disabilities Act.
- Moves the Florida Intrastate Highway System into the Strategic Intermodal System.
- Revises the definition of "economically feasible" and adjusts the threshold for legislative approval of turnpike projects.
- Adjusts the threshold for review of work program amendments.
- Addresses liability issues related to the National Railroad Passenger Corporation operating trains on state-owned rail corridors.
- Revises financial disclosure requirements for some transportation authorities.
- Authorizes the Jacksonville Transportation Authority to meet using communications media technology.
- Revises provisions related to stormwater management and environmental mitigation.
- Revises the membership of the South Florida Regional Transportation Authority governing board.

This bill has an indeterminate fiscal impact on both state revenues and expenditures. See fiscal analysis and economic impact statement for specific details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill addresses numerous statutory provisions related to the transportation. For ease of understanding, this analysis is structured by topic.

Department of Transportation (Section 1)

Current Situation
The Department of Transportation (DOT) is a decentralized agency, organized into seven districts, the turnpike enterprise, and the rail enterprise.[1] The districts are headed by a district secretary and each enterprise has an executive director. Current law requires a district secretary or an executive director to be a registered professional engineer[2] or hold an advanced degree in an appropriate related discipline, such as a Masters of Business Administration.

Each district secretary is authorized to appoint up to three district directors, or until July 1, 2005, up to four district directors.

Proposed Changes
The bill amends s. 20.23(5), F.S., providing that a district secretary or an executive director may be a professional engineer in the accordance with the laws of another state. The bill also removes obsolete authorization for district secretaries to appoint up to four district directors until July 1, 2005.

Citrus Equipment Tax Exemption (Section 2)

Current Situation
Section 206.41, F.S., imposes state taxes on motor fuel. Section 206.41(4)(c), F.S., provides that the use of motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes where the local option fuel tax, the State Comprehensive Enhanced Transportation System (SCETS) Tax, and the fuel sales tax[3] is imposed is entitled to a refund of these taxes.

Section 206.41(4)(c)2., F.S. defines agricultural and aquacultural purposes as "motor fuel used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction does not apply to the movement of a farm vehicle or farm equipment between farms. . . ."

Proposed Changes
The bill amends s. 206.41(4)(c)2., F.S., providing that the restriction related to agricultural purposes of driving or operating on the highways of the state does not apply to the movement of citrus harvesting equipment or citrus loaders between farms. Therefore, the local option fuel tax, the SCETS Tax, and the fuel sales tax would not apply when transporting the equipment between farms.

Ports (Sections 3, 4, 5, 6, 7, 8, 9, 17, and 52)

Current Situation
Florida has 14 public seaports,[4] which are considered significant economic drivers. Recent economic analyses and planning documents[5] prepared for the Florida Ports Council indicated that:

[1] Section 20.23, F.S.
[2] Professional engineers are regulated pursuant to ch. 471, F.S.
[3] Sections.306.41(1)(e), (f), and (g), F.S.
[4] 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, and Port of Tampa. Listed

- In 2009, the maritime cargo activities at Florida seaports were responsible for generating more than 550,000 direct and indirect jobs and $66 billion in total economic value.
- In 2009, the maritime cargo activities at Florida seaports contributed $1.7 billion in state and local tax revenues.
- In 2009, the value of international trade moving through the 14 seaports was $56.9 billion, down more than one-third from 2008. Still, the $56.9 billion figure represented 55 percent of Florida's total international trade value of $103 billion in 2009.
- Imports and exports continue to be fairly even. Of the $56.9 billion in total value, imports were valued at $27.6 billion and exports at $29.2 billion.
- Based on 2009 figures, the average annual wage of Florida seaport-related jobs is $54,400, more than double the average annual state wage for all other non-advanced degree workers ($26,933) and over $15,000 more than the average annual state wage for all occupations ($38,470).
- The ROI for seaport projects is an estimated $6.90 to $1.

Section 311.07(2), F.S., requires that a minimum of $8 million per year be made available from the State Transportation Trust Fund (STTF) to fund the Florida Seaport Transportation and Economic Development (FSTED) Program. These funds are used to fund eligible and approved port projects as provided in s. 311.07(3), F.S. Program funds may also be used by the FSTED Council to develop trade data information products which will assist Florida's seaports and international trade. The program has been funded at $15 million since 2004. Other DOT funding is currently limited to bond repayment, the Strategic Intermodal System (SIS) program, and district discretionary funds.

Proposed Changes

The bill retitiles ch. 311, F.S., currently "Florida Seaport Transportation and Economic Development" as "Seaport Programs and Facilities."

FSTED Funding (Section 4)

The bill amends s. 311.07, F.S., providing that the FSTED program may be used to finance port projects that retain or enhance the creation of jobs in all areas of the state, by limiting it to the ports listed in s. 311.09, F.S.[6]

The bill increases the minimum FSTED funds available from $8 million to $15 million per year to match current practice. The bill directs the FSTED Council to develop guidelines for project funding. FSTED Council staff,[7] DOT, and the Department of Economic Opportunity (DEO) are to work in cooperation to review projects and allocate funds in accordance with the schedule for DOT to include these projects in DOT's tentative work program.[8]

The bill adds that seaport projects eligible for FSTED funding include all intermodal access projects and seaport master plan development or updates, including the support of data to support such plans.

The bill removes the limit of a single port's distribution of funds to $7 million during one calendar year or $30 million during any five calendar year period.

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in s. 403.021(9)(b), F.S. Interactive locator map is available at: http://flaports.org/Sub_Content2.aspx?id=3. (Last viewed November 2, 2011)

[5] Information for this section as gleaned from a 2010 Economic Action Plan for Florida Ports, available at http://www.flaports.org/Sub_Content2.aspx?id=34&pid=5 and from a 2011 economic analysis, available at http://flaports.org/Assets/312011100301AM_Martin_Associates_Analysis_of_Seaport_Priority_Projects_February_2011.pdf and other information provided by the Florida Ports Council. (Last viewed November 2, 2011).

[6] The ports listed in s. 311.09(1), F.S., are Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina. The bill changes a reference to ports listed in s. 403.021(9)(b), F.S., to s. 311.09, F.S., which adds Port Citrus to the list of ports eligible for funding.

[7] The FSTED Council is administered by the Florida Ports Council.

[8] Section 339.135(4), F.S.

FSTED Council (Section 5)
The bill amends s. 311.09, F.S., relating to the FSTED Council. It changes the criteria for potential projects from its economic benefit to include, but not be limited to, factors such as consistency with appropriate plans, economic benefit, readiness for construction, noncompetition with other Florida ports, and capacity within the seaport system.

The bill removes the requirement that the Department of Community Affairs[9] review the list of projects for consistency with local government comprehensive plans.

DOT is required to review the list of project applications approved by the FSTED Council for consistency with the Florida Transportation Plan, the Statewide Seaport and Waterway System Plan and DOT's adopted work program,[10] and notify the FSTED Council of any inconsistent project. In evaluating the project, DOT is to assess the transportation impact and economic benefit of the project.

The bill removes statutory language where in evaluating a project, DOT is required to determine whether the transportation impact of the proposed project is adequately handled by existing state-owned transportation facilities or by the construction of additional state-owned transportation facilities as identified in the Florida Transportation Plan or DOT's work program.

The DEO is required to review project applications for consistency with the state's economic development goals and for consistency with state, regional, and local plans.

Strategic Port Investment Initiative (Section 6)
The bill creates the strategic port investment initiative within DOT. Beginning in Fiscal Year 2012-2013, a minimum of $35 million is to annually be available from the State Transportation Trust Fund (STTF) for the initiative. DOT is required to work with the deepwater ports to develop and maintain a priority list of strategic projects. Project selection will be based on projects that meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities by:

- providing important access and major on-port capacity improvements;
- providing capital improvements to strategically position the state to maximize opportunities in international trade, logistics, or the cruise industry;
- achieving state goals of an integrated intermodal transportation system; and
- demonstrating the feasibility and availability of matching funds through local or private partners.

Prior to making final project allocations, DOT is required to schedule a publicly noticed workshop with DEO and the deepwater ports. DOT shall finalize a prioritized list of potential projects after considering comments it received.

To the maximum extent feasible, DOT is required to include the seaport projects proposed to be funded in its tentative work program.

Intermodal Logistics Center Infrastructure Program (Section 7)
The bill creates the Intermodal Logistics Center Infrastructure Support Program within DOT to provide funds to local governments and seaports[11] thereby enabling the state to respond to private sector market demands and meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities.

The bill defines "Intermodal Logistics Center," including but not limited to an "inland port" as a facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport where activities relating to transport, logistics, and goods distribution, consolidation, or value-added activities are carried out and whose activities and services are designed to support or be supported by one or more seaports.

[9] The Department of Community Affairs was repealed in 2011.
[10] Section 339.135, F.S.
[11] For purposes of this section, seaports are defined in s. 311.09, F.S.

DOT must consider, but is not limited to, the following criteria when evaluating projects for Intermodal Logistics Center Infrastructure Program Assistance:

- The ability for the project to serve a strategic state interest.
- The ability of the project to facilitate the cost-effective and efficient movement of goods.
- The extent to which the project contributes to economic activity, including job creation, increased wages, and revenues.
- The extent to which the project efficiently interacts with and supports the transportation network.
- A commitment of a funding match.
- The amount of capital investment made by the owner of the existing or proposed facility.
- The extent to which the owner has commitments, including memorandums of understanding or memorandums of agreement, with private sector businesses planning to locate operations at the intermodal logistics center.
- Demonstrated local support or commitment to the project.

DOT is required to coordinate and consult with the DEO in selecting projects to be funded by this program. DOT is authorized to administer contracts on behalf of the entity selected to receive funding for a project. DOT is also required to provide up to 50 percent of a project's cost for eligible projects. Beginning in Fiscal Year 2012-2013, up to $5 million per year shall be made available from the STTF for the program. DOT is required to include projects proposed to be funded in its tentative work program. Further, DOT is authorized to adopt rules to implement the Intermodal Logistics Center Infrastructure Support Program.

Seaport Mitigation (Section 8)
Due to being land limited, ports often have difficulty doing stormwater mitigation activities on port property.

The bill creates s. 311.106, F.S., providing that a seaport listed in s. 403.021(9)(b), F.S.,[12] is authorized to provide off-site mitigation for port activities causing or contributing to pollution from stormwater runoff. An offsite mitigation project may occur outside of the established boundaries of the port, but shall be in the same drainage basin in which the port activity causing the need for mitigation is located. The offsite mitigation project must be designed to meet or exceed the mitigation requirements of a permit. A port's offsite stormwater mitigation project must be constructed and maintained by the seaport or by the seaport in conjunction with an adjacent local government. The offsite mitigation project shall be included as part of the port master plan.

Seaport Planning (Section 9)
The bill repeals s. 311.14(1) and (2), F.S., which required the FSTED Council, in cooperation with the State Public Transportation Administrator, to develop freight mobility and trade corridor plans and for the Office of the State Public Transportation Administrator to integrate these plans into the Florida Transportation Plan, and plans and programs of the Metropolitan Planning Organizations (MPOs).

The bill creates a new s. 311.14(1), F.S., requiring DOT to develop, in coordination with the ports and other partners, a Statewide Seaport and Waterways System Plan. The plan is to be consistent with the Florida Transportation Plan[13] and consider the needs identified in individual port master plans and those from individual seaport strategic plans.[14] The plan will identify five, ten, and twenty-year needs for the seaport system and will include seaport, waterway, road, and rail projects that are needed to ensure the success of the transportation system as a whole in supporting state economic development goals.

[12] The seaports listed in s. 403.021(9)(b), F.S., are the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.
[13] Section 339.155, F.S.
[14] Seaport Strategic Plans are required under s. 311.14(3), F.S.

Freight Mobility and Trade Plans (Section 17)
The bill creates s. 334.044(33), F.S., authorizing DOT to develop, in coordination with its partners, freight mobility and trade plans to assist in making freight mobility investments that contribute to the state's economic growth. These plans should enhance the integration and connectivity of the transportation system across and between transportation modes throughout the state for people and freight. Freight issues and needs are to be given emphasis in all appropriate transportation plans, including the Florida Transportation Plan and the Strategic Intermodal System Plan.[15]

Placement of an Intermodal Logistics Center on the Strategic Intermodal System (Section 52)
Section 339.63(4), F.S., provides the after the initial designation of the SIS, DOT is supposed to work with impacted entities to add or delete facilities from the SIS based on criteria adopted by DOT.[16]

The bill creates s. 339.63(5), F.S., to provide that upon the request of a facility meeting the criteria and thresholds for a planned facility to be added to the SIS and meets the definition of "intermodal logistics center" and where the local government in which the facility is located has designated the facility in its comprehensive plan as an intermodal logistics center or an equivalent planning term, the Secretary of DOT shall designate the planned facility as part of the SIS.

For this facility, a local government which maintains a transportation concurrency system shall adopt a waiver of transportation concurrency requirements to accommodate all development at the facility which occurs pursuant to a building permit issued on or before December 31, 2017.

Toll Enforcement (Sections 10, 12, and 34)

Definition of Motor Vehicle (Section 10)

Current Situation
The definition of "motor vehicle" in ch. 316, F.S., associated with uniform traffic control, is not the same as the definition for "motor vehicle" in chapter 320, F.S, associated with motor vehicle registrations, which is broader.

