

STORAGE NAME: h1147s1.jud

DATE: April 9, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 1147

RELATING TO: Transportation

SPONSOR(S): Committee on Transportation and Rep. K. Smith

COMPANION BILL(S): CS/CS/SB 0972(s), CS/HB 0311(c), HB 1689(c), CS/SB 0240(c), CS/CS/SB 0940(c), CS/SB 1314(c), SB 1920(c), and SB 2174(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 10 NAYS 1
 - (2) JUDICIARY
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The basis for this bill is the Department of Transportation's (DOT) 1999 legislative proposals. The bill addresses a number of transportation infrastructure financing issues and conforms state law to recent changes in federal transportation law, the Transportation Equity Act for the 21st Century (TEA-21). Many of the provisions in the bill are related to department operations and are intended to allow DOT to operate more efficiently. Major provisions in the bill would:

1. Enhance or implement transportation finance programs related to right-of-way and bridge bonds, federal grant anticipation revenue bonds, fixed guideway project bonds, and direct federal loans for railroad rehabilitation and improvement financing.
2. Conform DOT's and MPO's transportation planning process with new federal requirements, including placing more emphasis on freight and intermodal issues in transportation planning and project selection.
3. Clarify the state's role in seaport planning and financing; and strengthen statewide coordination and control of future investments in seaports and intermodal development projects.
4. Improve DOT contract administration process, including increasing the number of construction contract claims that can be resolved by the State Arbitration Board prior to litigation and allowing DOT to contract directly with utility company for right-of-way clearing work necessary for utility relocation.
5. Strengthen the program that allows DOT and the Department of Environmental Protection (DEP) to mitigate impacts of transportation projects to wetlands and other sensitive habitats.
6. Repeal the Florida High Speed Rail Transportation Act.

The bill results in administrative cost-savings and increased departmental efficiencies which are expected to have an overall positive fiscal impact on DOT operating costs. The bonding and other financing provisions in the bill have the potential for significant positive fiscal impacts on DOT's 5-year work program of transportation projects. For more details about these impacts, see the Fiscal Analysis and Economic Impact Statement under Part III.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Because of the comprehensive nature of the transportation related changes contained in this bill, the present situation relating to each issue is set out in the Section-by-Section portion of this research document.

B. EFFECT OF PROPOSED CHANGES:

Because of the comprehensive nature of the transportation related changes contained in this bill the effect of each proposed change is set out in the Section-by-Section portion of this research document.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Bond Programs: DOT may be required to disclose certain bond related financial information on an annual basis in accordance with the Securities and Exchange Commission (SEC) reporting guidelines. Similar disclosures are required with existing department bonding programs.

Fixed Guide way Bond Program: DOT would be required to negotiate agreements with local governments or transportation authorities and participate in the development of bond documents required to implement these provisions.

Inspection of Hazardous Materials on Florida Rail Lines The bill authorizes DOT to conduct hazardous materials inspections on Florida rail lines, including the loading, unloading and labeling of hazardous materials at shippers', receivers' and transfer points. This would impact the private sector as manufacturers, shippers and receivers of hazardous materials would periodically and randomly be subject to inspections.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 20.23, 206.46, 215.615, 215.616, 311.06, 311.061, 311.07, 311.09, 311.105, 311.11, 316.0815, 316.302, 316.3025, 316.545, 316.555, 320.0715, 320.20, 334.035, 334.0445, 334.046, 334.071, 334.351, 335.0415, 335.093, 337.025, 337.11, 337.16, 337.162, 337.18, 337.185, 337.19, 337.25, 337.251, 337.403, 337.408, 338.223, 338.229, 339.135, 339.155, 339.175, 341.041, 341.053, 341.302, 341.3201 - 341.386, 373.4137, 479.01, 479.07, 479.15, & 479.16, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. DOT Organizational Changes: The bill contains several minor changes to the department's organizational structure as contained in s. 20.23, F.S.

First, the bill clarifies that the Florida Transportation Commission's role in reviewing the status of the state transportation system and recommending improvements to the governor and legislature includes reviewing of all components of the system. These components include highway, transit, rail, seaport, intermodal development and aviation modes of transporting people and goods.

Second, the bill allows DOT to change the name of "The Office of Construction" within DOT to "The Office of Highway Operations." The Office of Construction was reorganized in 1998 to include The Office of Construction, The Office of Maintenance, Traffic Engineering, Contracts Administration and the Materials Testing Laboratory in Gainesville. All of these offices were combined to form "The Office of Highway Operations" within DOT.

Sections 1, 5 - 10, 17, & 42 - 43. State Seaport Program The Florida Seaport Transportation and Economic Development Program is provided by statute with a minimum of \$8 million funding per year for the program. The funds are used to fund approved port projects on a 50-50 matching basis with any of Florida's deepwater ports. In 1996 the Legislature provided an additional \$15 million of annual funding which may be bonded to fund projects in the Florida seaport program. In 1997 the Legislature provided that beginning in 2001 an additional \$10 million per year will be deposited into the State Transportation Trust Fund for the purpose of funding Florida's seaport program and for funding seaport intermodal access projects of statewide significance. The revenues may be bonded by the seaports and provisions relating to project eligibility for seaport program funding were modified to authorize the use of Florida Seaport Transportation and Economic Development funds for seaport intermodal access projects identified in the 5-year Florida Seaport Mission Plan.

Currently there is a need to establish more statewide coordination and control of investments in seaports and intermodal access roads. The growing importance of trade to Florida's economic prosperity makes the modernization and globalization of Florida's seaports and intermodal access a priority issue.

