

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

**BILL #:** SB 1998

**FINAL HOUSE FLOOR ACTION:**

**SPONSOR(S):** Budget Committee

85 Y's

29 N's

**COMPANION BILLS:** None

**GOVERNOR'S ACTION:** Approved

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**SUMMARY ANALYSIS**

SB 1998 passed the House on March 9, 2012. The bill conforms to the FY 2012-13 General Appropriations Act, and contains various provisions related to transportation, including technical and conforming changes throughout Florida Statutes. Specifically, the bill:

- Redirects a portion of title fees from the General Revenue Fund to the State Transportation Trust Fund, resulting in \$200 million of new revenue for transportation;
- Transfers actual receipts up to \$200 million of redirected title fees back to general revenue unallocated in FY 2012-13 only;
- Beginning in FY 2013-14, allocates these new revenues to transportation priorities, including:
  - \$10 M - Seaport Investment Program;
  - \$35 M - Turnpike Enterprise;
  - \$10 M - Transportation Disadvantaged Program;
  - \$10 M - Small County Outreach Program; and
  - \$135 M - Strategic Transportation Projects;
- Provides a process for summary proceedings within 30 days for a challenge to a consolidated environmental resource permit or associated variance or a sovereign submerged lands authorization issued by the Department of Environmental Protection in connection with the state's deepwater ports;
- Transfers the Transportation Economic Development "Road Fund" program from the Department of Economic Opportunity to the Department of Transportation (DOT);
- Provides a minimum of \$15 million per year from the State Transportation Trust Fund for the Florida Seaport Transportation and Economic Development (FSTED) grant program;
- Creates the Strategic Port Investment Initiative, which directs \$35 million annually towards projects which are selected jointly by DOT and the deepwater ports;
- Creates the Intermodal Logistics Center Infrastructure Support Program, which allocates \$5 million per year towards funding up to 50% of the eligible costs of local government or private projects that meet certain criteria;
- Amends several sections of law relating to highway safety and commercial driver licenses to bring the state law into compliance with federal law and regulations;
- Repeals the transfer of \$5 million annually from the Highway Safety Operating Trust Fund to the Transportation Disadvantaged Trust Fund;
- Repeals the Toll Facility Revolving Trust Fund and transfers those revenues and future revenues to the State Transportation Trust Fund;
- Provides financial protection to the state for its obligations for Wekiva Parkway construction;
- Mandates certain actions by DOT when they receive an inspection report which either recommends a limit on the use of a bridge, or recommends closing a bridge;
- Enhances DOT's authority to establish tolls on certain future limited access facilities in the State Highway System;
- Allows for bond issuance on high-occupancy toll lanes or express lanes, with certain restrictions on usage; and
- Allows private sector entities and off-system toll facilities to use DOT's toll collection and video billing systems in order to increase toll revenues or add convenience or other value for its customers.

The bill will have an indeterminate fiscal impact on state funds in FY 2012-13. However, SB 1998 will have a recurring negative impact of up to \$200 million on general revenue beginning in FY 2013-14, and a positive impact of like amount on the State Transportation Trust Fund.

The bill was approved by the Governor on April 20, 2012, ch. 2012-128, Laws of Florida. Sections 42 and 43 of the bill are effective upon becoming law. Sections 1-41 of the bill are effective July 1, 2012.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** s1998z2.TEDAS.DOCX

**DATE:** April 24, 2012

**PAGE: 1**

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Title Fees and Redirecting Revenues**

##### Current Situation

Section 319.32, F.S., provides for the disposition of fees and various service charges related to certificates of title for motor vehicles. Prior to 1991, the fees for both original and duplicate certificates of title were deposited in the General Revenue Fund in their entirety. Effective January 1, 1991, these fees were increased by \$21, of which this increase was deposited solely in the Department of Transportation's State Transportation Trust Fund; the general revenue distribution was not changed. Finally in 2009, title fees were again increased, this time by \$46, bringing the total fee to \$70 with the entire increase deposited in the General Revenue Fund and not changing the State Transportation Trust Fund revenues. This present-day distribution deposits \$49 in the General Revenue Fund and \$21 in the State Transportation Trust Fund.