In issuing a uniform traffic citation for non-payment of a toll, a photographic image of the rear license plate of the vehicle is recorded. For certain motor vehicle combinations, the trailer or rear part of the combination may have been leased to the owner or operator of the truck cab, and thus there may be more than one registered owner associated with the motor vehicle combination using the toll road.

Section 316.1001, F.S., provides that the citation for the toll violation is to be mailed to the registered owner of the motor vehicle involved in the violation. The current definition for "motor vehicle" in ch. 316, F.S., indicates that a motor vehicle is self-propelled,[17] while the broader definition for "motor vehicle" in ch. 320, F.S., for motor vehicle registrations, also includes semi-trailers and other vehicles attached to a truck cab and allowed to be pulled while traveling on the roads.[18]

Because toll enforcement equipment captures the image of the rear license plate, a violation delivered to the registered owner of the semi-trailer creates a legal issue as to whether the citation has been issued to the registered owner under the toll enforcement statute.

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[15] Section 339.64, F.S.
[16] A list of criteria for the SIS for various types of facilities is available at: https://www3.dot.state.fl.us/EnterpriseInternetAssets/ESIS/CriteriaThreshold/CriteriaThreshold.aspx?portal=true (Last viewed January 31, 2012).
[17] Section 316.003(21), F.S., defines "motor vehicle" as "[a]ny self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, or moped."
[18] Section 320.01(1)(a) , F.S., defines "motor vehicle" as "[a]n automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles, or mopeds."

Proposed Changes
The bill provides that the definition of "motor vehicle" for purposes of issuance of a citation to the registered owner of the motor vehicle involved in a toll violation by amending the definition of "motor vehicle" in s. 316.003(21), F. S., to be the same as the definition of "motor vehicle" in s. 320.01(1)(a), F.S., for purposes of toll violations under s. 316.1001, F.S.

Mailing of Citations (Section 12)

Current Situation
Prior to 2010, s. 316.1001(2)(b), F.S., authorized a citation for failure to pay a toll to be issued by mailing the citation by first class mail, or by certified mail, return receipt requested, to the address of the registered owner of the motor vehicle involved in the violation. Mailing the citation to this address constituted notification. In 2010, the statute was revised and currently provides that a citation issued for failure to pay a toll may only be issued by mailing the citation by first-class mail, return receipt requested, to the address of the registered owner of the motor vehicle involved in the violation, and that receipt of the citation constitutes notification.[19,20]

The 2010 statute change has dramatically increased toll enforcement costs. It has also created a legal issue regarding the enforceability of a majority of the citations issued whenever the violator's signature is not obtained on the mail receipt through no fault of DOT, but simply because the intended recipient declines to sign for or pick up the citation at the post office.

According to DOT, since the statutory change requiring certified mail, return receipt requested, for citations, the percentage of citations returned with the violator's signature has fallen to 31 percent of the citations issued and mailed. As a result, DOT is unable to enforce in court 69 percent of the citations issued to toll violators, not because of a wrong address used, but because the violator has not signed the receipt and there is no signed receipt for DOT to take to court to demonstrate notification under the current version of the statute. DOT currently uses several governmental databases to verify the current address of the registered owner.

Proposed Changes
The bill amends s. 316.1001(2)(b), F.S., returning the mailing of citations to first class mail or certified mail, but without the "return receipt requested" feature. The mailing of the citation would once again constitute notification as is the case for most commercial transactions.

Toll Collections (Section 34)

Current Situation
Section 316.1001, F.S., provides that a person may not use any toll facility without paying tolls, subject to certain limited exemptions[21] and the failure to pay a prescribed toll is a noncriminal traffic infraction, punishable as a moving violation.[22] Section 316.1001, F.S., also provides for the enforcement of this section by governmental entities that own or operate toll facilities through the designation of toll enforcement officers. This section further provides related rulemaking authority for the department, and the requirements for the issuance of a citation for the failure to pay a toll.

Regarding the authority to delegate to a Toll Enforcement Officer, s. 316.1001 (2)(a), F.S., reads as follows:

> (2)(a) For the purpose of enforcing this section, any governmental entity, as defined in s. 334.03, that owns or operates a toll facility may, by rule or ordinance, authorize a toll enforcement officer to issue a uniform traffic citation for a violation of this section. Toll enforcement officer means the designee of a governmental entity whose authority is to

[19] Chapter 2010-225, L.O.F.
[20] For purposes of red-light cameras, delivery constitutes notification. See s. 316.0083(1)(c)1.b., F.S.
[21] The exemptions are provided in s. 338.155, F.S.
[22] Moving violations are punishable under ch. 318, F.S.

enforce the payment of tolls. The governmental entity may designate toll enforcement officers pursuant to s. 316.640(1).[23]

Section 338.155(1), F.S., also provides that the failure to pay a prescribed toll constitutes a noncriminal traffic infraction, punishable as a moving violation. DOT is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, authorized in chs. 316, 318, 320, 322, and 338, F.S.,[24] including, but not limited to, rules for the implementation of video or other image billing and variable pricing.

Additionally, s. 338.231, F.S. provides that the DOT shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.

Further, s. 338.231(3)(b), F.S., provides that the department shall also fix, adjust, charge and collect such amounts needed to cover the costs of administering the different toll collection and payment methods, and types of accounts being offered and used, in the manner provided for in s. 120.54, F.S., which will provide for public notice and the opportunity for a public hearing before adoption.

Proposed Changes

The bill creates s. 338.01(8), F.S., authorizing DOT, or other governmental entity responsible for toll collection, to pursue the collection of unpaid tolls and associated fees and other amounts to which it is entitled by contracting with a private attorney who is a member in good standing with the Florida Bar, or a collection agent who is registered and in good standing.[25] A collection fee in an amount that is reasonable within the collection industry, including reasonable attorney's fees, may be added to the delinquent amount collected by an attorney or collection agent retained by DOT or another governmental entity. The requirements of s. 287.059, F.S.[26] do not apply to private attorney services used in delinquent toll collection

Use of Shoulder (Section 11)

Current Situation

In 2007, as a pilot project, Miami-Dade Transit buses began operating on shoulder lanes to help alleviate congestion and by-pass slower moving traffic on several high-volume arterials and freeways. This project, called "Buses on Shoulders," was modeled after a successful, similar program started in Minneapolis, Minnesota 12 years ago, and which now utilizes more than 400 buses and 200 miles of shoulder lanes daily. The bus on shoulders pilot program in Miami-Dade became permanent in October 2010. The project was carried out in partnership with the Miami-Dade Expressway Authority, Florida Department of Transportation, Florida Turnpike Enterprise, the Florida Highway Patrol, the Metropolitan Planning Organization and Miami-Dade Transit.

In addition to Miami-Dade County, buses are also being operated on the shoulder in Interstate 4 in Orlando, on Interstate 275, and on Interstate 75 in Sarasota.

Proposed Changes

The bill creates s. 316.091(5), F.S., authorizing DOT and expressway authorities to designate the use of shoulders of limited access facilities and interstate highways under their jurisdiction for such

[23] Section 316.640(1) concerns how the enforcement of the traffic laws of this state are vested for the State –listing the various agencies.

[24] Chapter 316, F.S., relates to state uniform traffic control; ch. 318, F.S., relates to the disposition of traffic infractions; ch. 320, F.S., relates to motor vehicle licenses, ch. 322, F.S., relates to drivers' licenses, and ch. 338, F.S, relates to the Florida intrastate highway system and toll facilities.

[25] Collection agents are regulated pursuant to ch. 559, F.S.

[26] Section 287.059, F.S., relates to private attorney services procured by state government.

vehicular traffic determined to improve safety, reliability, and transportation system efficiency. The bill requires appropriate traffic signs or dynamic lane control signs to be erected along those portions of the facility affected to give notice to the public of the action to be taken, clearly indicating when the shoulder is open to designated vehicular traffic. This is not to be deemed to authorize a designation in violation of any federal law or any covenant established in a resolution or trust indenture relating to the issuance of turnpike bonds, expressway authority bonds or other bonds.

Bicycle Pilot Program (Section 11)

Current Situation
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. . ."[27] Section 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 under s. 349.04(1), F.S. Highways identified with state highway route signs that include the word TOLL are limited access facilities.

Proposed Changes
The bill amends s. 316.091, F.S., creating a two-year Limited Access Facilities Pilot Program. 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 bill authorizes DOT to select bridges or approaches in conjunction with the Federal Highway Administration (FHWA) under specified criteria in three separate urban areas. Upon completion, the bill requires DOT to present the results of the pilot program to the Governor and Legislature.

Straight Trucks (Section 13)

Current Situation
Section 316.515(3)(a), F.S. limits the length of a straight truck to 40 feet, excluding safety and energy conservation devices. A straight truck may tow one trailer not to exceed 28 feet in length; however, the trailer length limitation does not apply if the overall length of the truck-trailer combination is 65 feet or less, including the load. Section 316.516(4)(b), F.S., provides the penalties for a violation of length limits as follows:

1. forty dollars for length limit violations not exceeding 2 feet over the length limit;
2. one hundred dollars for length limit violations of greater than 2 feet but not exceeding 10 feet over the length limit; or
3. two hundred and fifty dollars for length limit violations of greater than 10 feet, plus $250 for every additional foot or any portion thereof that exceeds 11 feet over the length limit.

Section 316.516(4)(c), F.S., provides for a maximum penalty of $1,000 for each violation.

As the statute is currently written, if a straight truck is pulling a 47 foot trailer and has a 18 foot-6 inch truck, the driver would then exceed the overall dimension allowed of 65 feet by 6 inches. The fine associated with this is $1,000 because of the way the statute is written. Since the statute only allows a trailer length of 28 feet, the fine is written based on a overlength trailer of 19 feet (47 – 28 = 19) which results in the maximum fine of $1,000 when in reality, the driver only exceeded the overall length of 65 feet by 6 inches, which should result in a $40 fine.[28]

Proposed Changes
The bill amends s. 316.515(3)(a), F.S., providing that the overall length of a truck-trailer combination may not exceed 68 feet, which is consistent with the current maximum length in statute.

[27] Section 334.03(12), F.S.
[28] These fines are deposited into the State Transportation Trust Fund.

Citrus Equipment Use of Roadway (Section 13)

Current Situation
Section 316.515(5)(a), F.S., authorizes the transport of specified implements of husbandry, farm equipment, and products from their specified locations. This is generally from the point of production to the first point of change of custody or storage returning to the point of production.

Proposed Changes
The bill amends s. 316.515(5)(a), F.S., to include citrus harvesting equipment, citrus fruit loaders, and citrus in the current authorization for the transport of specified implements of husbandry, farm equipment and products.

Low Speed Vehicle (Section 14)

Current Situation
Section 320.01(42), F.S. defines a "low-speed vehicle" as "any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 47 C.F.R. s. 571.500 and s. 316.2122."

Proposed Changes
The bill amends s. 320.01(43), F.S., redefining "low-speed vehicle" to provide that it does not only apply to electric vehicles and that it includes, but not limited to, neighborhood electric vehicles.

Airport Privatization Pilot Program (Section 15)

Current Situation
In 1996, Congress established the Airport Privatization Pilot Program as a way to look at privatization as a way of generating access to private capital for airport improvements and development. The law allows private companies to "own, manage, lease and develop public airports." The Federal Aviation Administration (FAA) is authorized "to permit up to five public airport sponsors to sell or lease an airport" and exempts the sponsor from certain federal requirements which could make airport privatization impractical, including the repayment of federal grants, returning property acquired with federal assistance, and the requirement that proceeds from the airport's sale or lease be used exclusively for airport purposes.[29]

Hendry County's Airglades Airport has applied and been approved for this program. However, current law appears to only authorize the sale of the airport to a private party if the county determines that the property is no longer needed for aeronautic purposes.[30]

Proposed Change
The bill creates s. 332.08(6), F.S., providing that notwithstanding any other provision of that section, a municipality participating in the FAA's Airport Privatization Pilot Program[31] may lease or sell an airport or other air navigation facility or real property, together with improvements and equipment, acquired or set apart for airport purposes to a private party under the terms and conditions negotiated by the municipality. However, if state funds were provided to the municipality pursuant to s. 332.007, F.S.,[32] the municipality must obtain DOT approval of the agreement. DOT is authorized to approve the agreement if it determines that the state's investment has been adequately considered and protected consistent with the applicable conditions specified in federal law.[33]

[29] Federal Aviation Administration Airport Privatization Pilot Program information. Available at: http://www.faa.gov/airports/airport_compliance/privatization (Last viewed January 23, 2012).
[30] Attorney General Opinion AGO, 2011-11, June 24, 2011.
[31] 49 U.S.C. s. 47134
[32] Section 332.007, F.S., relates to the administration and financing of aviation and airport programs and projects and the state plan.
[33] 49 U.S.C. s. 47134

Road System Definitions and References (Sections 16, 17 and 18)

Current Situation
In 1995, the state revised ch. 335, F.S., amending road system classifications. The previous system, in which DOT assigned road jurisdiction based on a road's "functional classification," was changed to a system in which jurisdiction is decided by mutual agreement between governmental entities. Some provisions in ch. 334, F.S., relating to Transportation Administration still refer to "functional classification" and the road jurisdiction process formerly found in ch. 335, F.S.

Proposed Changes
The bill amends s. 334.03, F.S., providing definitions for the Florida Transportation Code.[34] It redefines "functional classification" to provide that road classifications may be developed using procedures promulgated by the FHWA. The bill also redefines "State Highway System" to include the interstate system, all roads under the jurisdiction of the state on June 10, 1995, plus any road transferred to the state by mutual consent, but not roads transferred from the state's jurisdiction.