The bill amends various statutory provisions to clarify the state's role in seaport planning and financing. The bill strengthens statewide coordination and control of future investments in seaports and intermodal development by:

- (1) Establishing a seaport office in the DOT with duties and responsibilities similar to the DOT aviation office to provide greater oversight of the seaport and international trade issues.
- (2) Changing the title of the "Florida Seaport Transportation and Economic Development Council" to the "Florida Seaport Development Council".
- (3) Revising provisions relating to the Florida Seaport Transportation and Economic Development (FSTED) Council and the Florida Trade Data Center to direct DOT to develop trade data to prepare statewide seaport system plans and to determine economic benefits of proposed seaport projects.
- (4) More clearly defining project eligibility requirements to those projects that accommodates freight movement and storage and cruise ship capacity.
- (5) Strengthening DOT's ability to approve and provide oversight on projects in the seaport bonding program.
- (6) Changing representatives of three state agencies (DOT, the Department of Community Affairs, and the Office of Tourism, Trade, and Economic Development) that are now included on the FSTED Council as nonvoting members to full voting members.
- (7) Allowing the newly created DOT seaport office to provide staff for the Florida Seaport Council with provisions for the administrative cost to be reimbursed by the ports.
- (8) Directing DOT to develop a seaport system plan by January 2001 for the utilization of the additional \$10 million per year beginning in FY 2001/02 earmarked for the seaport program.
- (9) Strengthening the intermodal development program to direct priority to the Florida Intrastate Highway System and to projects recommended by the Freight Stakeholders Task Group.

Section 2. Right-of-Way Acquisition and Bridge Construction Bonds Section 206.46, F.S., currently provides for transfer of up to 6 percent of revenues deposited into the State Transportation Trust Fund (STTF) annually to pay debt service on Right-of-Way Acquisition and Bridge Construction Bonds. The transfer is also limited by a total amount of \$115 million. Section 337.276, F.S., limits the use for debt service payments to 90 percent of the transfer amount, or a maximum debt service of \$103.5 million. The bill amends section 206.46(2), F.S., to increase program funding to 7 percent of STTF revenues annually transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund with a

maximum dollar amount of \$135 million. The bill also provides that the total maximum transfer of \$135 million may be used for debt service payments.

These changes would support additional bonding capacity of \$475 million in 30-year bonds at a 5% interest rate. After debt service is subtracted, this provision would add \$370 million to the 5-year work program. The issuance of additional bonds will provide additional funding for the purchase of right-of-way and bridge repairs and replacements. Providing this funding through bonds allows the transportation improvements today thereby saving future increases in the cost of right-of-way land and bridge construction projects. The funding source for the increased debt service would be state transportation revenues composed primarily of state gas taxes and motor vehicle fees. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding.

Minimum Funding for Public Transportation Projects Section 206.46(3), F.S., provides that DOT must commit a fixed percentage of state revenues deposited in the STTF for public transportation projects. For FY 1999-00, the percentage is 14.3 percent, and for each fiscal year thereafter the percentage is 15 percent. The bill clarifies that DOT funding for commuter rail projects pursuant to Chapter 343, F.S., is included in the percentage funding allocation required to be committed to public transportation projects.

Section 3. Grant Anticipation Revenue Bonds Currently, Section 122 of Title 23, United States Code, allows states to borrow against future year apportionments of Federal funds for the payment of debt service on bonds issued to fund the costs of Federal-aid projects. Article VII of the Florida Constitution allows for the issuance of revenue bonds to finance fixed capital projects authorized by law. The bill creates section 215.615, F.S., to authorize a bond program for Federal Aid Highway Construction and to authorize a pledge of up to 10 percent of the state's future federal-aid allocations as payment for debt service. The bill would allow the state to issue bonds with a maximum term of 12 years backed by a pledge of future federal-aid funds.

The Department's Official Federal-Aid Forecast estimates Florida will receive an average of \$1.24 billion of federal aid annually for highway transportation purposes during federal fiscal years 1999 through 2004. Under the bill, up to 10 percent, or \$124 million of the annual federal aid may be pledged for debt service. Assuming a 4.25 percent interest rate and a 10 year term, this provision will allow over \$1 billion in bonds to be issued. After debt service is subtracted this bond issue would add \$840 million to the 5-year work program. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding.

Bond proceeds could be used to advance major transportation project phases and to add new transportation projects to the work program. Specific projects will be identified through the planning and programming process of ss. 339.135 & 339.155, F.S., and included in the tentative work program presented to the legislature each session.

Section 4. Fixed Guide way Transportation Financing/Bonding This proposal would authorize DOT or commuter rail authorities and regional transportation authorities to issue bonds to fund fixed guide way projects. A "fixed-guide way transportation system" means a public transit system for transporting people by a conveyance, or a series of interconnected conveyances, specifically designed for travel on a stationary rail or other guide way.

The bill creates s. 215.616, F.S., to allow DOT and local governmental entities having jurisdiction of a fixed guide way system, to enter into an interlocal agreement to provide for the financing by either party of total project costs by the issuance of revenue bonds. Each party would be contractually liable for an equal share of debt service. Projects must comply with DOT's major capital investment policy guidelines, and must be included in the work program. DOT's share of debt service would be payable from, and is limited to, a maximum of two percent of all state revenues deposited into the STTF. These debt service payments would be part of the 15 percent of transportation revenues committed to public transportation projects pursuant to s. 206.46, F.S. The local share would be payable from any available revenues other than revenues of the DOT.

This proposal will permit accelerated financing of fixed guide way projects and would permit the Department to assist in the financing of fixed guide way projects where the demand for financing exist today, rather than waiting many years to accumulate adequate financing. The public will receive the benefits of the fixed guide way systems sooner, and local governments will be better able to incorporate these public transportation systems into their growth management and local comprehensive planning

initiatives. Projects must first be submitted to and approved by an act of the Legislature before it can be funded under this bond program.

State transportation tax revenues are projected to total nearly \$1.7 billion in the current fiscal year. Two percent of this amount (about \$33 million in FY 1999-00) would be available annually for debt service under this proposal. If DOT elected to request the issuance of bonds to finance a local government authority's share of a given project's cost, the local government authority would be required by interlocal agreement (with the DOT) to repay any such disbursements made by the DOT. This could generate up to \$600 million from the sale of bonds, with the actual amount determined based on interest rates, bond covenant provisions, bond ratings and coverage requirements at the time of the sale. After debt service is subtracted and the local match is added, this provision would add \$550 million to the 5-year work program. Since the annual debt service is based on a percentage of STTF revenues (similar to the Department's "Amendment 4" bond program), bonding capacity will grow in the future as state transportation tax revenues increase. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding.