##### Proposed Changes

The bill does not change the amount of title fees charged to a consumer, but rather redirects \$47 of the existing revenues being deposited in the General Revenue Fund to the State Transportation Trust Fund. Thus, the adjusted allocation of deposits for original and duplicate certificates of title fees provides \$2 to the General Revenue Fund and \$68 to the State Transportation Trust Fund. This shift will have a negative impact on general revenue of \$200 million.

The bill makes further provision for this increase of revenues available for transportation. In FY 2012-13, all \$200 million, or actual receipts up to \$200 million, will be transferred to the General Revenue Fund. This transfer amounts to a net-neutral impact on general revenue for FY 2012-13. Beginning in FY 2013-14, however, the increased revenues are allocated to support transportation infrastructure in the following ways:

- \$10 M - Seaport Investment Program;
- \$35 M - Turnpike Enterprise;
- \$10 M - Transportation Disadvantaged Program;
- \$10 M - Small County Outreach Program; and
- \$135 M - Strategic Transportation Projects.

#### **Economic Development Transportation Fund**

##### Current Situation

The Department of Economic Opportunity (DEO) assists the Governor in formulating policies and strategies designed to provide economic opportunities for all Floridians. DEO provides executive direction and staff support to develop policies and advocate for economic diversification and improvements in Florida's business climate and infrastructure. Florida has a number of economic development incentive programs used to recruit industry to Florida, or to persuade existing businesses to expand their operations in the state. The Economic Development Transportation Fund (Road Fund) is created in s. 288.063, F.S. This incentive is funded by a transfer from the State Transportation Trust Fund. The Road Fund is used to assist local governments in paying for highway or other transportation infrastructure improvements that will benefit a relocating or expanding company. The amount appropriated for this transfer varies from year to year, and in FY 2011-12, \$15 million was appropriated for this program, however, \$917,000 was vetoed by the Governor. Since 1995, the DEO or its predecessor organization has issued \$60 million in Road Fund projects.

## Proposed Changes

The bill repeals s. 288.063, F.S., which authorizes the Economic Development Transportation Fund (Road Fund) in the Department of Economic Opportunity and makes further conforming changes throughout statute. The bill also creates s. 339.2821, F.S., authorizing the Economic Development Transportation Road Fund in DOT. Simply, the purpose of the Road Fund is not changing, only the department which oversees the program. The General Appropriations Act provides \$30 million for this program in DOT.

## Ports

### Current Situation

Florida has 14 public seaports<sup>1</sup>. Recent economic analyses and planning documents<sup>2</sup> prepared for the Florida Ports Council indicated that:

- 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 Return on Investment 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 retitles ch. 311, F.S., currently "Florida Seaport Transportation and Economic Development" as "Seaport Programs and Facilities."

### *FSTED Funding*

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.<sup>3</sup>

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<sup>1</sup> 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 s. 403.021(9)(b), F.S. Interactive locator map is available at: [http://flaports.org/Sub\\_Content2.aspx?id=3](http://flaports.org/Sub_Content2.aspx?id=3). (Last viewed November 2, 2011)

<sup>2</sup> 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](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](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).

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,<sup>4</sup> 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.<sup>5</sup>

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.

#### *FSTED Council*

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<sup>6</sup> 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,<sup>7</sup> 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 requiring DOT in evaluating a project, 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*

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.

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<sup>3</sup> 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.

<sup>4</sup> The FSTED Council is administered by the Florida Ports Council.

<sup>5</sup> Section 339.135(4), F.S.

<sup>6</sup> The Department of Community Affairs was repealed in 2011.

<sup>7</sup> Section 339.135, F.S.

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*

The bill creates the Intermodal Logistics Center Infrastructure Support Program within DOT to provide funds to local governments and seaports<sup>8</sup> 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" to mean a facility or group of facilities, including but not limited to, an "inland port," 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 conveyance or shipping through one or more seaports.

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 investment or commitments made by the owner or developer 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.