The bill amends s. 334.044(13), F.S., removing DOT's ability to designate existing transportation facilities on the State Highway System.

The bill also amends s. 334.047, F.S., removing an obsolete provision prohibiting DOT from setting a maximum number of miles of "urban principal arterial roads"[35] within a district or county, and amends the powers and duties of DOT in s. 334.044(11), F.S., to remove DOT's authority to assign jurisdictional responsibility for public roads.

Landscaping (Section 17)

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

- 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 Fiscal Year 2011-2012, DOT allocated $41,836,338 for landscaping, comprising 1.86 percent of the amount contracted for construction projects.

Proposed Changes
The bill amends s. 334.044(26), F.S., requiring that no less than 1.5 percent of the amount contracted for construction projects that add capacity or provide significant enhancements to the existing system shall be allocated by DOT for landscaping. The bill also prohibits DOT districts from expending funds

[34]Section 334.01, F.S., provides that the "Florida Transportation Code" is Chs. 334 through 339, 341, 348, and 349 and ss. 332.003-332.007, 351.35, 351.36, 351.37, and 861.011, F.S.
[35] Section 334.03(35), F.S., defines "urban principal arterial road" as "a route that generally interconnects with and augments an urban principal arterial road and provides service to trips of shorter length and a lower level of travel mobility. The term includes all arterials not classified as 'principal' and contain facilities that place more emphasis on land access than the higher system."

for landscaping on projects limited to resurfacing existing lanes unless the expenditure has been approved by DOT's secretary or the secretary's designee.

Safety Inspection of Bridges (Section 19)

Current Situation

Section 335.074, F.S., currently requires each bridge on a public transportation facility to be inspected for structural soundness and safety for the passage of traffic on such bridge at regular intervals not to exceed two years.[36] The governmental entity having maintenance responsibility for any such bridge is deemed responsible for having inspections performed and reports prepared in accordance with the provisions of that section.

Section 316.555, F.S., authorizes DOT and local authorities with regard to bridges under their respective jurisdictions to prescribe by specified notice loads, weights, and speed limits lower than the limits otherwise prescribed by law; and to regulate or prohibit by notice the operation of any specified class or size of vehicles. Neither this statute, nor any other, authorizes DOT to take any action to ensure that locally owned bridges are inspected or physically posted with loads, weight, or speed limits or closed.

DOT recently received from the FHWA clarification of the responsibilities of state Departments of Transportation for locally owned highway bridges under the National Bridge Inspection Program (NBIP). The FHWA in its memo of June 13, 2011, advises in part:

> "It is clear from the language of 23 U.S.C. 151 that a State is ultimately responsible for the inspection of all public highway bridges within the State, except for those that are federally or tribally owned. ... The State may delegate bridge inspection policies and procedures...to smaller units of the State like a city or county. However, such delegation does not relieve the State transportation department of any of its responsibilities under the NBIS.[37] ... Because of the fundamental relationship established in Title 23 of the U.S. Code between the FHWA and a State, if the inspections by a city or county were not done in accordance with the NBIS, the FHWA could take action against the State for failure to comply with Federal laws and regulations."
>
> "The NBIS was established under Title 23 in order to preserve the safety of ... all highway bridges, not just those directly under State jurisdiction. ... States *must* establish the necessary authority to take whatever action is needed to ensure that the intentions of Congress and the expectations of the public are executed to their fullest extent. State DOTs are required to have adequate powers to discharge the duties required by Title 23 (see 23 U.S.C. 302 and 23 CFR 1.3)."
>
> "Ideally, States that do not currently have the authority to post or close a local bridge will take action to gain that authority in the interest of safety to the travelling public without the need for aggressive action by FHWA."[38]

Currently, DOT obtains compliance from local agencies by persuasion; however, except for the withholding of Federal Highway funds to the local agency, DOT does not have the authority to post load, weight, or speed limits or close a local bridge. The state is therefore subject to potential action by the FHWA, which could result in the loss of federal funds.

Proposed Changes

The bill amends s. 335.074, F.S., bringing Florida law in compliance with federal law. It provides that upon receipt of an inspection report recommending reducing weight, size, or speed limit on a bridge, the governmental entity responsible for maintaining the bridge must reduce the maximum limits for the

[36] It is DOT's practice to inspect local bridges for local governments using federal funds. Pursuant s. 335.074, F.S., each bridge on a public transportation facility is inspected for structural soundness and safety for the passage of traffic at regular intervals not to exceed two years. DOT inspects more frequently if condition is in question, based on the last inspection findings.

[37] NBIS is National Bridge Inspection Standards

[38] A copy of this memorandum is on file with the staff of the Transportation & Highway Safety Subcommittee.

bridge in accordance with the inspection reports and post the limits.[39] Within 30 days, the governmental entity must notify DOT that the limitations have been implemented and the bridge has been posted accordingly with load, weight, or speed limits. If the governmental entity does not take the required actions within 30 days, DOT is required to post the bridge in accordance with the inspection report. All costs incurred by DOT in connection with providing notice of the bridge's limitations or restrictions are to be assessed against and collected from the governmental entity responsible for maintaining the bridge.

If an inspection report recommends a bridge's closure, the bridge shall be immediately closed. If a governmental entity does not immediately close the bridge, DOT is required close the bridge and all costs incurred in connection with the bridge closure shall be assessed and collected from the governmental entity responsible for maintaining the bridge.

Noise Abatement (Section 20)

Current Situation
On July 23, 2010, the FHWA issued 23 C.F.R. 772 Final Rule, effective July 13, 2011, amending the federal "Procedures for Abatement of Highway Traffic Noise and Construction Noise." The changes in federal procedures have no effect on current DOT policy or procedures, but s. 337.17, F.S., contains and out-of-date regulation of March 1, 1989.

Additionally, ss. 335.17, F.S., directs DOT to make use of noise-control methods in construction on all "new state highways." However, federal procedures require consideration of noise-control methods for capacity expansion as well and DOT already undertakes such consideration as required by federal law.

Proposed Changes
The bill amends s. 335.17(1) and (2), F.S., making technical changes to conform to federal law related to noise abatement.

Local Option Fuel Taxes (Sections 21 and 22)

Ninth-Cent Fuel Tax (Section 21)

Current Situation
Sections 206.41(1)(d), 206.87(1)(b), and 336.021, F.S., authorize the ninth-cent fuel tax, which is a one-cent tax on every net gallon of motor and diesel fuel sold within a county. The tax is authorized either by ordinance adopted by an extraordinary vote of the governing body or approved by voters in a countywide referendum. While all counties are eligible to levy this tax, it will be levied by 51 counties in 2012. However, due to statewide equalization, it is imposed on diesel fuel in every county.[40] All impositions of this tax must be levied before July 1 to be effective on January 1 of the following year.

The tax proceeds may be used for transportation expenditures as defined in s. 336.025(7), F.S. The county is not required to share these tax proceeds with its municipalities. However, by joint agreement with one or more of its respective municipalities the county may distribute tax proceeds within both incorporated and unincorporated areas of the county for the authorized transportation purposes.

Proposed Changes
The bill amends s 336.021(5), F.S., changing the imposition date of the ninth-cent fuel tax from July 1 to October 1 to match the start of the local government's fiscal year.

[39] The limits must be posted in accordance with s. 316.555, F.S.
[40] The local tax on diesel fuel is six cents per gallon statewide.

1 to 6 Cents Local Option Fuel Tax (Section 22)

Current Situation
Sections 206.41(1)(e), 206.87(1)(c), and 336.025(1)(a), F.S., authorize local governments to levy a tax of 1 to 6 cents on every net gallon of motor fuel sold in the county. The tax is authorized either by ordinance adopted by an extraordinary vote of the governing body or approved by voters in a countywide referendum. In 2011, all counties, except Franklin, levied the tax at the maximum rate of 6 cents per gallon.[41] All impositions of this tax must be levied before July 1 to be effective on January 1 of the following year.

The tax proceeds are distributed according to distribution factors determined by interlocal agreement between the county and the municipalities within the county. However, if there is no interlocal agreement, the distribution is based on the proportion of transportation expenditures of each local government. The tax proceeds may be used for transportation expenditures as defined in s. 336.025(7), F.S.

The tax proceeds may be used for transportation expenditures as defined in s. 336.025(7), F.S. However, small counties[42] and municipalities in those counties are authorized to use the proceeds to fund infrastructure projects if the projects are consistent with the local government's comprehensive plan. Except as provided in s. 336.025(7), F.S., these funds may not be used for the operational expenses of any infrastructure.

Proposed Changes
The bill amends s. 336.025(1)(a)1., F.S., changing the imposition date of the 1 to 6 cents local option fuel tax from July 1 to October 1 to match the start of the local government's fiscal year.

1 to 5 Cents Local Option Fuel Tax (Section 22)

Current Situation
Sections 206.41(1)(e), 206.87(1)(c), and 336.025(1)(b), F.S., authorize local governments to levy a tax of 1 to 5 cents on every net gallon of motor fuel sold in the county. The tax is authorized either by ordinance adopted by a majority plus one vote of the governing body or approved by voters in a countywide referendum. All counties are eligible to levy this tax, and it was levied by 24 counties in 2011. All impositions of this tax must be levied before July 1 to be effective on January 1 of the following year.

The tax proceeds are distributed according to distribution factors determined by interlocal agreement between the county and the municipalities within the county. However, if there is no interlocal agreement, the distribution is based on the proportion of transportation expenditures of each local government. The tax proceeds may be used for transportation expenditures as defined in s. 336.025(7), F.S.

The tax proceeds are to be used for 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 or for other critical transportation-related expenditures. However the routine maintenance of roads is not considered an authorized expenditure.

Proposed Changes
The bill amends s. 336.025(1)(b)1., F.S., changing the imposition date of the 1 to 5 cents local option fuel tax from July 1 to October 1 to match the start of the local government's fiscal year.

[41] Franklin County levies the tax at 5 cents per gallon.
[42] Small counties are defined as having a total population of 50,000 or less on April 1, 1992.

Notification to the Department of Revenue (Section 22)

Current Situation
Current law requires the Department of Revenue (DOR) to be notified of changes to the 1 to 6 cents local option fuel tax and the 1 to 5 cents local option fuel tax by July 1 of each year.

Proposed Change
The bill amends s. 336.025(5)(a) to change the notification date to DOR for these local option fuel taxes to October 1, to conform to the changes in implementation date.

Use of Local Option Tax (Section 22)

Current Situation
Section 336.025(7), F.S., defines "transportation expenditures" for the purpose of s. 336.025, F.S., as expenditures by the local government from local or state shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

a) Public transportation operations and maintenance.
b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
c) Roadway and right-of-way drainage.
d) Street lighting.
e) Traffic signs, traffic engineering, signalization, and pavement markings.
f) Bridge maintenance and operation.
g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

A 2010 Attorney General's Opinion addresses the use of the local option fuel tax to pay for electricity and water to operate street lighting, traffic signals, and water pumps for drainage. The opinion states "that proceeds from the local option fuel tax revenues levied pursuant to section 226.035(1)(a), Florida Statutes, may not be used to pay operational expenditures for storm drainage, street lighting, and traffic signalization."[43]

Proposed Changes
The bill amends s. 336.025(7), F.S., incorporating the installation, operation, maintenance, and repair of street lighting, traffic signs, traffic engineering, signalization, and pavement markings as permitted uses of the local option fuel tax.

Contracting Notice (Section 23)

Current Situation
Section 337.11(3)(a), F. S., requires DOT on all construction contracts of $250,000 or less, and any construction contract of less than $500,000 for which DOT has waived prequalification[44] to advertise for bids in a newspaper having general circulation in the county where the proposed work is located, with publication at least once a week for no less than two consecutive weeks, with the first publication no less than 14 days prior to the date on which bids are to be received.

Proposed Changes
The bill amends s. 337.11, F.S., requiring DOT to advertise the bids on its website for a period of no less than 14 days prior to the day the bids are to be received and removes the requirement that the contract be advertised in the newspaper.

[43] Florida Attorney General's Opinion 2010-29.
[44] Prequalification is pursuant to s. 337.14, F.S.

Monuments at Rest Areas (Section 24)

Current Situation
In 2005, the Legislature created the "Ellwood Robinson 'Bob" Pipping, Jr., Memorial Act" (Act). In order to create "an environment in which state residents and visitors will be reminded of the accomplishments made by military veterans in past conflicts and continuing sacrifices made by military veterans in past conflicts and the continuing sacrifices made by veterans and their families to protect the freedoms we enjoy today."[45] The Act authorized DOT to enter into contracts, approved by a reviewing committee, with any specified not-for-profit group or organization to provide for the installation of monuments and memorials honoring military veterans at the state's highway rest areas.

The Act requires the group or organization making the proposal to be responsible for all costs of the monument and its installation, and requires the group or organization to provide a 10-year bond. The bond secures the cost of removal of the monument and any modifications made to the site as part of the placement of the monument in the event DOT determines that it is necessary to remove or relocate the monument.

Since the Act's passage, an interested group has attempted to install a replica of the Iwo Jima Memorial in a DOT rest area, but was unable to obtain a 10-year bond from the bonding industry. According to DOT, it appears that the bonding industry has reservations about issuing these bonds, and no monuments have ever been installed.

Proposed Changes
The bill amends s. 337.111(4), F.S., providing for forms of security, which could be provided by groups interested in installing monuments and memorials at rest areas. These include an annual renewable bond, an irrevocable letter of credit, or other form of security approved by DOT's comptroller.[46] The bill no longer requires the automatic renewal of the security instrument when it expires.