Section 11. Public Transit Buses/Right-of-Way: A number of transit systems are trying to use "pull-out bays", which are passenger loading areas along the sides of roadways, to get publicly owned transit buses out of the traffic flow when stopping to load passengers. Under current traffic laws, a bus that has pulled into a pull-out bay must wait for all vehicles to pass before returning to the traffic flow. This makes it difficult for the bus to reenter traffic and continue on its route. This bill creates s. 318.0815, F.S., to provide that the driver of another vehicle must yield the right of way to a publicly owned bus that has signaled and is reentering the traffic flow from a designated bus pull-out bay. A violation of this section would be a noncriminal traffic infraction classified as a moving violation. The bill specifically provides that the bus driver is not relieved from the duty to drive with due regard for the safety of all persons using the road.

Sections 12 - 13. Motor Carrier Compliance This proposal contains various technical and clarifying changes regarding the following statutory provisions relating to commercial motor vehicles and DOT enforcement of truck weight and safety regulations:

- Amend s. 316.302(1)(b), F.S., to update the reference to the current safety regulations contained in the Code of Federal Regulations. The Department of Transportation's Motor Carrier Compliance Office is charged with enforcement of laws relating to the operation of commercial motor vehicles within the state, including those safety regulations applicable to owners or drivers engaged in intrastate commerce. The proposed change to s. 316.302(1)(b), F.S., would authorize the Department to enforce the most current safety regulations applicable to these owners or drivers.
- Amend s. 316.302(2)(e), F.S., to remove a reference to drug testing provisions contained in the Code of Federal Regulations which no longer exists and to add a reference to a requirement regarding vehicle maintenance. The drug testing provisions contained in 49 C.F.R. part 391, subpart H are now obsolete and have been replaced by provisions contained in 49 C.F.R. part 382. Operators or drivers of commercial motor vehicles engaged in interstate or intrastate commerce are currently, and remain, subject to part 382.
- Amend s. 316.302(2)(e)&(f), F.S., to add a reference to a requirement regarding vehicle maintenance. The Department participates in a nation-wide program known as SafetyNet, which collects data regarding defects in commercial motor vehicles discovered during roadside inspections. The Department is experiencing difficulty in data entry functions because the SafetyNet program calls for entry of a reference to 49 C.F.R. s. 396.3(a)(1), which is not referenced in the Florida Statutes. These changes to s. 316.302(2)(e)&(f), F.S., impose no new or additional requirements on commercial motor vehicle owners or operators and simply resolves the Department's data entry problem.
- Amend s. 316.3025(3)(c), F.S., to correct a cite to the Code of Federal Regulations. The reference to 49 C.F.R. s. 395.5 should have been 49 C.F.R. s. 397.5, which addresses attendance and surveillance regulations regarding commercial motor vehicles transporting hazardous materials.

Section 14. Commercial Motor Vehicles/Registration Penalties: Section 316.545, F.S., provides for unlawful weight and loads for commercial motor vehicles; the penalty for driving a truck with an expired registration is based on the weight and configuration of the truck and can exceed \$2,000, plus the payment of the appropriate registration fee. The bill amends this section to provide a maximum penalty

charge of \$1,000 for operating a truck where the registration or license plate has not been expired for more than 90 days. This penalty is in addition to payment of the appropriate registration fee for the truck.

Section 15. Forestry and Agricultural Trucks/ Local Weight Restrictions: Currently s. 316.555, F.S., allows local governments to impose load, weight and speed restrictions on roads under their jurisdiction. Some local governments have imposed weight restrictions that prevent some commercial motor vehicles from operating on the local roads at normal operating weights, and this has created situations where forestry and agricultural products could not be accessed. The bill exempts commercial motor vehicles carrying forestry and agricultural products (including related site management equipment) from county imposed weight restrictions, when a county road provides the only access to the forestry or agricultural property. The bill also limits the exemption, so that it does not apply when a weight restriction has been imposed on a bridge or other structure for safety reasons.

Section 16. International Registration Plan/New Purchase & Repair Exemption: The Department of Highway Safety & Motor Vehicles registers Florida-based commercial motor vehicles under the International Registration Plan (IRP) Program. The IRP is an interstate cooperative agreement for the payment of vehicle registration fees. This enables carriers to register in a single state and put one license plate on each vehicle for the right to travel in all participating jurisdictions. The carrier's base jurisdiction collects annual fees for all other jurisdictions for which the carrier registers. Each IRP jurisdiction collects the necessary fees for all other IRP jurisdictions through which each carrier will travel and then distributes each state's share accordingly. Section 320.0715, F.S., sets out the IRP program. The bill amends this section to exempt vehicles from IRP requirements if it is a newly purchased vehicle being picked-up, or if the vehicle is brought into the state for repairs. The exemption only applies to an unloaded vehicle operated by its owner.

Section 18. Purpose of the Transportation Code: Section 334.035, F.S., provides that the purpose of the Transportation Code is to establish the responsibilities of the state, counties, and municipalities in the planning and development of the state's transportation systems, and to assure the development of an integrated, balanced statewide transportation system. The bill would add to this purpose by providing that the system should enhance economic development through promotion of international trade and interstate and intrastate commerce.

Section 19. Model Classification and Pay Project: The bill amends s. 334.0445(1), F.S., to extend the current authorization for DOT's Model Classification and Pay Project through June 30, 2002. The project was authorized as a three-year pilot by the 1994 Legislature and was extended by the 1997 Legislature through June 30, 1999. The Department of Management Services (DMS) was directed by the Legislature to facilitate the statewide revision of the career service system. According to DOT, a suitable replacement for DOT's system has not yet been developed, and it does not appear that DMS will be able to develop and implement a new system by June 30, 1999. If this legislation is not enacted, the Department would have to return to the State's Career Service and Classification Plan. This plan is more restrictive and complex to administer and would diminish DOT's current flexibility in work force utilization.