#### *Placement of an Intermodal Logistics Center on the Strategic Intermodal System*

Section 339.63(4), F.S., provides that after the initial designation of the SIS, DOT is required to work with impacted entities to add or delete facilities from the SIS based on criteria adopted by DOT.<sup>9</sup>

The bill creates s. 339.63(5), F.S., to require the Secretary of Transportation to designate a planned facility as part of the SIS upon the request of the facility if it meets the criteria and thresholds of a planned facility to be added to the SIS, meets the definition of "intermodal logistics center," and had

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<sup>8</sup> For purposes of this section, seaports are defined in s. 311.09, F.S.

<sup>9</sup> 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).

been designated in a local comprehensive plan or local government development order as an intermodal logistics center or equivalent planning term.

A facility designated as part of the SIS that is within the jurisdiction of a local government that maintains a transportation concurrency system shall receive a waiver of transportation concurrency requirements applicable to SIS facilities in order to accommodate any development at the facility which occurs pursuant to a building permit issued on or before December 31, 2017, but only if such a facility is located:

- within an area designated as a Rural Area of Critical Economic Concern;<sup>10</sup>
- within a rural enterprise zone;<sup>11</sup> or
- within 15 miles of the boundary of a Rural Area of Critical Economic Concern or a rural enterprise zone.

### **Federal Funding Issues Related to Commercial Drivers**

The Federal Motor Carrier Safety Administration (“FMCSA”) requires states to comply with federal commercial motor vehicle and licensing regulations. The FMCSA has requested minor modifications to current Florida law regarding commercial motor vehicle issues.

#### *Noncriminal Traffic Infractions; Exception; Procedures*

##### Current Situation

Section 318.14(9), F.S., provides that a person who does not hold a commercial driver’s license and who is cited for a traffic infraction may, in lieu of a court appearance, elect to attend a basic driver improvement course approved by the Florida Department of Highway Safety and Motor Vehicles (“DHSMV”). In such cases, adjudication must be withheld and points may not be assessed. However, a person may not elect to attend such course if he or she has attended the course within the preceding 12 months. In addition, a person may make no more than five elections in a lifetime.

Section 318.14(10), F.S., provides that any person who does not hold a commercial driver’s license and who is cited for an infraction involving an invalid driver’s license, registration or proof of insurance may, in lieu of payment of the fine or court appearance, elect to enter a plea of *nolo contendere* and provide proof of compliance to the clerk of court, designated official or authorized operator of a traffic violations bureau. In such cases, adjudication shall be withheld. A person may not make this election if he or she has made a similar election in the preceding 12 months and no person may make more than three elections in a lifetime.

##### Proposed Changes

The bill amends s. 318.14, F.S., to comply with a federal regulation that denies the elections described above to persons cited for traffic violations who either (i) hold a commercial driver’s license (regardless of the vehicle being driven), or (ii) hold a regular operator’s license but are cited while driving a vehicle that requires a commercial driver’s license. In other words, the bill provides that eligibility for the basic driver improvement course and the withhold-of-adjudication election is restricted to drivers who have regular motor vehicle driver’s licenses and who were not driving a commercial motor vehicle when cited.

#### *Instruction Permits and Temporary Licenses*

##### Current Situation

Florida law, with certain specified exceptions, requires all persons to be licensed by the state before operating a motor vehicle within the state. This requirement includes drivers of commercial vehicles.

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<sup>10</sup> Section 288.0656(7), F.S.

<sup>11</sup> Section 290.004(5), F.S., defines “rural enterprise zone” as “an enterprise zone that is nominated by a county having a population of 75,000 or fewer, or a county having a population of 100,000 or fewer which is contiguous to a county having a population of 75,000 or fewer, or by a municipality in such a county, or by such a county and one or more municipalities. An enterprise zone designated in accordance with s. 290.0065(5)(b) is considered to be a rural enterprise zone.”