Disadvantaged Business Enterprises (Sections 25, 26, 27, and 46)

Current Situation
The Code of Federal Regulations applicable to the Disadvantaged Business Enterprise (DBE) Program[47] changed significantly in 1999 and the Florida Statutes have not been updated to reflect these changes. Specifically, the new federal regulations deleted the 10 percent requirement and required each state to follow a methodology to develop their own goals. Certain DBE certification issues were also changed to clarify that a certified DBE is always certified until their certification is removed, and the recertification process has been changed to an annual affidavit of continuing eligibility.

Proposed Changes
The bill makes technical revisions to Florida law to bring it into compliance with federal regulations that require a DBE program in order to receive federal funds.

The bill amends s. 337.125(1), F.S., relating to notice requirements regarding socially and economically disadvantaged enterprises to provide that documenting a subcontract with a DBE takes place when contract goals are established. The bill repeals s. 337.137, F.S., relating to subcontracting by socially and economically disadvantaged business enterprises. The bill amends s. 339.0805, F.S., to update a reference to federal law. Finally, the bill amends s. 339.0805, F.S., updating references to federal law and conforming provisions to federal law.

[45] Chapter 2005-43, L.O.F.
[46] This proposed change to s. 337.111(4), F.S., is consistent with s. 334.087, F.S., relating to guarantee of obligations to DOT.
[47] 47 CFR Part 26.

Contractor Financial Statements (Section 28)

Current Situation
Section 337.14, F.S., currently requires any person desiring to bid for the performance of any construction contract in excess of $250,000 which DOT proposes to let to first be certified by DOT as qualified. Each application for certification of qualification must be accompanied by the latest annual financial statement of the applicant completed within the last twelve months. If the application or the annual financial statement shows the financial condition of the applicant more than four months prior to the date on which the application is received by DOT, then an audited interim financial statement must be submitted and accompanied by an updated application.

This statute was last revised in 2010 in an effort to remove apparent confusion.[48] Contractors did not understand that they must submit the audited financial statements and the application for qualification within the currently specified four month period. Contractors often submitted one or the other and were also confused as to when audited interim financial statements are due. However, confusion still appears to exist, as contractors continue to incur expenses associated with audited interim financial statements.

Proposed Changes
The bill amends s. 337.14, F.S., providing that upon request by the applicant, an application and accompanying annual or interim financial statement received by DOT within 15 days of either 4-month period is to be considered timely. Additionally, the bill provides that an applicant desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant, which is less costly and burdensome.

Interference by Utilities (Sections 29 and 30)

Current Situation
Section 337.401, F.S., addresses the use of road and rail corridor right-of-way by utilities. Section 337.401(1), F.S., provides that DOT and local government entities which have jurisdiction and control of public roads and publicly-owned rail corridors are authorized 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., provides that, other than the exceptions below, if an authority determines that a utility upon, under, over, or along a public road or publicly-owned rail corridor, is interfering with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor, the utility, upon 30 days written notice, shall remove or relocate the utility at its own expense. The exceptions are:

- when the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, DOT pays for the removal or relocation with federal funds;
- where the cost of the utility improvement, installation, or removal exceeds DOT's official cost estimates for such work by 10 percent, DOT 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, DOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the relocation;
- if the utility facility being removed or relocated was initially installed to benefit DOT, its tenants, or both, DOT bears the cost of removal or relocation, but DOT is not responsible for bearing the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others;

[48] s.21, ch. 2010-225, L.O.F.

- if, pursuant to an agreement between a utility and the authority (DOT and local governments) entered into after July 1, 2009, the utility conveys, subordinates, or relinquishes 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, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to July 1, 2009; 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. However, some local governments interpret the provision to mean that the utility has 30 days to complete the removal or relocation of the utility.

Proposed Changes
The bill amends s. 337.403, F.S., relating to interference caused by utilities. The bill provides 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 a reasonable time as 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., conforming to changes made to the notice provision and to change the terms "improvements, relocation, and removal" to "utility work."

Facilities on the Right-of-Way (Section 31)

Current Situation
Current law permits cities and counties to authorize the installation of bus benches and transit shelters for the comfort and convenience of the general public, or at designated stops on official bus routes. This authority includes installation within the right-of-way limits of any state road except a limited-access highway. DOT 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.

DOT 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 Americans with Disability Act (ADA). However, DOT may be liable for such non-compliance and subject to legal action as a result of its jurisdiction over the State Highway System

Proposed Changes
The bill amends s. 337.408, F.S., providing 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 and counties are required to indemnify, defend, and hold harmless DOT from any suits, damages, liabilities, attorney fees, and court costs relating to the installation, removal or relocation of these installations.

The bill gives DOT 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. If a municipality or county fails to comply with DOT's direction, DOT 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 DOT.

The bill also clarifies that bus stops may not be in the right-of-way in a manner that conflicts with the requirements of federal law, regulations, or safety standards which would cause a loss in federal funds and that competition among persons seeking to provide bus stops may be regulated, restricted, or denied by the appropriate local government.

Florida Intrastate Highway System/Strategic Intermodal System (Sections 16, 32, 33, 34, 51, 52, 53, and 54)

Current Situation

Chapter 338, F.S., contains provisions for developing and updating the Florida Intrastate Highway System Plan (FIHS). Chapter 339, F.S., includes provisions for developing and updating the Florida Strategic Intermodal System Plan (SIS). All but a few highway miles in the FIHS are also in the SIS. The 2010 SIS Strategic Plan, developed by DOT and other partners,[49] recommended sunsetting the FIHS as a separate statewide highway network to simplify the planning process.[50]

Proposed Changes

The bill deletes the definition of "Florida Intrastate Highway System" from the definitions relating to the Florida Transportation Code in s. 334.03, F.S.

The bill retitiles ch. 338, F.S., "Florida Intrastate Highway System and Toll Facilities" to "Limited-access and Toll Facilities" to reflect the deletion of the FIHS Plan. The bill repeals s. 338.001, F.S., regarding FIHS planning components.

The bill amends s. 338.01, F.S., authorizing DOT to establish limited-access facilities and to provide that the primary function of these facilities is to allow high-speed and high-volume traffic movement, that access to abutting land is subordinate to that function, and such access must be prohibited or highly regulated.

The bill amends s. 339.62, F.S., changing that the SIS consists of highway corridors instead of the Florida Intrastate Highway System and that it includes other existing or planned corridors that serve a statewide or interregional purpose.

The bill amends s. 339.63, F.S., adding "existing or planned military access facilities that are highways or rail lines linking SIS corridors to the state's strategic military installations," as additional facilities included in the SIS.

The bill amends s. 339.64(4)(d), F.S., providing that the 20-year cost-feasible component of a finance plan included in the SIS plan is a minimum, and that the component must be "at least" 20 years.

The bill creates s. 339.65, F.S., which mirrors the language of s. 338.01, F.S., (discussed above) and provides that DOT must plan and develop SIS highway corridors, including limited and controlled-access facilities that allow for high-speed and high-volume traffic movements. The primary function of these corridors is to provide traffic movement. Access to abutting land is subordinate to this function, and such access must be prohibited or highly regulated.

Section 339.65, F.S., also requires SIS highway corridors to include facilities from the following components of the State Highway System:

- Interstate highways.
- The Florida Turnpike System.

[49] The plan was created by a 31-member 2010 SIS Strategic Plan Leadership Committee. This committee "provided overall guidance to this process. Members of the committee represented transportation agencies and providers, regional and local governments, business and economic development interests, and community and environmental interests." *See* Florida Department of Transportation, *2010 SIS Strategic Plan* (January 31, 2010). This document is available at http://www.dot.state.fl.us/planning/sis/strategicplan/2010sisplan.pdf (Last viewed November 28, 2011).

[50] Florida Department of Transportation, *2010 SIS Strategic Plan* (January 31, 2010).

- Interregional and intercity limited-access facilities.
- Existing interregional and intercity arterial highways previously upgraded or upgraded in the future to limited-access or controlled-access facility standards.
- New limited-access facilities necessary to complete a statewide system.

DOT is required to adhere to the following policy guidelines in developing SIS highway corridors:

- Make capacity improvements to existing facilities where feasible to minimize costs and environmental impacts.
- Identify appropriate arterial highways in major transportation corridors for inclusion in a program to bring these facilities up to limited-access or controlled-access facility standards.
- Coordinate proposed projects with appropriate limited-access projects undertaken by expressway authorities and local governmental entities.
- Maximize the use of limited-access facility standards when constructing new arterial highways.
- Identify appropriate new limited-access highways for inclusion as a part of the Florida Turnpike System.
- To the maximum extent feasible, ensure that proposed projects are consistent with approved local government comprehensive plans of the local jurisdiction in which such facilities are to be located with the transportation improvement program of any metropolitan planning organization in which such facilities are to be located.

Section 339.65, F.S., requires DOT to develop and maintain a plan for the SIS highway corridor projects that are anticipated to be let to contract for construction within a time period of at least 20 years. The plan is also required to identify when the segments of the corridor will meet standards and criteria developed by DOT. DOT must establish these standards and criteria for the functional characteristics and design of facilities proposed as part of the SIS highway corridors.

Allocation provisions requiring DOT to allocate funds based on Fiscal Year 2003-2004, as adjusted by the Consumer Price Index, are transferred from s. 338.001, F.S. (which is repealed), to s. 339.65(6), F.S.

Lastly, the bill amends s. 339.65, F.S., providing that any project to be constructed as part of the SIS highway corridor must be included in DOT's adopted work program. Any SIS highway corridor projects that are added or deleted from the previous adopted work program, or any modification of the SIS highway corridor projects contained in the previous adopted work program, shall be specifically identified and submitted as a separate part of the tentative work program.

The bill does not require an annual status report on the SIS highway corridors similar to that which is currently required by the Florida Intrastate Highway System Plan.

Innovative Financing (Sections 35, 36, and 38)

Current Situation

Federal law generally prohibits the imposition of tolls on facilities constructed with federal funds; however, exemptions are provided. For example, 23 USC 129 permits the imposition of tolls on free non-Interstate highways, bridges, and tunnels and certain tolled facilities pursuant to the provisions of this section. In addition, 23 USC 166 permits the conversion of high occupancy vehicle lanes into high occupancy toll lanes. The federal authorization act passed in 2005 (SAFETEA-LU) also continued and established new exemptions to 23 USC 301 (e.g., Value Pricing Pilot Program, Express Lanes Demonstration Program).

Currently, several sections of ch. 338, F.S., set forth provisions related to tolling. Section 338.155, F.S., requires the payment of tolls on toll facilities with some exceptions (e.g., any person operating a fire or rescue vehicle when on official business). Section 338.165, F.S., authorizes the collection of tolls on a revenue-producing project after the discharge of any bond indebtedness and the use of this revenue; however, these provisions do not apply to high occupancy toll lanes or express lanes.

Section 338.166, F.S., authorizes DOT to request the issuance of bonds secured by revenues collected on high occupancy toll lanes or express lanes located on Interstate 95 in Miami-Dade and Broward Counties. DOT is authorized to implement variable rate tolls on these lanes. This section of law also specifies, except for high occupancy toll lanes or express lanes, that no tolls may be charged for the use of an interstate highway where tolls were not charged as of July 1, 1999.

Proposed Changes
The bill creates s. 338.151, F.S., authorizing DOT to establish tolls on new limited access facilities on the State Highway System, lanes added to existing limited access facilities on the State Highway System, new major bridges on the State Highway System over waterways, and replacements for existing major bridges on the State Highway System over waterways to pay for, fully or partially, the cost of such projects. This authority is in addition to the authority provided under the Florida Turnpike Enterprise Law. In addition, the bill prohibits DOT from establishing tolls on lanes of limited access facilities that exist as of July 1, 2012, except as otherwise authorized by law unless tolls were in effect for the lanes prior to that date. This authority is in addition to the authority provided under the Florida Turnpike Enterprise Law and the law authorizing high-occupancy toll (HOT) lanes.[51]

The bill amends s. 338.155, F.S., providing that with respect to DOT managed toll facilities, the revenues which are not pledged for repayment of bonds, DOT may by rule allow the use of such facilities by public transit vehicles or by vehicles participating in a funeral processional for an active duty military service member without the payment of a toll.

The bill also amends s. 338.166, F.S., removing the limit for bonding authority for HOT or express lanes to Interstate 95 in Miami-Dade and Broward Counties. Additionally, any remaining toll revenues from HOT or express lanes are to be used by DOT for the construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the toll revenues were collected, or to support express bus service on the facility where the toll revenues were collected.

Nontoll Revenues (Section 37)

Current Situation
DOT has been approached by other toll facility owners regarding toll collection and enforcement on facilities that are currently not interoperable with SunPass.[52] However, it is unclear what DOT's authority is to contract with these facilities for toll collection and enforcement.

Proposed Changes
The bill creates s. 338.161(3)(c), F.S., to provide that if DOT finds that it can increase nontoll revenues or add convenience or other value to its customers, it is authorized to enter into agreements with private or public entities for DOT's use of its electronic toll collection and video billing systems to collect tolls, fares, administrative fees, or other applicable charges imposed in connection with transportation facilities of the private or public entities that become interoperable with DOT's electronic toll collection system. DOT may modify its rules regarding toll collection and procedures and the imposition of an administrative charge to be applicable to toll facilities that are not part of the turnpike system or otherwise owned by DOT. This is not to be construed to limit the authority of DOT under any other provision of law or any agreement entered into prior to July 1, 2012.