Section 20. Department of Transportation Program Objectives: Section 334.046, F.S., sets out statutory program objectives for DOT. Many of these program objectives are either obsolete or do not provide clear direction to DOT for implementing state transportation programs. The bill rewrites these provisions to incorporate DOT's agency mission statement:

.....To provide a safe, interconnected statewide transportation system for Florida's citizens and visitors that ensures the mobility of people and freight, while enhancing economic prosperity and sustaining the quality our environment.

In addition, the bill directs that goals to be included in the Florida Transportation Plan must at a minimum address safety, system preservation, providing an interconnected system to support the state's economy, and providing travel choices to support communities.

Section 21. Effect of Legislative Designation of Transportation Facilities: The bill creates s. 334.071, F.S., to clarify the effect of road and bridge designations by the legislature. The bill provides that designation of a transportation facility is for honorary or memorial purposes or to distinguish a facility, and unless specifically provided for, does not require any local government or private party to change street signs, mailing address, or emergency telephone number "911" system listing. The bill further provides that such designations only require the placement of markers by the department at the termini or

intersections specified in the act, and as authority for the department to place other markers as appropriate for the transportation facility being designated.

Section 22. Youth Work Experience Program/Clarification: Section 334.351, F.S., creates the Youth Work Experience Program in DOT. The purpose of the program is to give young people an opportunity to obtain public service work and training experience that conserves the resources and promotes participation in other community enhancement projects. DOT is authorized to contract with public agencies and nonprofit organizations for work related to the construction and maintenance of transportation-related facilities by youths enrolled in youth work experience programs. These contracts are not subject to competitive bidding requirements that control other department contracts. The total amount of such contracts entered into by the department in any fiscal year may not exceed the amount specifically appropriated for this program.

The bill amends this section to delete the restriction on the program to the amount specifically appropriated for the program. This will give DOT more flexibility in the amount of work that may be contracted under the youth program. According to the department, it intends to contract for increasing amounts under the program as youth work experience organizations continue to expand their capability to perform work.

Section 23. Road Jurisdiction/Operation & Maintenance Responsibility: Under s. 335.0415, F.S., jurisdictional responsibilities, and operations and maintenance (O&M) responsibilities of various governmental entities (DOT, counties, and cities) for public roads was frozen as the responsibilities that existed on July 1, 1995. Due to an effective date of June 11, 1995 for the act that created this section, some local governments have requested clarification regarding the 19 day gap and its effect on O&M responsibilities. The bill amends this section to change the date on which the freeze on transfers of these responsibilities became effective from July 1, 1995 to June 10, 1995.

Section 24. Scenic Highway Designation This proposal would authorize DOT, after consultation with other state agencies and local governments, to designate public roads as scenic highways. Current law authorizes DOT, after consultation with other state agencies and local governments, to designate scenic highways on the State Highway System. The bill amends section 335.093(1), F.S., to conform the Florida Scenic Highway Program to the National Scenic Byways Program by authorizing DOT to designate both state and local roads as scenic highways. The criteria for designation remains unchanged. Similarly, designation does not effect or limit customary uses in commercial or industrial areas adjacent to designated highways or on the ability of local governmental entities to control or limit uses in commercial or industrial areas within their jurisdiction.

Section 25. Innovative Highway Projects Pursuant to s. 337.025, F.S., DOT is authorized to establish a program for highway projects demonstrating innovative techniques of highway construction and finance which have the intended effect of controlling time and cost increases on construction projects. This may include innovative bidding and financing techniques; accelerated construction procedures; and techniques that can reduce project life cycle costs. Prior to using an innovative technique, DOT documents the need for using the technique and identifies anticipated public benefits. Current law provides that DOT may enter into no more than \$60 million in contracts annually for the purposes authorized by this section. The bill would increase this amount to \$120 million annually.

Section 26. Fast Response Contracting Section 337.11, F.S., provides the contracting authority for the DOT. If the DOT Secretary determines an emergency exists in regard to the restoration or repair of any state transportation facility and delays due to competitive bidding would be detrimental to the interests of the state, then the provisions requiring competitive bidding do not apply. Occasionally, circumstances arise which do not warrant declaration of an emergency or reduced safety as defined by Chapter 252, F.S., but which it would be in the public's interest to more timely proceed with a project than contracting using normal advertisement and competitive bidding as provided by s. 337.11, F.S.

This proposal amends s. 337.11(6)(c), F.S., to allow DOT to enter into contracts up to the threshold amount provided in s. 287.017, F.S., for Category Four (\$60,000 or less) for construction or maintenance of roadway and bridge elements without competitive bidding. One of the following reasons would be required for such a contract award:

- To ensure timely completion of projects or avoidance of undue delay for other projects;
- To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or
- To accomplish non-emergency work necessary to ensure avoidance of adverse conditions affecting the safe and efficient flow of traffic.

However, when the work exists within the limits of an existing contract, the department is required to make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract. This change would allow the Department flexibility to resolve local, small dollar issues without going through the competitive bid process.

Owner Controlled Insurance Plan Section 337.11(16), F.S., provides authority for an owner controlled insurance program (OCIP) on any DOT construction project. The OCIP provides insurance coverage for the DOT and for worker's compensation and employers liability and general liability and builders risk for contractors and subcontractors in conjunction with all work performed on DOT projects. The transportation contracting industry has raised concerns about the cost and administrative burden of using OCIPs on transportation projects. The bill repeals authority for the owner controlled insurance program.