Florida law further provides that drivers of commercial vehicles must be state residents and must surrender all other driver's licenses (or submit an affidavit stating that he or she does not possess a driver's license) before being issued a state commercial driver's license. Section 322.07, F.S., provides that a person may apply for and receive a temporary commercial instruction permit if:

- the applicant possesses a valid driver's license issued in any state; and
- the applicant, while operating a commercial motor vehicle, is accompanied by a licensed driver who is 21 years of age or older, who is licensed to operate the class of vehicle being operated and who is actually occupying the closest seat to the right of the driver.

The permit holder must keep the permit in his or her immediate possession at all times while operating a commercial motor vehicle.

#### Proposed Changes

The bill amends s. 322.07(3), F.S., to require that the applicant hold a valid Florida driver's license before being issued a temporary commercial instruction permit.

#### *License Required – Exemptions for Farm Vehicles and Straight Trucks*

##### Current Situation

Section 322.53, F.S., requires every person driving a commercial vehicle to possess a commercial driver's license (CDL). The section also lists several exemptions from this requirement, including:

- drivers of authorized emergency vehicles;
- military personnel driving vehicles operated for military purposes;
- farmers transporting farm supplies or farm machinery within 150 miles of their farm, transporting agricultural products to or from the first place of storage or processing directly to or from market, within 150 miles of their farm;
- drivers of recreational vehicles;
- drivers of straight trucks that are exclusively transporting their own tangible personal property which is not for sale; and
- employees of a public transit system when moving the vehicle for maintenance or parking.

Notwithstanding these exemptions, all drivers of for-hire commercial motor vehicles are required to possess a valid CDL.

##### Proposed Changes

The bill amends s. 322.53(2), F.S., to clarify two of the exemptions to the requirement for drivers of commercial motor vehicles to possess a CDL. Section 322.53(2)(c), F.S., is amended to clarify that farmers are exempt from CDL requirements only when transporting agricultural products, farm machinery, or farm supplies to or from their farms as long as such transport is also within 150 miles of the farm. Additionally, the vehicle operated must not be used in the operations of a common or contract motor carrier.

Section 322.53(2)(e), F.S., is amended to clarify the exemption for drivers of straight trucks. The bill clarifies that in order for the exemption to apply the driver must be transporting, exclusively, the driver's own tangible personal property, which is not for sale.

#### *Possession of Medical Examiner's Certificate*

##### Current Situation

Section 322.59, F.S., provides that DHSMV shall not issue a CDL to any person who is required by the laws of this state or by federal law to possess a medical examiner's certificate, unless such person presents a valid certificate prior to licensure.

### Proposed Changes

The bill amends s. 322.59, F.S., to provide a federal statutory citation to the federal medical examiner's certificate requirement<sup>12</sup> and to require DHSMV to disqualify a driver holding a CDL who fails to comply with such requirement. The bill also provides that if otherwise qualified, the disqualified holder may obtain a Class E driver's license.

### *Disqualification from Operating a Commercial Motor Vehicle*

#### Current Situation

Section 322.61(3), F.S., provides that if any driver is convicted of committing one of the following violations while operating a commercial motor vehicle, or if a CDL-holder is convicted of committing one of these violations while operating a non-commercial motor vehicle, he or she will be disqualified for one year from operating a commercial motor vehicle:

- driving a motor vehicle under the influence;
- driving a commercial motor vehicle with a blood alcohol content (BAC) of .04 percent or higher;
- leaving the scene of a crash involving a commercial motor vehicle driven by the driver;
- using a motor vehicle in the commission of a felony;
- driving a commercial motor vehicle while in possession of a controlled substance;
- refusing to submit to a test to determine his or her alcohol concentration while driving a motor vehicle;
- driving a commercial motor vehicle while the driver's commercial driver's license is suspended, revoked, cancelled, or while the driver is disqualified from driving a commercial motor vehicle; or
- causing a fatality through the negligent operation of a commercial motor vehicle.

Section 322.61(5), F.S., specifies instances wherein drivers may be permanently disqualified from operating a commercial motor vehicle. These instances are the following:

- any person convicted of two violations specified above which were committed while operating a commercial motor vehicle, or any combination thereof, arising in separate incidents; or
- a CDL holder convicted of two violations specified above which were committed while operating a non-commercial motor vehicle, or any combination thereof, arising in separate incidents.