Turnpike Projects (Sections 39 and 40)

Economic Feasibility (Section 39)

Current Situation
Section 338.223, F.S., requires that any proposed Turnpike project must be "economically feasible" as defined in s. 338.221(8), F.S. Economic feasibility means the estimated net revenues of a proposed

[51] Section 338.166, F.S.
[52] SunPass is DOT's electronic toll collection system.

project sufficient to pay 50 percent of the annual debt service by the end of the 12th year of operation and sufficient to pay 100 percent of the annual debt service by the end of the 22nd year of operation. This definition does not adequately relate the needed economic test to the estimated service life of the Turnpike project.

Economic feasibility is a financial tool used to objectively compare the cost versus the benefit of a capital project. The purpose of the test of economic feasibility is to evaluate the ability of a proposed Turnpike project to generate sufficient net revenue to satisfy its debt service requirements. However, there is no standard calculation used by toll agencies, authorities or expressways. Because of the long-term nature of transportation projects, comparing the net revenue to the annual debt service at the 12th and 22nd years underestimates the value of the transportation project over its service life, which is well beyond 22 years. The result is that potential transportation projects that meet other established criteria will not be undertaken because of an overly restrictive economic feasibility test.

Proposed Changes
The bill amends s. 338.221(8), F.S., modifying the definition of economically feasible to require that the estimated net revenues of a proposed Turnpike project will be sufficient to pay 100 percent of the annual debt service on the bonds associated with the project by the end of the 30th year of operation.

Legislative Approval (Section 40)

Current Situation
DOT has been encouraged to pursue innovative highway projects in accordance with s. 337.025, F.S., which also provides that DOT's annual cap of $120 million in contracts for such innovative highway projects shall not apply to Turnpike Enterprise projects, and that Turnpike Enterprise projects shall not be counted toward the annual cap. Before the Turnpike Enterprise may construct a new Turnpike project, however, there are many requirements to be met, as set out in s. 338.223, F.S. One requirement is that the design phase of a proposed Turnpike project must be at least 60 percent completed before DOT may request approval from the Legislature to construct the project. At the 60 percent plan phase, most of the project's design is essentially completed, and the potential advantages and opportunities provided with innovative highway projects, such as design-build projects, are substantially diminished.

Proposed Changes
The bill amends s. 338.223(1)(a), F.S., allowing the Florida Turnpike Enterprise to seek Legislative approval for a proposed Turnpike project at 30 percent design completion, rather than the current 60 percent design completion, and thereby allow the Turnpike Enterprise to more fully participate in innovative highway projects as clearly intended by s. 337.025, F.S., and to more fully leverage the potential time and cost saving opportunities associated with design-build projects and other innovative highway project practices. This could accelerate project delivery times by allowing design-build contractors opportunities to more fully participate in project designs.

Dormant Toll Accounts (Section 44)

Current Situation
Section 338.231, F.S., authorizes DOT to establish tolls on the turnpike system to cover the debt service and the cost of operating and maintaining the turnpike system. However, dormant Sunpass toll accounts are not addressed in the law.

Proposed Changes
The bill creates s. 338.231(3)(c), F.S., requiring DOT, notwithstanding any other law to the contrary, to assess an administrative fee of $.25 per month as an account maintenance charge against any pre-paid toll account (i.e. Sunpass) that has remained inactive from 24 to 48 months. The administrative fee is to be charged in each month of inactivity, from the 25th month, up to and including the 48th month, as long as a zero or negative balance has not been reached. When the administrative fee results in a zero or negative balance, DOT is required to close the toll account. If after the 48th month, a positive balance remains in the account, the balance is presumed to be unclaimed and its disposition is handled by the

Department of Financial Services in accordance with the applicable statutory provisions regarding the disposition of unclaimed property[53] and the prepaid toll account is closed.

Work Program Amendments (Section 47)

Current Situation
DOT is responsible for the development of a Five-Year Work Program [54] which lists transportation projects scheduled for implementation during the ensuing five-year period. Dynamic circumstances may result in changes to projects which require review by the Governor and the Legislature. Actions transferring fixed capital outlay appropriations for projects within the same appropriations category must be submitted to the Governor's Office for approval and the Legislature for review based on the following thresholds:

1. any amendment that deletes any project or project phase;
2. any amendment that adds a project estimated to cost over $150,000;
3. any amendment that advances or defers to another fiscal year a right of way phase, a construction phase, or a public transportation project phase estimated to cost over $500,000, except an amendment advancing or deferring a phase for a period of 90 days or less; and,
4. any amendment that advances or defers to another fiscal year any preliminary engineering phase or design phase estimated to cost over $150,000, except an amendment advancing or deferring a phase for a period of 90 days or less.

The threshold amounts for the latter three categories were established in the 1980s and have not been adjusted for inflation which may more accurately reflect today's project costs. Additionally, project phase advances and deferrals within one year of the original date are typically the result of a schedule change of months rather than years.

Proposed Changes
The bill amends s. 339.135(7)(e), F.S., revising the thresholds for submittal to the Governor and Legislature of Work Program amendments as follows:

1. raises the threshold from $0 to $150,000 for amendments deleting a project or project phase;
2. raises the threshold from $150,000 to $500,000 for amendments adding a project;
3. raises the threshold from $500,000 to $1,500,000 for amendments advancing or deferring to another fiscal year a right of way phase, a construction phase, or a public transportation project phase and exempts an amendment advancing a phase by one year to the current fiscal year; and,
4. raises the threshold from $150,000 to $500,000 for amendments advancing or deferring to another fiscal year any preliminary engineering phase or design phase and exempts amendments advancing a phase by one year to the current fiscal year.

The bill provides that beginning July 1, 2013, DOT is required to index the budget amendment threshold amounts to the Consumer Price Index or similar inflation indicator. The threshold adjustment may be made no more frequently than once a year and are subject to notice and review procedures in s. 216.177, F.S.[55]

Transportation Planning (Section 48)

Current Situation
Federal law requires each state to adhere to certain requirements in its transportation planning process.[56] Occasionally, these requirements change and the state revises its statutes to conform to federal provisions. The federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

[53] Chapter 717, F.S.
[54] Section 339.135, F.S.
[55] Section 216.177, F.S., relates to notice and review associated with the appropriations act.
[56] 23 U.S.C. s. 135

contained 23 planning factors to considered in the statewide planning process and 16 planning factors to be included in the metropolitan planning process. In 1999, Congress passed the Transportation Equity Act for the 21st Century (TEA-21) and consolidated the statewide and metropolitan planning factors into seven broad areas for consideration. The 1999 Florida Legislature amended the statutes to accommodate TEA-21. Section 339.155, F.S. currently reflects the seven broad factors to consider in the planning process.[57] These factors require plans to:

1. support the economic vitality of the United States, Florida, and the metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
2. increase the safety and security of the transportation system for motorized and nonmotorized users;
3. increase the accessibility and mobility options available to people and for freight;
4. protect and enhance the environment, promote energy conservation, and improve quality of life;
5. enhance the integration and connectivity of the transportation system, across and between modes throughout Florida, for people and freight;
6. promote efficient system management and operation; and
7. emphasize the preservation of the existing transportation system.[58]

The 2005 federal 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. The SAFETEA-LU legislation has expired, though Congress has extended the law until March 2012.

Federal law requiring each state to have a "Long-Range Transportation Plan" was modified in SAFETEA-LU to be a "Long-Range Statewide Transportation Plan." Federal law has not required a short-range component of the long-range plan or an annual performance report, which is required under state law. In the past, DOT has issued a separate Short-Range Component of its Florida Transportation Plan[59] and an annual performance report. DOT has recently combined these reports into a single report. The Short Range Component is not an annual update of the Florida Transportation Plan, but rather documents DOT's implementation of the Florida Transportation Plan. DOT and the Florida Transportation Commission[60] conduct extensive performance measurements of Florida's transportation system. DOT also submits an annual Long Range Program Plan to the Governor and Legislature that reflects state goals, agency program objectives, and service outcomes.[61]

Proposed Changes

The bill amends s. 339.155, F.S., providing a citation to the federal law containing current planning factors. The planning factors referenced in federal law include:

1. supporting the economic vitality of the United States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
2. increasing the safety of the transportation system for motorized and nonmotorized users;
3. increasing the security of the transportation system for motorized and nonmotorized users;
4. increasing the accessibility and mobility of people and freight;
5. protecting and enhancing the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and state and local planned growth and economic development patterns;
6. enhancing the integration and connectivity of the transportation system, across and between modes throughout the state, for people and freight;
7. promoting efficient system management and operation; and

[57] Chapter 99-385, L.O.F.
[58] Section 339.155(2), F.S.
[59] A copy of DOT's 2060 Florida Transportation Plan, which was adopted in December 2010, is available at http://www.2060ftp.org/images/uploads/home/2060%20FTP%20Final%2001272011F.pdf (Last viewed December 1, 2011).
[60] The Florida Transportation Commission provides leadership in meeting Florida's transportation needs through policy guidance on issues of statewide importance and by maintaining oversight and public accountability for the Department of Transportation and other statutorily specified transportation authorities.
[61] Section 216.013, F.S.

8. emphasizing the preservation of the existing transportation system.[62]

The bill also removes the short-range component of the long-range plan and the annual performance report requirement.

Metropolitan Planning Organizations (Section 49)

Current Situation
Federal laws and regulations allow the State and units of local government to determine the composition of Metropolitan Planning Organizations (MPOs) "in accordance with procedures established by applicable State or local law." Section 339.175(4) F.S., establishes the process for determining membership on Florida MPOs. This section requires representation by DOT on each MPO. Such representation is limited to non-voting membership. DOT membership on the MPO subjects the representative's interaction with other MPO members to certain public meeting requirements.

Proposed Changes
The bill amends s. 339.175(2), F.S., providing to the extent possible, only one MPO is to be designated for each urbanized area or group of contiguous urbanized areas. The bill also amends s. 339.175(4)(a), F.S., to make representatives of DOT non-voting advisers to MPOs, rather than non-voting members. Additionally, the bill amends s. 339.175(8)(b), F.S., to provide that where more than one MPO exists in an urbanized area, the MPOs are to coordinate in developing regionally significant project priorities.

Transportation Regional Incentive Program (Section 50)

Current Situation
Section 339.2819, F.S. creates the Transportation Regional Incentive Program (TRIP) within DOT to provide funds to improve regionally significant transportation facilities in regional transportation areas created pursuant to s. 339.155, F.S. The percentage of matching funds provided by the TRIP program is 50 percent of the project cost.

At a minimum, projects funded with TRIP funds shall

- Support the transportation facilities that serve national, statewide, or regional function and function as an integrated regional transportation system.
- Be identified in the capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of ch. 163, F.S.,[63] after July 1, 2005. Further, the project shall be in compliance with local government comprehensive plan policies relative to corridor management.
- Be consistent with the Strategic Intermodal System Plan.[64]
- Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project.

In allocating TRIP funds, priority is to be given to projects that:

- Provide connectivity to the Strategic Intermodal System.
- Support economic development and the movement of goods in rural areas of critical economic concern.[65]
- Are subject to a local ordinance that establishes corridor management techniques, including access management strategies, right-of-way acquisition and protection measures, appropriate land use strategies, zoning, and setback requirements for adjacent lands.
- Improve connectivity between military installations and the Strategic Highway Network or the Strategic Rail Corridor Network.

[62] 23 U.S.C. s. 135(d)(1).
[63] Part II of ch. 163, F.S., relates to growth policy, county and municipal planning; and land development regulation.
[64] The Strategic Intermodal System Plan is developed pursuant to s. 339.64, F.S.
[65] Rural areas of critical economic concern are designated under s. 288.0656(7), F.S.

Proposed Changes
The bill amends s. 339.2819(2), F.S., changing the percentage of matching funds to *up to* 50 percent of the project costs.

The bill amends s. 339.2819(4), F.S., to strengthen statutory language to highlight regionalism. It also provides that TRIP projects are to be included in DOT's work program.[66] The bill also prohibits DOT from funding projects under the TRIP program unless the project meets that program's requirements.

Strategic Intermodal Transportation Advisory Council (Section 53)

Current Situation
Chapter 339, F.S., creates the Statewide Intermodal Transportation Advisory Council (SITAC) to advise and make recommendations to the Legislature and DOT on the policies, planning, and funding of intermodal transportation projects. These responsibilities include:

- Advising DOT on the policies, planning, and implementation strategies related to intermodal transportation.
- Providing advice and recommendations to the Legislature on funding for projects to move goods and people in the most efficient manner for the state.

The members of the council are appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, and represent various interests involved in the Strategic Intermodal System. The council is no longer active. It held its last meeting in December 2004, and assisted in developing the initial 2005 SIS Strategic Plan. Subsequent to January 2005, no further appointments to the SITAC have occurred; however, the members' organizations have been involved in planning and updating the SIS plan.

Proposed Changes
The bill repeals the SITAC contained in s. 339.64(5), F.S.

Rail Liability (Sections 55 and 56)

Current Situation
In 2007, the department entered into an agreement with CSX to purchase 61.5 miles of track or right-of-way in Central Florida. This agreement was contingent on the passage of legislation containing certain indemnification provisions. The department plans to use existing freight tracks to provide commuter rail service, while CSX continues to operate freight trains in the corridor. The track goes from Deland in Volusia County to Poinciana in Osceola County. The project, known as SunRail, is expected to begin passenger service by 2014.[67]

In 2009, the Legislature passed HB1B,[68] which created a framework for passenger rail in Florida. One of the issues in the bill addressed the issue of liability as it related to CSX trains on the SunRail corridor. The purchase of the SunRail Corridor was completed in November 2011, and groundbreaking began in January 2012.