Section 27. Contractor Intermediate Delinquency Section 337.16, F.S., provides for the disqualification of delinquent contractors. Currently, intermediate delinquency exists, 1) when a specified time or date for performing a special milestone stage of the work has expired, and the contractor has not completed the work for that milestone stage; or, 2) when the allowed contract time has not expired and the percentage of dollar value of completed work is 15 percent or more below the dollar value of work that should have been completed under the approved working schedule for the project. According to DOT, the current process encourages contractors to file claims against DOT to get time extensions sufficient to resolve the delinquency; and encourages contractors to file for hearings under Chapter 120, F.S., or to file claims in civil court. Attempts by DOT to suspend or revoke contractor certificates of qualification to bid based on intermediate delinquency involve substantial work effort to investigate and prosecute, and have been largely unsuccessful. The bill amends s. 337.16, F.S., to eliminate intermediate delinquency as grounds for suspension or revocation of a contractor's certificate of qualification to bid on DOT construction contracts. Under this proposal, delinquency in contractor performance would exist only when the allowed contract time has expired and the contract work is not complete.

Section 28. Appraiser Discipline Section 337.162, F.S., requires professional and occupational licensees working for DOT to report violations of state professional licensing laws or rules to the Department of Business and Professional Regulation (DBPR). Section 455.227(1)(l), F.S., requires professional and occupational licensees to report violations of state professional licensing laws or rules to DBPR. Failure to submit a complaint about violations may be grounds for disciplinary action. Chapter Law 98-250, Laws of Florida, amended s. 475.624(1), F.S., to exempt appraisers from the reporting requirement of s. 455.22(1)(l), F.S., and possible disciplinary action. However, those same appraisers remain potentially liable for failure to report violations as a result of s. 337.162, F.S., if they are employed by the DOT. The bill amends s. 337.162, F.S., to conform the section to s. 475.624, F.S., thus relieving DOT appraisers from the obligation of reporting violations of state professional licensing laws or rules to DBPR.

Section 29. Contracts/Surety Bonds & Liquidated Damages Schedule Section 337.18(1), F.S., requires a surety bond from successful bidders on DOT projects to ensure successful completion of a given

construction project in the event of a contractor default, and provides all bonds be payable to the Governor. In current practice, surety bonds are made payable to DOT. The bill amends s. 337.18(1), F.S., to require that surety bonds posted by successful bidders on DOT projects be made payable to DOT. Payment to DOT will ensure that the surety bond funds are deposited into the State Transportation Trust Fund and available for the intended purpose of completion of the relevant construction project.

Section 337.18(2), F.S., requires that DOT include in each contract a reasonable estimate of the damages that would be incurred by DOT as a result of the contractor's failure to timely complete the contract work. DOT must establish and incorporate into every contract a schedule of daily liquidated damage charges. DOT bases the schedule on the average construction, engineering, and inspection costs experienced by the department on contracts over the two preceding fiscal years. Further, the schedule is divided in s. 337.18 (2), F.S., into specified categories based on original contract amounts. However, in the absence of authority to adjust the contract amount categories, DOT's estimates of damages can be skewed due to under-representation or over-representation in a given contract amount category. This subsection is amended to remove the schedule of contract amount categories used to calculate liquidated damages and to allow the DOT to adjust the categories. This would allow the DOT the opportunity to ensure each category contains a valid number of samples and would result in a more realistic estimate of damages.

Section 30. Contracts/State Arbitration Board Section 337.185, F.S., provides for the State Arbitration Board to facilitate the prompt settlement of claims arising from construction contracts between DOT and its contractors. All claims in an amount up to \$100,000 per contract must go before the State Arbitration Board, and at the contractor's option, all claims up to \$250,000 per contract that cannot be resolved by negotiation may go before the board. Section 337.185, F.S., is amended to raise the contractual claim amount which must go to arbitration from \$100,000 to \$250,000 and the contractual claim amount which may go to arbitration at the claimant's option from \$250,000 to \$500,000. In addition, the bill allows claims of up to \$1 million to go to arbitration, if both DOT and the contractor agree. This proposal will allow the Department to settle more small claims through the State Arbitration Board, thereby reducing litigation.

The State Arbitration Board is composed of three members: one selected by DOT; one selected by the construction companies under contract with the department; and one chosen by agreement of those two selected members. Each member serves a 2-year term. Board members which are not employees of DOT may be compensated for their time not to exceed \$750 per day. Compensation to board members is paid for by fees paid to the board by the party requesting arbitration. The bill amends these provisions to provide that the DOT secretary may select an alternate or substitute to serve as the DOT's member of the arbitration board, and to clarify that DOT's board member may not be compensated if the person is a current employee of DOT. The bill provides a maximum hourly compensation for board members of \$125 per hour and raises the daily maximum pay from \$750 to \$1,000. The bill also raises the maximum arbitration fee that may be charged to cover administrative costs and compensation of the board from \$2,500 to \$5,000.

Section 31. Suits By and Against DOT Article X, Section 13 of the Florida Constitution provides: "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating." The courts have interpreted this language as providing sovereign immunity to state agencies from actions for breach of contract in the absence of a legislative or constitutional waiver. In s. 337.19, F.S., the legislature has waived sovereign immunity for suits against DOT based on contract. This section provides that suits against DOT may be brought on any claim under contract for work done. This section specifically prohibits lawsuits against DOT when the suit is based on a tort.

To the extent there is no express waiver of sovereign immunity for contract claims, the courts have ruled that there is an implied waiver of sovereign immunity in contract claims. This ruling is based on the premise that because the Legislature authorized state entities to enter into contracts, it must have intended such contracts to be valid and binding on both parties. The courts have limited this implied waiver by only allowing such suits when based on express, written contracts which the state agency has statutory authority to enter. See *County of Brevard, v. Miorelli Engineering, Inc.*, 703 So.2d 1049 (Fla. 1997).

In addition, case law authorizes suits against agencies based on breach of implied covenants or conditions contained within the scope of an express, written contract. For example, every contract includes an implied covenant that the parties will perform in good faith. In construction contract law, an owner has implied obligations: not to do anything to hinder or obstruct performance by the other person;

not to knowingly delay unreasonably the performance of duties assumed under the contract; and to furnish information which would not mislead prospective bidders.