### Proposed Changes

The bill amends s. 322.61, F.S., to provide that any CDL-holder who is convicted of two violations specified in s. 322.61(3), F.S., which were committed while operating any motor vehicle arising in separate incidents, shall be permanently disqualified from operating a commercial motor vehicle. The proposed change, however, does not affect a CDL-holder that has only been convicted of one of the specified offenses listed in s. 322.61(3), F.S. In this instance, the CDL-holder would only be subject to the one year disqualification.

### *Commercial Motor Vehicles; Safety Regulations; Transporters and Shippers of Hazardous Materials; Enforcement*

#### Current Situation

All owners and drivers of commercial motor vehicles engaged in commerce (interstate and intrastate) are subject to federal regulation. Florida law incorporates this language into s. 316.302, F.S. Among the requirements is a prohibition on the operation of a commercial motor vehicle beyond a specified number of consecutive hours of operation, under certain instances. Specifically, s. 316.302(2)(c), F.S., prohibits a person from operating a commercial motor vehicle more than 70 hours in any period of seven consecutive days or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week. Thirty-four consecutive hours off duty shall constitute the end of any such period of seven or eight consecutive days. This prohibition applies to persons operating solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172. Section 316.302(2)(c), F.S., provides an exception to the prohibition for

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<sup>12</sup> 49 C.F.R. s. 383.71.



operator's of commercial motor vehicles that transport time-sensitive, unprocessed agricultural products and other specified types of food.

#### Proposed Changes

The bill amends s. 316.302, F.S., to update a date reference to federal law regulating interstate commercial drivers. The bill requires commercial drivers to meet the requirements of this federal law as they existed on October 1, 2011.

The bill amends s. 316.302(2)(c), F.S., to clarify that the provisions of the section do not apply to operators of farm labor vehicles operated during a state of emergency declared by the Governor or operated pursuant to an emergency declared under the authority of the Florida Department of Agriculture and Consumer Services and/or its Secretary.

#### *Classification – Commercial Motor Vehicle Weight*

##### Current Situation

Section 322.54, F.S., provides for the classification of vehicles and the driver's licenses required for their operation. Currently, any vehicle with a declared and actual weight of 26,001 pounds or more is classified as a commercial motor vehicle for CDL purposes. Motor vehicle weight classifications are typically based on the Gross Vehicle Weight Rating (GVWR) ascribed to each vehicle by the manufacturer. The GVWR is typically identified by the Vehicle Identification Number (VIN) plate or by a separate plate attached to the vehicle. There is currently no provision for classifying a vehicle in situations where a GVWR or VIN plate is not available.

##### Proposed Changes

The bill amends s. 322.54, F.S., to specify the required driver's license classification for drivers operating motor vehicles with a gross vehicle weight of 26,001 pounds or more.

### **Transportation Disadvantaged Trust Fund**

##### Current Situation

The Commission for the Transportation Disadvantaged (commission) is established with the purpose of developing the state coordinated transportation services program provided to the transportation disadvantaged and with the goal of providing cost-effective transportation to qualified community transportation coordinators or operators. The Transportation Disadvantaged Trust Fund (TDTF) is established under s. 427.0159, F.S. Funds deposited into the trust fund are appropriated by the Legislature to the commission and are used to carry out the responsibilities of the commission including its administrative expenses. Motor vehicle registration fees account for over \$21 million of the annual revenues distributed to the TDTF. These fees include a \$1.50 dedicated fee on initial and renewal registrations on certain private use vehicles, \$5.00 from each issuance of a temporary handicapped disabled parking permit, and a \$1.00 voluntary contribution on motor vehicle registrations.

Section 320.204, F.S., directs DHSMV to transfer \$5 million beginning on July 1, 2011, and annually thereafter, to the Transportation Disadvantaged Trust Fund in DOT. Pursuant to the provisions of s. 53 of ch. 2011-47, L.O.F., no funds were transferred in FY 2011-12.