The National Railroad Passenger Corporation operates four Amtrak trains in Florida,[69] and currently operates some of these trains on the SunRail corridor. In December 2010, DOT and Amtrak entered into an agreement to resolve issues associated with DOT's acquisition of the SunRail corridor.

[66] DOT's work program is developed pursuant to s. 339.135, F.S.
[67] http://www.sunrail.com/ (Last viewed February 1, 2012).
[68] Ch 2009-271, L.O.F.
[69] The Sunset Limited Train's service is currently suspended east of New Orleans, Louisiana.

Regarding liability, the bill authorizes substantially the same contractural no-fault liability insurance that the 2009 legislation authorized between DOT and CSX. Similar liability apportionment arrangements have long been in place on virtually all rail lines where Amtrak operates.

Proposed Changes

The bill amends s. 341.301(7), F.S., revising the definition of "limited covered accident" to include a collision between trains, locomotives, rail cars, or rail equipment of DOT and National Railroad Passenger Corporation only, where the collision is caused by or arising from the willful misconduct of the National Railroad Passenger Corporation or its subsidiaries, agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of National Railroad Passenger Corporation or its subsidiaries, agents, licensees, officers, or directors.

The bill amends s. 341.302(17), F.S., relating to liability on rail corridors. Specifically, the bill:

- Provides that DOT may assume the obligation by contract to forever protect, defend, indemnify, and hold harmless National Railroad Passenger Corporation, or its successors, and National Railroad Passenger Corporation's officers, agents, and employees from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, and expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of National Railroad Passenger Corporation, its successors, or its officers, agents, and employees, or any other person or persons whomsoever, subject to certain parameters:

    - In the event of a limited covered accident, DOT's authority to protect, defend, and indemnify National Railroad Passenger Corporation for all liability, cost and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established and actually in force at the time of the limited coverage accident exists only if National Railroad Passenger Corporation agrees, with respect to the limited covered accident, to protect, defend and indemnify DOT for the amount of the deductible or self insurance retention fund actually in force at the time of the limited covered accident.

    - Provides that if only one train is involved in an incident, DOT may be solely responsible for any loss, injury or damage, if the train is a DOT train, or a train other than a DOT or freight rail operator's train. However, if in an instance when only a National Railroad Passenger Corporation's train is involved, including incidents with trespassers or at grade crossings, National Railroad Passenger Corporation is solely responsible for any loss, injury, or damage, except for commuter rail passengers, and rail corridor invitees.

    - Provides that if any train involved in an accident that is not a DOT train or a National Passenger Railroad Corporation train (other train), that train may be treated as if it is a DOT train when determining the allocation of liability between DOT and National Passenger Railroad Corporation, but only if DOT and National Railroad Passenger Corporation share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a DOT train and a National Railroad Passenger Corporation train, and the allocation between DOT and National Railroad Passenger Corporation, regardless of whether the other train is treated as a DOT train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train does not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

- Provides that when more than one train is involved in an incident:

    - If a DOT train (or other train treated as a DOT train), and National Railroad Passenger Corporation train are involved in an incident, DOT may be responsible for its property and all of its people, all commuter rail passengers, rail corridor invitees, but only if National Railroad Passenger Corporation is responsible for its property and all of its people, and DOT and National Passenger Railroad Corporation each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

    - If a DOT train, a National Railroad Passenger Corporation train and any other train are all involved in an incident, National Railroad Passenger Corporation and DOT would still pay 100 percent of the damages to its property and people on their respective trains and DOT pays 100 percent of its property, passengers and people in the corridor. DOT and the freight operator would be equally responsible for damages to people and property outside the corridor. Any payment by the non-DOT/non-freight operator to those injured or damaged outside of the rail corridor does not reduce the equal sharing responsibility of the freight operator to below one-third of the total third party loss.

- Provides that no contractual duty extends DOT's liability in scope and in effect beyond the contractual liability insurance and the self-insurance retention fund.

- Provides that National Railroad Passenger Corporation's compensation to DOT for use of the rail corridor includes a monetary contribution to the cost of liability coverage for the sole benefit of the National Railroad Passenger Corporation.

High Speed Rail Technical Change (Section 57)

Current Situation
Chapter 2009-271, L.O.F., repealed the Florida High Speed Rail Authority and related provisions and established the Florida Rail Enterprise within DOT. Section 341.840, F.S.,[70] still contains references to the repealed authority which should have been changed.

Proposed Changes
The bill replaces the references to the repealed "authority" still contained in s. 341.840, F.S., with the "enterprise" referring to the Florida Rail Enterprise within DOT.

South Florida Regional Transportation Authority (Sections 58, 59, and 60)

Current Situation
Part I of ch. 343, F.S. creates the South Florida Regional Transportation Authority (SFRTA), which currently operates Tri-Rail in Palm Beach, Broward, and Miami-Dade Counties; however its area may expand by mutual consent of the authority and the board of county commissioners representing the proposed expansion area.

Tri-Rail's board consists of a county commissioner from each of the three counties, a citizen member appointed by the county commission from each of the three counties, a DOT district secretary, or his or her designee, whose district is within the area served by SFRTA, and two residents and qualified electors of the area served who are appointed by the Governor. The statute also contains provisions related to the board if its area served ever expands.

[70] Section 341.840, F.S., relates to a tax exemption for high-speed rail.

In Fiscal Year 2010-2011, the state provided $35.8 million in funding to SFRTA, or 59.83 percent of its actual operating expenses.

Proposed Changes
The bill amends ss. 343.52 and 343.54, F.S., prohibiting the expansion of the area served by the SFRTA, and requiring approval by two-thirds of the authority board members before executing any agreement with a private entity for the operation or maintenance of any transit system or facility owned or operated by the authority.

The bill amends s. 343.53, F.S., expanding the board from nine voting members to twelve, and one ex officio non-voting member. Board representation on behalf of Miami-Dade, Broward, and Palm Beach counties remains unchanged, but the Governor shall now appoint six members to the board who are residents and qualified electors in the area served by the authority. The secretary of DOT's appointee shall now serve ex officio as a non-voting member.

The bill also removes some obsolete language regarding the terms of board members.

Financial Disclosure (Sections 61 and 62)

Current Situation
Article II, Section 8(a) of the Florida Constitution provides "[a]ll elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file a full and public disclosure of their financial interests." Section 112.3144, F.S., implements this constitutional requirement. The "Full and Public Disclosure of Financial Interests" is known as a Form 6.

Section 112.3145(2)(b), F.S., requires each local officer, specified state employee, or state officer to file a statement of financial interests, known as a Form 1. Included in the definition of "local officer" are appointed members of an expressway authority or transportation authority created by general law.[71]

In 2007, the Legislature amended s. 348.0003, F.S., the model expressway authority act, to require members of the authority to comply with the financial disclosure requirements in s. 8, Art. 2 of the State Constitution.[72] Since only the Miami-Dade Expressway Authority is created under the model expressway authority act, it was the only authority whose financial disclosure requirements changed.

In 2009, the Legislature amended s. 348.0003, F.S., to require members of each expressway authority, transportation authority, bridge authority, or toll authority, created pursuant to chapters 343, 348, or 349, F.S.,[73] or other legislative enactment to comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution, thus requiring members of these authorities to file a Form 6.[74] A Commission on Ethics Opinion determined that based on this statute, a Form 6 is required of both voting and non-voting members of a bridge authority created by a special act;[75] however, the opinion is in the process of being appealed in the First District Court of Appeal.[76]

[71] Section 112.3145(1)(a), F.S.
[72] Section 2007-196, F.S.
[73] Chapter 343, F.S. creates the 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., creates Miami-Dade Expressway Authority (MDX); Tampa-Hillsborough Expressway Authority (THEA); Orlando-Orange County Expressway Authority (OOCEA); Santa Rosa Bay Bridge Authority (SRBBA), and Osceola County Expressway Authority (OCEA): ch. 349, F.S. creates the Jacksonville Transportation Authority.
[74] Chapter 2009-85, L.O.F.
[75] Commission on Ethics Opinion 10-18; dated September 8, 2010. The special act creating this bridge authority requires voting members of the board of supervisors to file a Form 1.
[76] Case No. 1D 10-5383. Gasparalla Island Bride Authority vs. State of Florida Commission on Ethics.

Proposed Changes
The bill amends s. 348.0003(4)(c), F.S., revising the financial disclosure requirements for expressway, transportation, bridge, or toll authorities to remove a citation to ch. 349, F.S., which creates the Jacksonville Transportation Authority. This section is also amended to limit the statute's scope of application to entities created by general legislative enactment.

The bill amends s. 349.03(3), F.S., relating to the Jacksonville Transportation Authority, to provide that members of that authority are required to file a Form 1 with the Commission on Ethics.

Meetings of the Jacksonville Transportation Authority (Section 63)

Current Situation
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.[77]

Article I, section 24 of the Florida Constitution, ch. 119, F.S., and ch. 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 transacted or discussed, is subject to the open meetings law. Under ch. 119, F.S., any agency[78] 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 or 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.

The Administration Commission has codified rules regarding conducting meetings by communications media technology.[79] It permits agencies to conduct proceedings for the purpose of taking evidence, testimony or argument. Additionally, the rules are not to be construed to permit agencies to conduct proceedings subject to s. 286.011, F.S., by means of communications media technology without making provisions for member of the public who wish to attend. Notice is required to be provided in the same manner as for a meeting conducted without communications media technology.

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.

There have been multiple Attorney General Opinions regarding the use of media technology for meetings of local and regional entities. Based on those opinions participation by board members by

[77] Section 286.011, F.S.
[78] Section 119.011(2), F.S. defines "agency" 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."
[79] Chapter 28-109, F.A.C.

communications media technology in meetings were formal action is going to be taken is only in extraordinary circumstances and when a quorum of the board members is present.[80]

Proposed Changes
The bill creates s. 286.011(8), F.S., to allow the Jacksonville Transportation Authority to conduct public meetings and workshops by means of communications media technology as provided in s. 120.54(5), F.S. However, a resolution, rule, or formal action is not binding unless a quorum is physically present in person at the noticed meeting location, and only members physically present may vote on any item.

Stormwater Management (Section 64)

Current Situation

The Department of Environmental Protection (DEP) and the water management districts (WMDs) regulate and control the management and storage of surface waters pursuant to ch. 373, F.S., and chs. 62-302 and 62-40, F.A.C.

In general, the WMDs regulate construction of new facilities and alterations to existing systems. The water quality portion of the WMD permit requires the project be designed such that discharges meet water quality standards established in chs. 62-4.242, F.A.C. and 62-302, F.A.C.

Chapter 14-86, F.A.C., provides standards and procedures for drainage connections from the properties adjacent DOT's Rights-of-way.

Given the linear characteristics of state highways, on-site treatment is often difficult to achieve and results in significant expenditure of public funds for right-of-way acquisition. It is often necessary for DOT to exercise its eminent domain powers to purchase lands at exorbitant costs[81] to provide stormwater treatment within the project area.

Proposed Changes
The bill 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. It requires DEP or the governing board of the WMDs to balance the expenditure of public funds for stormwater treatment for state transportation projects and facilities with the benefits to the public in providing the most cost efficient and effective method of achieving the treatment objectives. The governing board of the WMDs or DEP is required to allow alternatives to onsite treatment, including but not limited to regional stormwater treatment systems. DEP is responsible for treating stormwater generated from state transportation projects, but is not responsible for the abatement of pollutants and flows entering its stormwater management system from offsite. However, it may do so if receiving and managing these pollutants is found to be cost-effective and prudent.

Further, the bill clarifies that in association with rights-of-way acquisition, DOT is responsible for providing stormwater treatment and attenuation for additional rights-of-way, but is not responsible for modifying adjacent landowners' stormwater permits.

The bill requires the governing boards of the WMDs and DEP to adopt rules for these stormwater activities; however, some of these entities may have existing rules which could be amended to implement these provisions.

[80] Florida Attorney General's Opinion 2003-41.
[81] DOT indicates that the costs could up to $1 million to $5 million per acre.

Environmental Mitigation (Section 65)

Current Situation

Background
Environmental mitigation as it relates to wetlands regulatory programs is defined as the creation, restoration, preservation or enhancement of wetlands to compensate for permitted wetland losses.[82] Mitigation banking is a concept designed to increase the success of environmental mitigation efforts and reduce costs to developers of individual mitigation projects.[83] Essentially, mitigation banks "are lands set aside to be used as mitigation for future projects that would adversely affect wetlands."[84]

Mitigation Requirements for Specified Transportation Projects
In 1996,[85] the Florida Legislature found that environmental mitigation efforts related to transportation projects proposed by DOT or transportation authorities could be more effectively achieved through regional, long-range mitigation planning rather than on a project-by-project basis. As such, s. 373.4137, F.S., requires DOT to fund mitigation efforts to offset the adverse effects of transportation projects on wetlands, wildlife and other aspects of the natural environment. Mitigation efforts are required to be carried out by a combination of WMDs and through the use of mitigation banks.

DOT's Role in the Mitigation Process
Section 373.4137, F.S., requires FDOT and transportation authorities to annually submit by July 1, a copy of projects in the adopted work program along with an environmental impact inventory of affected habitats (WMDs are responsible for ensuring compliance with federal requirements). This environmental impact inventory must include the following:

- a description of habitats impacted by transportation projects, including location, acreage and type;
- a statement of the water quality classification of impacted wetlands and other surface waters;
- identification of any other state or regional designations for the habitats; and
- a survey of threatened species, endangered species and species of special concern affected by the proposed project.