The bill clarifies the provisions related to suits against DOT based on contract claims to:

- (1) Limit the application of the bill to contract claims arising from breach of an express provision or an implied covenant of a written agreement or written directive. Written directives are modifications of an existing contract which facilitate a prompt response to unanticipated changes in circumstances as work on a project progresses. Such modifications are provided for in DOT contract documents.
- (2) Provide that in contractual claims suits, DOT and the contractor would have the same rights and obligations as a private person in a similar contractual dispute, but provides that no liability may be based upon oral modifications to written contracts or written directives.
- (3) Specifically provide that the sovereign immunity of the state and its political subdivisions is not waived from equitable claims and equitable remedies.
- (4) Provide that no employee or agent of the department may be held personally liable to an extent greater than described under s. 768.28, F.S. This section provides that no state employee or agent of the state may be held personally liable in tort or named as a party defendant in any action based on any act or omission while acting in the scope of their employment or function. This protection from personal liability is not applicable if the employee or agent acted in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 32. Right-of-Way Options Purchase/Replacement Housing Section 337.25, F.S., authorizes DOT to purchase, lease, exchange or otherwise acquire any land or buildings or other improvements necessary to secure transportation rights-of-way for existing, proposed or anticipated state transportation facilities. The section does not authorize DOT to purchase options to purchase land for such purposes. Section 337.25(1), F.S., is amended by the bill to authorize DOT to purchase options to purchase land for transportation facilities. This proposal would authorize DOT to make a commitment to purchase right-of-way property at some point in the future. DOT would have this option in situations where a property is now available, but funding for the entire purchase price does not currently exist. In addition, this authority would enable DOT to preclude development of a piece of property needed for an anticipated transportation project, thereby preventing increased damages.

Currently, DOT may acquire property as replacement housing for persons displaced by federally assisted transportation projects and may negotiate for the sale of such property as replacement housing. In such sales, the state must receive no less than its investment in the property or fair market value, whichever is lower. Section 337.25(4)(l), F.S., is amended by the bill to authorize DOT to acquire property as replacement housing for persons displaced by both state and federally funded transportation projects.

Section 33. Joint Use of Right-of-Way/Rail Speed Limitation Section 337.251, F.S., authorizes DOT to lease property for joint public-private development. A private firm, Bee Line Monorail System, Inc., have been developing a privately funded magnetic levitation train system to be operated on rights-of-way of the Bee Line Expressway leased by DOT to the private firm. The Florida High-Speed Rail Transportation Act as set forth in ss. 341.3201-341.386, F.S., is the process that DOT followed in awarding a franchise to build a high speed rail project. Section 341.327, F.S., provides that a high-speed rail transportation system may not be authorized, financed, constructed, or operated other than pursuant to the High-Speed Rail Transportation Act's franchise and certification requirements. Because "high speed rail" is statutorily defined to mean rail travel at speeds in excess of 120 miles per hour, DOT has limited the Bee Line project to less than 120 miles per hour. The bill provides specific statutory authority for the Bee Line project to travel at any safe speed.

Section 34. Utility Relocation - Contracts Most transportation construction contracts involve utilities located on or along road rights-of-way, with utilities being relocated in many instances. Relocation of these utilities occur in areas where clearing of vegetation and other site preparation is necessary for the road project. Currently, this clearing work is part of the construction contract with the contractor doing the clearing and grubbing and then the utility company relocates the utilities. This sometimes results in delays in construction projects due to scheduling conflicts and lack of coordination between the utility and the road contractor. This bill amends s. 337.403, F.S., to allow DOT to contract directly with the utility company for clearing and grubbing work necessary for utility relocation. This work would occur in advance of road construction, thus avoiding project delays.

Section 35. Bus Benches and Transit Shelters Benches or transit shelters with advertising may be installed on the right-of-way of any city, county or state road, except for limited access highways. The benches or transit shelters must be for the comfort or convenience of the general public, or must be at designated stops on official bus routes. A municipality or county may authorize by written agreement the installation, without public bid, of benches and transit shelters on road rights-of-way. The benches or transit shelters may not interfere with preservation and maintenance activities. The bill modifies these provisions to allow benches and shelters for public comfort and convenience, or at recognized bus stops. The bill also specifically provides that the agreements between bench and shelter providers and local governments may be of unlimited duration. These provisions have the potential to increase the number of benches and shelters on public rights-of-way, and to allow these structures to remain there indefinitely.

Section 36. Environmental Feasibility of Turnpike Projects Currently, s. 338.223, F.S., authorizes DOT to acquire lands and property for proposed turnpike projects before making a final determination of the economic feasibility of a project. The bill amends this section to require DOT to have a determination of environmental feasibility before making advanced acquisition of lands and property for turnpike projects. The requirement for a determination of environmental feasibility does not apply to hardship and protective purchases of advance right-of-way by DOT. Hardship purchases are defined by the bill to include purchases from a property owner of a residential dwelling of not more than four units who is at a disadvantage due to health impairment, job loss, or significant loss of rental income. A protective purchase under the bill means a purchase to limit development, building, or other intensification of land uses within the right-of-way needed for transportation facilities. The section is further amended to require DOT to notify the Department of Environmental Protection (DEP) to allow DEP to comment on the purchase.

Section 37. Pledge to Turnpike Bondholders Section 338.229, F.S., contains the state's pledge to Turnpike bondholders not to limit DOT's authority to build, maintain, and operate the Turnpike. This section contains other pledges regarding impairing the rights and remedies protecting bondholders. The bill authorizes the DOT to include restrictions on the sale or other transfer of portions of the Turnpike in bond covenants. This will further protect bondholders interests, and should help to maintain the high ratings that Turnpike revenue bonds have been given by bond rating agencies.