##### Proposed Changes

The bill repeals s. 320.204, F.S., providing for a \$5 million transfer from the Highway Safety Operating Trust Fund in DHSMV to the Transportation Disadvantaged Trust Fund in DOT beginning July 1, 2012. Repealing the transfer eliminates the DHSMV obligation and will allow those funds to be used for expenditures of DHSMV.

## **Toll Facilities Revolving Trust Fund**

### **Current Situation**

The Toll Facilities Revolving Trust Fund is a loan program created in s. 338.251, F.S., to develop and enhance the financial feasibility of revenue-producing road projects undertaken by local governmental entities and the Turnpike Enterprise. Loans can be awarded for project planning and design activities, and advanced right-of-way purchase activities by filing an application with the DOT. The trust fund provides interest free loans as “seed money” to pay initial project development costs for toll facilities. Loan awards greater than \$1.5 million must be appropriated by the Legislature.

### **Proposed Changes**

The bill repeals s. 338.251, F.S., which created the Toll Facilities Revolving Trust Fund and authorized DOT to advance funds to expressway authorities, the turnpike enterprise, counties, and local government entities to undertake revenue-producing road projects. It repeals subsection (7) of s. 334.30, F.S., which authorizes DOT to lend funds from the Toll Facilities Revolving Trust Fund to private entities constructing projects on the State Highway System containing toll facilities. The bill makes further conforming changes associated with this repeal, and creates an undesignated section of law specifying the cash balance in the Toll Facilities Revolving Trust Fund and all future payments obligated to the trust fund, be deposited into the State Transportation Trust fund for the purposes specified in s. 339.08, F.S.

## **Debt Assessment Report**

### **Current Situation**

Section 338.2275, F.S., specifies legislative approval of the tentative work program constitutes the approval to issue bonds as required by s. 11(f), Art. VII of the State Constitution, for turnpike projects which are included in the work program, and authorizes DOT to use the most cost efficient combination of funds available in developing a financial plan to fund those projects. Any turnpike project which the department proposes to finance through the issuance of bonds must be economically feasible as required in s. 338.221, F.S. There is no formal practice of reporting all projects which incur debt, whether turnpike or other, which might utilize innovative financing.

### **Proposed Changes**

The bill creates s. 339.139, F.S., requiring DOT to establish a transportation debt assessment report. This section directs DOT to submit, in conjunction with the tentative work program, a debt assessment report which includes all debt and debt-like contractual obligations. The debt assessment report shall include current and planned commitments which are payable from the State Transportation Trust Fund, as follows:

- Debt service payments on the issuance of bonds secured by a lien on federal highway aid reimbursements or motor fuel and diesel fuel taxes;
- Funding for seaports pledged to the payment of debt service for bonds issued pursuant to s. 320.20, F.S.;
- Commitments to pay the costs of operations and maintenance and renewal and replacement costs of expressway and bridge systems under lease-purchase agreements which are enforceable by bondholders;
- Availability, milestone and final acceptance payments required by public-private partnerships agreements in accordance with s. 334.30, F.S., excluding the cost of operations and maintenance of the facility;
- Scheduled payments to a contractor for work that is occurring in the current fiscal year for which the payment is deferred to a later fiscal year in accordance with s. 334.30, F.S.
- Reimbursements to local governments for work performed on a project for which payment is deferred to a later fiscal year in accordance with s. 339.12, F.S.; and
- Loan repayments on state infrastructure bank loans issued in accordance with s. 339.55, F.S.

A separate report on debt obligations secured solely from pledged revenues is also required to be submitted in conjunction with the tentative work program.

Beginning in FY 2017-18, DOT is required to manage all levels of debt to ensure that no more than 20 percent of the total projected state and federal revenues, and local funds committed to department projects are committed to the obligations identified in the debt assessment report. Further, DOT is required to provide notification to the Executive Office of the Governor, the Speaker of the House of Representatives, the President of the Senate and the chairs of the legislative appropriations committees, when a critical project is identified that would exceed the debt limitations established in this section. A 14-day legislative review process is provided, and the Governor may approve the project provided that no objection is filed.