WMDs Role in the Mitigation Process
By March 1st of each year, each WMD must develop a mitigation plan in consultation with DEP, the United States Army Corps of Engineers, DOT, transportation authorities and various other federal, state and local government entities and submit the plan to its governing board for review and approval.[86] Among other things, WMDs are required to consider the purchase of credits from properly permitted public or private mitigation banks when developing the plan and shall include this information in the plan when the purchase would:

- offset the impact of the transportation project;
- provide equal benefits to the water resources than other mitigation options being considered; and
- provide the most cost-effective mitigation option.[87]

For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent

[82] John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida*, 19 Nova L. Rev. 77, 101 (1994).
[83] Id. at 103
[84] Eric T. Olsen, *Mitigation Banking Under the Florida Environmental Reorganization Act of 1993*, 68- AUG Fla. B.J. 68, 69 (1994).
[85] Section 1., Ch. 96-238, Laws of Florida
[86] Section 373.4137(4), F.S.
[87] Id.

practicable. Currently, factors such as time saved, liability for success of the mitigation, and long-term maintenance are not required.

Florida law also provides that specific projects may be excluded from the mitigation plan in certain instances if DOT, applicable transportation authorities and WMDs agree that the efficiency or timeliness of the planning or permitting process would be hampered were it to be included. Additionally, WMDs may unilaterally exclude a project from the mitigation plan if appropriate mitigation for the project is not identifiable.[88] At this time, Florida law does not allow DOT to unilaterally elect which plans to include or exclude from the mitigation plan.

Mitigation Credits
On a quarterly basis, FDOT and transportation authorities must transfer sufficient funds into escrow accounts to pay for mitigation of projected acreage impacts resulting from projects identified in the environmental impact inventory. By statute, the amount transferred must correspond to $75,000/acre of acreage projected to be impacted and must be spent down through the use of 'mitigation credits' throughout the fiscal year. Each July 1st, this amount is adjusted based on the percentage change in the average of the Consumer Price Index.[89] As defined by statute, a 'mitigation credit' is a unit of measure which represents the increase in ecological value resulting from mitigation efforts on a proposed project or projects.[90] One mitigation credit equals the ecological value gained by successfully creating one acre of wetland.[91] At the end of each quarter, the projected acreage impacts are compared to the actual acreage impacts and escrow balances are adjusted accordingly. Pursuant to the process, and with limited exceptions, WMDs may request a release of funds from the escrow accounts no sooner than 30 days prior to the date the funds are needed to pay for costs associated with the development or implementation of the mitigation efforts. Associated costs relate to, but are not limited to, the following:

- design costs;
- engineering costs;
- production costs; and
- staff support.

Mitigation Expenditures
From 2007 to 2011, DOT's mitigation expenditures have totaled $169,921,562. WMDs have received $116,456,080 (68.54%) of the total expenditures, while public and private mitigation banks have received $38,107,600 (22.43%) of the total expenditures.[92] During this time, DOT also carried out its own mitigation in cases where mitigation banks were unavailable or the WMD could not identify the appropriate amount of mitigation within the existing statutory scheme. These related expenditures amount to $15,357,882 (9.04%) of total expenditures.

Statewide Anticipated Mitigation Inventory for Fiscal Year 2012-2013
For Fiscal Year 2012-2013[93], the total anticipated mitigation inventory is $20,068,232. It is anticipated that WMDs will receive $10,374,303 of the total, while public and private mitigation banks are anticipated to receive $9,643,929 of the total. DOT also anticipates it will carry out its own mitigation totaling $50,000.

Proposed Changes
The bill amends s. 373.4137, F.S., relating to mitigation requirements for specified transportation projects.

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[88] Id.
[89] The current adjusted amount is $104,701 per acre.
[90] Section 373.403(20), F.S.
[91] Eric T. Olsen, *Mitigation Banking Under the Florida Environmental Reorganization Act of 1993*, 63- AUG. Fla. B.J. 68 (1994).
[92] According to DOT, "itemizing mitigation bank purchases by project is not readily available because of the ability to purchase advance mitigation credits and the ability to lump various projects within a single mitigation bank credit purchase."
[93] According to DOT, these figures are current as of November 17, 2011, and are subject to change based on FDOT work program changes and/or coordination with WMDS and the U.S. Army Corps of Engineers

Currently the statute provides legislative intent that mitigation to offset the adverse effect of transportation projects be funded by DOT and be carried out by the WMDs including the use of mitigation banks. The bill allows for the use of mitigation banks and any other mitigation options that satisfy state and federal requirements.

Current law makes participation in mitigation programs mandatory for DOT and expressway authorities created pursuant to chs. 348 and 349, F.S. The bill makes their participation optional. Instead of providing the WMDs with a copy of its adopted work program, the bill requires that the entities provide a list of projects in the adopted work program. The entities participating in the program must still provide an environmental impact inventory of habitats addressed in the rules adopted pursuant to part IV of ch. 373, F.S.,[94] and s. 404 of the Clean Water Act,[95] which may be impacted by its plan of construction for transportation projects in the next three years of the tentative work program.

Current law requires the environmental impact inventory to include a survey of threatened species, endangered species, and species of special concern affected by the proposed project. The bill changes the survey to a list of these species.

The bill provides that environmental mitigation funds that are identified for or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or part from the mitigation plan.

The bill provides that upon the disbursement of the final maintenance and monitoring payment, the obligation of DOT or the participating transportation authority is satisfied, the WMD has continued responsibility over the mitigation and that the escrow account may be closed.

Current law provides that specific projects may be excluded from the mitigation plan and are not subject to this law upon election by DOT, a transportation authority, or the appropriate WMD. The bill removes current requirements that a project may be excluded if its inclusion would hamper efficiency or timeliness of the mitigation planning and permitting process and the WMD may choose to exclude a project if it is unable to identify mitigation that would offset impacts of the project.

Tourist Oriented Signs (Section 66)

Current Situation

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 placement 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 HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. Expeditious removal of illegal signs is required by federal regulations. While the states are not required to directly control sign placement, 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.

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 Primary Highway, and other highways that are part

[94] Part IV of ch. 373, F.S., relates to management and storage of surface waters.
[95] 33 U.S.C. s. 1344

of the NHS. The FAP routes are highways designated by state DOTs to be of significant service value and importance.
- States have the discretion to remove legal nonconforming signs 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.
- 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.

Under the provisions of a 1972 federal-state agreement incorporating the HBA, DOT 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.

Proposed Changes
The bill authorizes DOT to seek Federal Highway Administration approval of a tourist-oriented commerce sign pilot program for small businesses[96] in rural areas of critical economic concern.[97] Upon Federal Highway Administration approval, DOT is required to submit the pilot program for legislative approval in the next regular legislative session.

Palm Beach County Pilot Project (Section 67)

Current Situation
In 2008, the Legislature created a pilot program allowing the Palm Beach County School District to recognize its business partners by publicly displaying its business partners' names on school district property in unincorporated areas. The pilot program expired on June 30, 2011.

Proposed Changes
The bill creates a new pilot program through June 30, 2014. It requires the district to make every effort to display its business partner's names in a manner that is consistent with the county standards for uniformity in size, color, and placement of signs. If these provisions are inconsistent with county ordinances or regulations relating to signs in the unincorporated areas of the county inconsistent with ch. 125, F.S., relating to county government or ch. 166, F.S., relating to municipalities[98] the provisions of this section prevail.

[96] The bill provides that small business is defined in s. 288.703, F.S., which defines "small business" as "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.

[97] The bill provides that rural areas of economic concern are defined by s. 388.0656(2)(d) and (e), F.S. Section 388.0656(2)(d), defines rural area of critical economic concern as "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." Section 388.0656(2)(e), F.S., defines rural community as:
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.

For purposes of this paragraph, population shall be determined in accordance with the most recent official estimate pursuant to s. 186.901."

[98] The original pilot program contained a reference to ch. 479, F.S., relating to outdoor advertising.

Mobility 2000 Bonds (Section 68)

Current Situation
In 2000, the legislature created s. 215.616(7), F.S.,[99] authorizing up to $325 million in bonds for the Mobility 2000 Initiative[100] with emphasis on the Florida Intrastate Highway System to advance projects in the most cost-effective manner to support emergency evacuation, improved access to urban areas, or the enhancement of trade and economic growth corridors of statewide and regional significance which promote Florida's economic growth.

According to DOT, no bonds were ever issued and the Mobility 2000 projects are nearly complete.

Proposed Changes
The bill repeals s. 215.616(7), F.S. relating to bonds for the Mobility 2000 Initiative.

Conforming Changes (Sections 40 through 43, 45, 69 through 82)

The bill amends ss. 288.063, 311.22, 316.3122, 318.12, 320.20, 335.02, 338.222, 338.223, 338.227, 338.2275, 338.228, 338.234 339.285, 341.053, 341.8225, 403.7211, 479.01, 479.07, 479.261, F.S., to make conforming changes. Additionally, other sections of the bill discussed in this analysis may include conforming changes.

Effective Date (Section 83)

The bill has an effective date of July 1, 2012

B. SECTION DIRECTORY:

Section 1 Amends s. 20.23, F.S., relating to the Department of Transportation.

Section 2 Amends s. 206.41, F.S., relating to state taxes imposed on motor fuel.

Section 3 Retitles ch. 311, F.S., as "Seaport Programs and Facilities."

Section 4 Amends s. 311.07, F.S., relating to Florida Seaport Transportation and Economic Development Funding.

Section 5 Amends s. 311.09, F.S., relating to the Florida Seaport Transportation and Economic Development Council.

Section 6 Creates s. 311.10, F.S., relating to the Strategic Port Investment Initiative.

Section 7 Creates s. 311.101, F.S., relating to the Intermodal Logistics Center Infrastructure Support Program.

Section 8 Creates s. 311.106, F.S., relating to seaport stormwater permitting and mitigation.

Section 9 Amends s. 311.14, F.S., relating to seaport planning.

Section 10 Amends s. 316.003, F.S., relating to definitions relating to state uniform traffic control.

Section 11 Amends s. 316.091, F.S., relating to limited access facilities; interstate highways; use restricted.

Section 12 Amends s. 316.1001, F.S., relating to the payment of tolls on toll facilities required; penalties.

[99] Chapter 2000-257, L.O.F.
[100] Mobility 2000 is created pursuant to s. 339.371, F.S.

Section 13 Amends s. 316.515, F.S., relating to maximum width, height, and length of vehicles.

Section 14 Amends s. 320.01, F.S., relating to definitions relating to motor vehicle licenses.

Section 15 Creates s. 332.08, F.S., relating to additional powers for municipalities with airports.

Section 16 Amends s. 334.03, F.S., relating to definitions for the Florida Transportation Code.

Section 17 Amends s. 334.044, F.S., relating to DOT; powers and duties.

Section 18 Amends s. 334.047, F.S., relating to a prohibition of DOT capping the number of miles of roads.

Section 19 Amends s. 335.074, F.S., relating to safety inspection of bridges.

Section 20 Amends s. 335.17, F.S., relating to state highway construction; means of noise abatement.

Section 21 Amends s. 336.021, F.S., relating to county transportation system; levy of ninth-cent fuel tax on motor fuel and diesel fuel.

Section 22 Amends s. 336.025, F.S., relating to county transportation system; levy of local option fuel tax on motor fuel and diesel fuel.

Section 23 Amends s. 337.11, F.S., relating to contracting authority of the department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records requirements of vehicle registration.

Section 24 Amends s. 337.111, F.S., relating to contracting for monuments and memorials to military veterans at rest areas.

Section 25 Amends s. 337.125, F.S., relating to socially and economically disadvantaged enterprises; notice requirements.

Section 26 Repeals s. 337.137, F.S., relating to subcontracting and economically disadvantaged business enterprises.

Section 27 Amends s. 337.139, F.S., relating to efforts to encourage awarding contracts to disadvantaged business enterprises.

Section 28 Amends s. 337.14, F.S., relating to application for qualification as a contractor; certificate of qualification; restrictions; request for hearing.

Section 29 Amends s. 337.403, F.S., relating to interference caused by relocation of utility expenses.

Section 30 Amends s. 337.404, F.S., relating to removal or relocation of utility facilities; notice and order; court review.

Section 31 Amends s. 337.408, F.S., relating to the regulation of bus stops, benches, transit shelters, street light poles, waste disposal receptacles, and modular news racks within rights-of-way.

Section 32 Retitiles ch. 338, F.S., relating to “Limited Access and Toll Facilities.”

Section 33 Repeals s. 338.001, F.S., relating to the Florida Intrastate Highway System Plan.

Section 34 Amends s. 338.01, F.S., relating to the authority to establish and regulate limited access facilities.

Section 35 Creates s. 338.151, F.S., relating to the authority of the department to establish tolls on the state highway system.

Section 36 Amends s. 338.155, F.S., relating to the payment of tolls on toll facilities required; exemptions.

Section 37 Amends s. 338.161, F.S., relating to the authority of the department or toll agencies to advertise or promote electronic toll collection; expanded use of toll collection system; studies authorized; authority of department to collect tolls, fares, and fees for private and public entities.

Section 38 Amends s. 338.166, F.S., relating to high-occupancy toll lanes or express lanes.

Section 39 Amends s. 338.221, F.S., relating to definitions for the Florida Turnpike Enterprise Law.