Section 38. Allocation of Discretionary Highway Funds In developing the tentative work program, DOT is required by s. 339.135(4)(a), F.S., to allocate funds for new construction to the districts based on equal parts of population and motor fuel tax collections. This statutory formula does not apply to allocations to the turnpike district, because turnpike projects are funded from revenue bonds. Funds for resurfacing, bridge repair and rehabilitation, bridge fender system construction or repair, public transit projects, and other programs with quantitative needs assessments are allocated based on these assessments. Public transit block grants are distributed based on s. 341.052, F.S., which uses a weighted formula based on population, revenue miles, and number of passengers carried, to distribute the block grants. The bill codifies DOT's current policy of allocating at least 50 percent of discretionary highway funds to projects which are part of the Florida Intrastate Highway System (FIHS). The FIHS is a statewide system of limited access and controlled access facilities. The system is intended to provide a statewide transportation network that allows for high-speed and high-volume traffic movements within the state. The FIHS consists of Interstate highways, the Florida Turnpike, and interregional and intercity limited access and controlled access facilities.

Sections 39 & 40. Transportation Planning & Metropolitan Planning Organizations/ TEA-21 Section 339.155, F.S., provides the transportation planning duties of DOT. The section provides 24 planning factors required by the federal Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA). Section 339.175, F.S. provides the planning requirements for Metropolitan Planning Organizations (MPO's). In accordance with ISTEA, both the MPO long and short-range plans, and the State Transportation Plan must be based on the 24 planning factors.

The Transportation Equity Act for the 21st Century (TEA-21) was passed by Congress in June of 1998. The bill conforms Florida's transportation planning requirements to the planning requirements of the new federal law by replacing the current ISTEA planning factors with TEA-21 planning factors. The bill also clarifies that the Florida Transportation Plan sets forth statewide long range transportation goals and objectives, clarifies the role of the short-range component as providing the policy framework for other Department plans and programs, and modifies the procedures for public participation in transportation planning.

Sections 339.155, and 339.175, F.S., are amended to delete the former federally mandated 24 planning factors to conform to TEA-21. The bill provides that DOT and MPO plans consider 7 broader factors as follows:

- (1) Supporting the economic vitality of the state and of metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency.
- (2) Increasing the safety and security of the transportation system for motorized and non-motorized users.
- (3) Increasing the accessibility and mobility options available to people and for freight.
- (4) Protecting and enhancing the environment, promoting energy conservation, and improving quality of life through land use planning.
- (5) Enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight.
- (6) Promoting efficient system management and operation.
- (7) Emphasizing the preservation of the existing transportation system.

Section 339.155, F.S., is amended to require DOT to consider, in addition to the seven planning factors: a) the concerns of local elected officials in nonmetropolitan areas; b) the concerns of Indian tribal governments and federal land management agencies; and, c) coordination of transportation plans with related planning activities outside of metropolitan planning areas.

Section 339.155, F.S., is further amended to clarify the role of the short-range component as providing the policy framework for other DOT plans and programs. The procedures of public participation in transportation planning are modified to allow public comment on the long-range component of the Florida Transportation Plan only during development and prior to substantive revisions, not prior to adoption of all subsequent amendments as in current law. The requirement that notices be published twice prior to the day of the hearing, with the first notice appearing at least 14 days prior to the hearing, is deleted. Notice is still required in a newspaper of general circulation within the area of each DOT district office.

In addition to the change in planning factors, s. 339.175, F.S., is amended to add intermodal and freight emphasis to the development of plans and programs; and to require cooperation on projects located within the boundaries of more than one MPO. The section is amended to authorize the designation of more than one MPO in a metropolitan planning area if the affected MPOs and the Governor agree such designation is appropriate; and, by clarifying MPO boundaries must include at least the metropolitan planning area, which is the existing urbanized area and the contiguous area expected to become urbanized with a 20-year forecast period. For an urbanized area designated as a nonattainment area, the boundaries of the metropolitan planning area in existence may be adjusted by agreement of the Governor and the affected MPOs.

The section is further amended to provide the MPO financial plan may include, for illustrative purposes, additional projects that would be included in the long-range plan and Transportation Improvement Plan

if additional resources were available. Estimates of available funds are to be cooperatively developed by DOT and the MPOs. The section requires MPOs to annually publish for public review the annual listing of projects for which federal funds have been obligated in the preceding year.

Section 339.155, F.S., was last amended to reflect requirements of ISTEA. This bill will conform Florida's transportation planning to the requirements of TEA-21. In addition, recent experience in developing the Florida Transportation Plan has raised the need to clarify the role of the plan and its relationship to the short-range component.

Section 41. Self-Retention Insurance Fund for Public Transit Projects The 1987-88 General Appropriations Act contained proviso language creating a \$5 million self-retention fund in DOT to satisfy the requirements of the insurance provisions in the contract between DOT and CSX Transportation (CSX) to support Tri-Rail commuter service. That fund was created specifically to pay the deductible for an insurance policy covering Tri-Rail service and cannot be used to support other public transit projects. The bill create subsection (14) of section 341.041, F.S., to authorize the creation and maintenance of a common self-retention insurance fund to support public transit projects throughout the state where there is a contractual or legal obligation to have such fund in existence in order to provide public transit services. DOT is currently participating in the development of a light-rail system for the Orlando area, and DOT anticipates a similar requirement regarding a self-retention fund for that project. Based on DOT's experience with the Tri-Rail self-retention fund, it is projected that the current \$5 million fund will be sufficient to cover the Orlando light rail project.

Section 44. Railroad Financing/TEA-21 & Hazardous Materials Inspection on Florida Rail Lines The bill amends s. 341.302(6), F.S., to authorize DOT to secure and administer federal loans for rail projects. TEA-21 included a new federal credit program entitled "Railroad Rehabilitation and Improvement Financing." This bill will allow DOT to pursue federal loans for existing railroad capital improvements, to finance these improvements in Florida. According to DOT, it is sometimes more feasible to pursue a federal loan to finance a project rather than a grant or public debt financing. This will allow DOT to evaluate and, if appropriate, utilize this option in financing rail capital improvements. This bill would allow DOT to assist local governments in securing federal loans for rail capital improvements. Any specific funding to be used in repayment of loans or to pay related costs would be specifically identified in the annual tentative work program submitted to the Legislature.