## **Public-Private Partnerships**

### **Current Situation**

The Department of Transportation is authorized in s. 334.30, F.S., to advance projects which are programmed in the adopted 5 year work program which increase transportation capacity and projects greater than \$500 million in the 10-year Strategic Intermodal Plan using funds provided by public-private partnerships or private entities. These partnerships allow DOT to advance a project utilizing private financing and to reimburse those funds in the fiscal year in which the project is programmed in the work program.

Legislative approval for DOT to receive and solicit proposals to enter into agreements with private entities for the building, operation, ownership or financing of transportation facilities, is evidenced by the project being in DOT's 5-year work program.

### **Proposed Changes**

The bill creates s. 339.2825, F.S., requiring DOT to notify the Executive Office of the Governor, the Speaker of the House of Representatives, the President of the Senate and the chairs of the legislative appropriations committees, prior to soliciting proposals, or when receiving unsolicited proposals, to advance a project or projects programmed in the adopted 5-year work program, or in the 10-year Strategic Intermodal Plan, using funds provided by a public-private partnership or private entity which are to be reimbursed by DOT in the fiscal year in which the project is programmed in the work program, pursuant to s. 334.30, F.S. As part of the notification, DOT is required to provide a summary of the proposed project or projects including:

- A description of any anticipated commitment by the department for the years outside of the adopted work program;
- A description of anticipated impacts on the department's overall debt load;
- Sufficient information to demonstrate that the project(s) will not cause DOT to exceed the overall debt limitation provided in s. 339.139.

The Governor may approve the advancement of the project or projects provided that no objection is filed within the 14-day legislative review period. Public-private partnership agreements in which DOT leases an existing toll facility pursuant to s. 334.30(2)(a), F.S., require approval of the Legislative Budget Commission.

## **Safety Inspection of Bridges**

### **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.<sup>13</sup> 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.<sup>14</sup> ... 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.”<sup>15</sup>

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 bridge in accordance with the inspection reports and post the limits.<sup>16</sup> 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

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<sup>13</sup> 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.

<sup>14</sup> NBIS is National Bridge Inspection Standards

<sup>15</sup> A copy of this memorandum is on file with the staff of the Transportation & Highway Safety Subcommittee.

<sup>16</sup> The limits must be posted in accordance with s. 316.555, F.S.

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 to 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. This shall not be construed as altering existing jurisdictional responsibilities for the operation and maintenance of bridges.

## **Wekiva Parkway Construction**

### **Current Situation**

Section 369.317, F.S., defines the "Wekiva Parkway" as any limited access highway or expressway constructed between State Road 429 and Interstate 4 specifically incorporating the corridor alignment recommended by Recommendation 2 of the Wekiva River Basin Area Task Force final report dated January 15, 2003, and the recommendations of the SR 429 Working Group that were adopted January 16, 2004. The parkway and related transportation facilities shall follow the design criteria contained in such recommendations, subject to reasonable environmental, economic and engineering considerations.<sup>17</sup>

### **Proposed Changes**

The bill codifies references to an existing Memorandum of Understanding and lease-purchase agreement between DOT and the Orlando-Orange County Expressway Authority (OOCEA). The memorandum, in part, describes both parties' obligations for the construction of the Wekiva Parkway. It sets up a payment schedule and provides bonding limitations for OOCEA to insure OOCEA makes its payment obligations to DOT. The bill authorizes transfer of the Beachline-East Expressway to the Florida Turnpike Enterprise and payment to DOT for the asset. The Beachline's current estimated value is \$60 million, and these funds will be used by DOT to construct the Wekiva Parkway. In this case, the \$60 million cash will result in \$60 million in commitment for construction. The Orlando-Orange County Expressway is directed to pay DOT \$10 million on July 1, 2012, and \$20 million every July 1 thereafter to pay out their long-term debt obligation to DOT. DOT advised that the OOCEA's long-term debt as of February 29, 2012, is \$236,775,488.

## **Innovative Financing**

### **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.

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<sup>17</sup> Section 369.317(2), F.S.

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.<sup>18</sup>

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 procession 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 and limiting it to facilities owned by DOT. 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

##### 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.<sup>19</sup> 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(5), F.S., providing 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.

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<sup>18</sup> Section 338.166, F.S.