Section 40 Amends s. 338.223, F.S., relating to proposed turnpike projects.

Section 41 Amends s. 338.227, F.S., relating to turnpike revenue bonds.

Section 42 Amends s. 338.2275, F.S., relating to approved turnpike projects.

Section 43 Amends s. 338.228, F.S., relating to bonds not debts or pledges of credit of the state.

Section 44 Amends s. 338.231, F.S., relating to turnpike tolls, fixing, pledge of tolls and other revenues.

Section 45 Amends s. 338.234, F.S., granting concessions or selling along the turnpike system; immunity from taxation.

Section 46 Amends s. 339.0805, F.S., relating to funds to be expended with certified disadvantaged business enterprises; construction management development program; bond guarantee program.

Section 47 Amends s. 339.135, F.S., relating to the work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.

Section 48 Amends s. 339.155, F.S., relating to transportation planning.

Section 49 Amends s. 339.175, F.S., relating to metropolitan planning organizations.

Section 50 Amends s. 339.2819, F.S., relating to Transportation Regional Incentive Program.

Section 51 Amends s. 339.62, F.S., relating to system components.

Section 52 Amends s. 339.63, F.S., relating to system facilities designated; additions and deletions.

Section 53 Amends s. 339.64, F.S., relating to strategic intermodal system plan.

Section 54 Creates s. 339.65, F.S., relating to Strategic Intermodal System highway corridors.

Section 55 Amends s. 341.301, F.S., relating to definitions for the rail program.

Section 56 Amends s. 341.302, F.S., relating to the rail program; duties and responsibilities of the department.

Section 57 Amends s. 341.840, F.S., relating to a tax exemption.

Section 58 Amends s. 343.52, F.S., relating to the definition of area served.

Section 59 Amends s. 343.53, F.S., relating to the membership of the South Florida Regional Transportation Authority.

Section 60 Amends s. 343.54, F.S., relating to the expansion of the service area for the South Florida Regional Transportation Authority.

Section 61 Amends s. 348.0003, F.S., relating to expressway authority; formation; membership.

Section 62 Amends s. 349.03, F.S., relating to the Jacksonville Transportation Authority.

Section 63 Amends s. 349.04, F.S, relating to the powers and duties of the Jacksonville Transportation Authority.

Section 64 Amends s. 373.413, F.S., relating to permits for construction or alteration.

Section 65 Amends s, 373.4137, F.S., relating to mitigation requirements for specified transportation projects.

Section 66 Authorizes DOT to obtain approval of a pilot program.

Section 67 Establishes a pilot program in Palm Beach County.

Section 68 Amends s. 215.616, F.S., relating to state bonds for federal aid highway construction.

Section 69 Amends s. 288.063, F.S., relating to contracts for transportation projects.

Section 70 Amends s. 311.22, F.S., relating to additional authorization for funding certain dredging projects.

Section 71 Amends s. 316.2122, F.S., relating to the operation of a low-speed vehicle or mini truck on certain roadways.

Section 72 Amends s. 318.12, F.S., relating to purpose of laws relating to the disposition of traffic infractions.

Section 73 Amends s. 320.20, F.S., relating to disposition of license tax money.

Section 74 Amends s. 335.02, F.S., relating to authority to designate transportation facilities and rights-of-way and establish lanes; procedure for redesignation and relocation; application of local regulation.

Section 75 Amends s. 338.222, F.S., relating to the department being the sole government entity to acquire, construct, or operate turnpike projects; exception.

Section 76 Amends s. 339.285, F.S., relating to Enhanced Bridge Program for Sustainable Transportation.

Section 77 Amends s. 341.053, F.S., relating to Intermodal Development Program; administration; eligible projects; limitations.

Section 78 Amends s. 341.8225, F.S., relating to the department being the sole governmental entity to acquire, construct, or operate high-speed rail projects; exception.

Section 79 Amends s. 403.7211, F.S., relating to hazardous waste facilities managing hazardous wastes generated offsite; federal facilities managing hazardous waste.

Section 80 Amends s. 479.01, F.S., relating to definitions for outdoor advertising.

Section 81 Amends s. 479.07, F.S., relating to sign permits.

Section 82 Amends s. 479.261, F.S., relating to logo sign program.

Section 83 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 10 modifies the definition of “motor vehicle” as it relates to toll enforcement and may have an insignificant but positive impact. In issuing a uniform traffic citation for non-payment of a toll, a photographic image of the rear license plate of the vehicle is recorded. For certain motor vehicle combinations, the trailer or rear part of the combination may have been leased to the owner or operator of the truck cab, and thus there may be more than one registered owner associated with the motor vehicle combination. This clarification ensures the registered owner of the truck cab is responsible for payment of the traffic citation.

Section 12 restores the mailing of failure to pay toll notices to first class or certified mail instead of return receipt requested mail, which will result in a revenue increase of approximately $10.2 million per year since DOT will be able to collect additional fines. DOT currently collects 31% of fines since the remaining 69% are not enforceable in court without the violator’s signature on the return receipt. Current year estimates for fines by DOT are $14.8 million.

Section 13 modifies the definition of “straight-truck”, which is expected to have an indeterminate decrease in fines associated with vehicle length. Currently the truck and trailer are measured separately to determine if a fine should be assessed. The modification provides for the overall length of a truck-trailer combination.

Section 37 authorizes DOT may contract with other entities to collect their tolls for them. DOT advises this will result in an indeterminate amount of nontoll revenue through administrative charges to toll facilities that are not part of the turnpike system or otherwise owned by DOT.

Section 44 authorizes DOT to charge a 25 cent fee for toll accounts that are inactive over 24 months, which will result in additional revenue; however, the additional revenue is designed to cover DOT’s administrative costs to maintain these accounts.

2. Expenditures:

Section 11 authorizes DOT and expressway authorities to designate the use of shoulders of limited access facilities and interstate highways in certain situations. The bill requires appropriate traffic signs or dynamic lane control signs to be erected when the shoulder is open to designated vehicular traffic, but DOT can absorb these costs within existing resources.

Section 11 also establishes a two year bicycle pilot program, providing 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. DOT is expecting to incur minor expenses establishing this

pilot program and reporting to the Governor and Legislature, which it can absorb within existing resources.

Section 12 restores the mailing of failure to pay toll notices to first class or certified mail instead of return receipt requested mail. DOT estimates that no longer requiring a return receipt will result in an administrative cost savings of approximately $2 million per year.

Section 23, authorizing DOT to advertise bids on their Internet website, will result in a $91,600 reduction in expenditures due to the savings from advertising in newspapers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 10 revises the definition of motor vehicles as it pertains to toll collections in order to allow for toll violations to be sent to the person who owns the truck portion of a truck-trailer combination rather than the owner of the trailer. This section may reduce negative impacts on persons and companies who rent trailers by subjecting truck drivers to toll violation penalties rather than the trailer owners.

Section 13 provides that the overall length of a truck-trailer combination may not exceed 68 feet. Clarifying the definition of “straight truck” could result in a reduction of fines to the trucking industry, but this impact is indeterminate.

Section 17 qualifies the landscaping allocation on transportation construction projects to spending a minimum of 1.5 percent only on projects adding capacity or providing significant system enhancements. This may result in a reduction in revenues to landscaping businesses and a corresponding reduction in DOT expenditures, its impact is indeterminate.

Section 23 allows applicants who are bidding exclusively for projects worth less than $1 million to have their financial statements reviewed, rather than audited, by a CPA. This will save such applicants money and will cause an indeterminate positive fiscal impact for such applicants.

Section 34 allows DOT, or other governmental entity responsible for toll collection, to pursue collection of unpaid tolls by contracting with a private attorney or a collection agent. This section could result in an indeterminate positive fiscal impact for the attorneys or agencies hired to collect such tolls. This section could also have an indeterminate fiscal impact on persons who must pay attorney or collection fees along with their delinquent tolls.

Section 35 allows DOT to establish tolls on certain types of new construction of limited access facilities including the replacement of existing, non-tolled, bridges. This will have an indeterminate negative fiscal impact for those persons choosing to use such tolled installations.

D. FISCAL COMMENTS:

Section 2 expands s. 206.41, F.S., to add citrus harvesting equipment and citrus fruit loaders to the exemption from the state motor fuel tax. The expansion was reviewed by the Revenue Estimating Conference on January 13, 2012, and was determined to have no fiscal impact since citrus harvesting equipment and citrus fruit loaders already meet the criteria for “farm equipment” and are already exempted.

The funds associated with the seaport initiative in sections 4 (Florida Seaport Transportation and Economic Development Program), 6 (Strategic Port Investment Initiative), and 7 (Intermodal Logistics Center Infrastructure Support Program) have already been programmed by DOT in its five-year work program and have no additional fiscal impact.

Section 19 gives DOT the statutory authority to post load, weight, or speed limits or close local bridges following an inspection. Failure to provide this authority may result in FHWA sanctions against the state, which may include a loss of federal highway funds; however, the amount of any possible penalty is unknown.

While the bill does not increase the local option fuel tax, section 22 expands purposes to include the installation, operation, maintenance, and repair of street lighting, traffic signs, traffic engineering, signalization, and pavement markings.

Section 29 allows DOT to potentially reduce costs of transportation projects that require utility relocation based on the reduced length of time it will take for the relocation activities to begin and be completed. This could allow DOT to avoid potential fees associated with delays in construction timelines. Potential savings are indeterminate.

Section 31 will allow DOT to see a reduction in litigation costs associated with requiring municipalities and counties either to remove or make compliant noncompliant bus benches and transit shelters. However, the potential cost of this litigation is unknown at this time. Locals not complying would have revenues reduced or offset by DOT.

Section 35 authorizes DOT to establish tolls on certain types of new construction of limited access facilities including the replacement of existing, non-tolled, bridges. This will have an indeterminate positive fiscal impact should DOT utilize this authority.

Section 65 provides for flexibility in the use of mitigation options for DOT projects. This could have a positive impact on DOT granting it the ability to choose the most cost-effective mitigation method that it finds appropriate. This could also have a negative impact on the WMDs should DOT opt-out of their mitigation plan.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The FSTED Council will have to revise its rules for evaluating projects it funds to provide for a change in the criteria it must use in evaluating these projects. DOT may have to amend its Disadvantaged Business Enterprise rules to reflect changes in the bill. The bill also removes an obsolete rulemaking deadline related to DBE. The bill authorizes DOT to by rule allow the use of certain toll facilities by public transit vehicles or by vehicles participating in a funeral procession for an active duty service member without the payment of tolls.

The bill authorizes DOT to adopt rules to implement the Intermodal Logistics Center Infrastructure Support program.

The bill authorizes DOT to modify its rules regarding toll collection procedures and the imposition of an administrative charge to be applicable to toll facilities that are not part of the turnpike system or otherwise owned by DOT.

The bill authorizes the governing boards of the WMDs and DEP to adopt rules for certain stormwater activities; however, some of these entities may have existing rules which could be amended to reflect the implementation of these provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On lines 2612 through 2615 the new language does not fit with the previous language changes in that paragraph and should be amended back to current statutory language.

On line 3103 the word “property” should be changed to “passenger.”

Comments

The bill inserts references to the Code of Federal Regulations (CFRs) and updates other existing references to certain CFRs. Florida courts have stated that “the Legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body ‘that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.”[101] Future changes by the federal government, to the referred CFRs, would not be reflected in the laws of Florida unless or until the Florida Legislature chose to amend or re-enact statutes with such references.

[101] *Freimuth v. State*, 272 So. 2d 473 (Fla. 1972).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Transportation & Highway Safety adopted a strike-all amendment with two amendments. The amendment as amended:

- Permits DOT district secretaries and executive directors to have engineering licenses from another state.
- Revises the definition of "intermodal logistics center" to include an inland port.
- Addresses stormwater mitigation related to seaports.
- Authorizes the use of the shoulder of limited access facilities for vehicular traffic under certain circumstances.
- Allows the sale or lease of an airport participating in the FAA's Airport Privatization Pilot Program.
- Revised the notification date to DOR for changes in the local option fuel taxes to conform with changes to the implementation date.
- Allows the hiring of a private attorney or a collection agency to pursue the collection of unpaid tolls.
- Authorizes DOT to collect tolls for other entities.
- Provides that to the extent possible there should be only one MPO in an urbanized area and revises language regarding regional coordination.
- Provides an intermodal logistics center will become part of the Strategic Intermodal System if certain criteria are met.
- Addresses liability issues related to the National Railroad Passenger Corporation operating trains on state-owned rail corridors.
- Removes language changing the board of the South Florida Regional Transportation Authority.
- Creates a pilot program regarding signs at schools in unincorporated areas of Palm Beach County.
- Other technical and conforming changes.

On February 14, 2012, the Transportation & Economic Development adopted four amendments. The amendments:

- Removes the codification of the Department of Transportation (DOT) training programs.
- Removes the exemption for the Office of Toll Operations from consolidation into the Agency for Enterprise Information Technology.
- Revises the definition for area served and prohibits the expansion of the area served by the South Florida Regional Transportation Authority.
- Revises the membership of the South Florida Regional Transportation Authority from nine voting members to twelve, and one ex officio non-voting member.
- Requires approval by two-thirds of the authority board members before executing any agreement with a private entity for the operation or maintenance of any transit system or facility owned or operated by the authority
- Requires that no less than 1.5 percent of the amount contracted for construction projects that add capacity or provide significant enhancements to the existing system shall be allocated by DOT for landscaping.

The analysis is drawn to the bill as amended.