<sup>19</sup> SunPass is DOT's electronic toll collection system.

## **Turnpike Projects**

### *Economic Feasibility*

#### 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 project sufficient to pay 50 percent of the annual debt service by the end of the 12<sup>th</sup> year of operation and sufficient to pay 100 percent of the annual debt service by the end of the 22<sup>nd</sup> year of operation.

#### 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 30<sup>th</sup> year of operation.

### *Legislative Approval*

#### 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.

#### 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 and to more fully leverage the potential time and cost saving opportunities associated with design-build projects and other innovative highway project practices.

## **Environmental Resource Permits**

#### Current Situation

There is currently a dredging project at the Port of Miami and the bill seeks to reduce the delay in the dredging project due to administrative challenges related to environmental permits.

#### Proposed Changes

The bill provides that notwithstanding ss. 120.569,<sup>20</sup> 120.57,<sup>21</sup> or 373.427, F.S.,<sup>22</sup> or any other provision of law to the contrary, a consolidated environmental permit or any associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with the state’s deepwater ports<sup>23</sup> shall be subject to a summary hearing.<sup>24</sup> However, the summary proceeding shall be conducted within 30 days after a party files a motion for a summary hearing, and the administrative law judge’s decision shall be in the form of a recommended order and does not constitute final agency action by DEP. DEP shall issue the final order within 45 working days after receiving the administrative law judge’s recommended order. The summary hearing provisions of this section apply to pending

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<sup>20</sup> Section 120.569, F.S., relates to decisions which affect substantial interest.

<sup>21</sup> Section 120.57, F.S., relates to additional procedures for particular cases.

<sup>22</sup> Section 373.427, F.S., relates to concurrent permit review.

<sup>23</sup> For purposes of this section, it is the ports listed in s. 403.021(9), F.S.

<sup>24</sup> Section 120.574, F.S.

administrative proceedings. However, the provisions of s. 120.574(1) (b) and (d), F.S.,<sup>25</sup> do not apply to pending administrative proceedings. This section takes effect upon this act becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments below.

#### 2. Expenditures:

See Fiscal Comments below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See Fiscal Comments below.

#### 2. Expenditures:

See Fiscal Comments below.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The redirection of revenue to the State Transportation Trust Fund may result in more construction projects being let by the department in future fiscal years, and would positively impact the number of jobs available in the construction and related industries.

### D. FISCAL COMMENTS:

The redirection of title fee revenues from general revenue to the State Transportation Trust Fund will not have a fiscal impact on state revenues or expenditures during the 2012-2013 fiscal year because of the subsequent transfer of these funds back to general revenue for the 2012-13 fiscal year only. However, it is expected to have a recurring negative impact of up to \$200 million on the General Revenue Fund and a positive fiscal impact of like amount on the State Transportation Trust Fund. Beginning in FY 2013-14, it is anticipated that the additional transportation revenues for seaports, the Turnpike, the Transportation Disadvantaged program, Small County Outreach Program and strategic transportation projects will translate in a commensurate increase in infrastructure spending.

The repeal of the \$5 million transfer to the Transportation Disadvantaged Trust Fund from the Highway Safety Operating Trust Fund will not change current practice, thus should not have a fiscal impact on revenues or expenditures in either HSMV or DOT. Similarly, the repeal of the Toll Facilities Revolving Trust Fund and transferring \$19 million of current revenues and future revenues to the STTF should have an insignificant impact on total transportation revenues and expenditures.

The funds associated with the seaport initiative (Florida Seaport Transportation and Economic Development Program, Strategic Port Investment Initiative, and Intermodal Logistics Center

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<sup>25</sup> Section 120.574, F.S., relate to whether or not a motion for summary hearing is filed after the initial order.



Infrastructure Support Program) have already been programmed by DOT in its five-year work program and have no additional fiscal impact.

DOT is granted 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.

The bill allows for the transfer of the Beachline-East Expressway to the Turnpike Enterprise whose estimated value is approximately \$60 million. The revenues from this asset, in turn, must be used for constructing the Wekiva Parkway.