The duties and responsibilities of DOT with regard to its rail program are defined in s. 341.302(8), F.S., which requires the department to implement a rail program and ensure the proper maintenance, safety, revitalization and expansion of the rail system. "Rail system" is defined by s. 341.301(5), F.S., as any common carrier fixed-guideway transportation system such as the conventional steel rail-supported, steel-wheeled system. With respect to inspection responsibilities, s. 341.302(8), F.S., authorizes DOT to conduct "inspections of track and rolling stock, train signals and related equipment, hazardous materials transportation, and train operating practices to determine adherence to state and federal standards." DOT has interpreted these provisions to mean that the department does not have the authority to conduct inspections of hazardous materials at manufacturers and shippers facilities. According to DOT, many potential defects can originate at these locations, and early detection of these safety-related problems is critical in order to prevent incidents prior to a shipment reaching the general railroad network for movement. The bill amends this subsection to expressly authorize DOT to conduct hazardous materials inspections on Florida rail lines, including the loading, unloading and labeling of hazardous materials at shipping, receiving and transfer facilities.

Section 45. Environmental Mitigation The bill makes technical and clarifying revisions to the existing program that allows the Department of Transportation (DOT), the Department of Environmental Protection (DEP), and the water management districts (WMDs) to mitigate the impacts to wetlands and other sensitive habitats from DOT projects. Currently, DOT submits annually to DEP and WMDs a copy of the adopted work program and an inventory of wetlands and habitats which may be impacted by transportation projects in the first three years of the adopted work program. DOT transfers into the Ecosystem Management and Restoration Trust Fund within DEP \$75,000 for each acre within the WMDs where an impact upon wetlands has been projected. The funds are used by the WMDs for use in mitigation development and implementation activities. WMDs are not currently authorized to use these funds for support and development of mitigation plans, including staff support, design, engineering, and production.

In 1996, DOT transferred \$12 million from the State Transportation Trust Fund to DEP for the surface water improvement management program and to address statewide aquatic and exotic plant problems

within wetlands and other surface waters. This was considered an advance upon funds which DOT would have to pay for statewide wetland mitigation until the year 2000. DEP expended a portion of the funds on projects which were not credited toward mitigation of DOT's work program projects. As a result, DEP is indebted to DOT for a portion of those funds, or mitigation credits, and is not able to replace those funds by the year 2000 as required by current law.

Currently, mitigation plans prepared by the WMDs are updated annually to show changes in the DOT's work program. The plans are preliminarily approved by the WMD governing board and are then submitted to the Secretary of DEP for final approval.

The bill amends s. 373.4137, F.S., to authorize DOT to include additional projects identified in the tentative work program in the inventory of affected wetland habitats submitted to DEP and the WMDs beyond the first 3 years of the 5-year work program. The bill authorizes WMDs to use a portion of the \$75,000 per acre mitigation funds paid by DOT for support and development of mitigation plans, including staff support, design, engineering, and production. The bill also requires that mitigation banks operators be consulted during development of annual mitigation plans. Each mitigation plan must also include an explanation of why mitigation banks were or were not used as a mitigation option in the plan.

The bill provides that preliminary approval of a mitigation plan by the WMD governing board does not constitute a decision that affects substantial interests as provided by Chapter 120, F.S., the Administrative Procedures Act. This clarifies that affected parties objecting to a mitigation plan may only file for an administrative hearing after the plan receives final approval from the Secretary of DEP.

The bill extends the time period that DEP has to use DOT's \$12 million in wetlands mitigation funds to the year 2005 to allow DEP enough time to supplant the funds that were not credited toward mitigation of DOT projects. The bill also authorizes amendment of mitigation plans throughout the year, instead of once a year, to allow schedule changes or minor adjustments to the plans.

Section 46. Outdoor Advertising/Commercial and Industrial Zones Chapter 479, F.S., and the agreement between the State of Florida and the U.S. Department of Transportation requires outdoor advertising signs to be located in commercial or industrial areas. Section 479.01(3), F.S., requires DOT to use the Future Land Use Map (FLUM) of an adopted comprehensive plan as the controlling document in determining commercial and industrial land use areas for purposes of outdoor advertising sign permitting. In implementing this provision problems have resulted with the interpretation of comprehensive plans when the land development regulations are not considered along with the FLUM. The result has been confusion and excessive litigation in determining whether a specific property has been designated for commercial or industrial development. This has caused the Federal Highway Administration to question DOT's control of outdoor advertising signs.

The bill amends s. 479.01, F.S., to define "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the comprehensive plan and the land development regulations adopted pursuant to Chapter 163, F.S. This would allow DOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas. In addition, if a parcel is located in an area designed for multiple uses on the FLUM of the comprehensive plan, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area if it meets specified criteria. The bill also provides that land used for a communication tower is not recognized as a commercial or industrial activity for determining if an area designated for multiple uses is an unzoned commercial or industrial area.

Section 47. Outdoor Advertising/Permit Reinstatement Current law provides that DOT may reinstate an outdoor advertising sign permit that was not renewed because of a good faith error by the permit holder. This reinstatement may only be allowed within 90 days of DOT's notice of sign removal and the permittee must pay a \$300 reinstatement fee. The bill modifies s. 479.07(8)(b), F.S., to provide that permits may be reinstated at any time prior to actual removal of the sign. The bill also changes the fixed fee of \$300, to allow DOT to set reinstatement fees based on the size of the sign, but not to exceed \$300. In those cases where there is no reinstatement, the proposal provides that conflicting applications filed by other persons for the same or competing sites shall not be approved until after the sign subject to the expired permit has been removed.

Section 48. Outdoor Advertising/Relocation of Nonconforming Signs A "nonconforming sign" is a lawfully erected sign which does not comply with land use, setback, size, spacing, and lighting provisions of state

or local sign regulations passed after the sign was erected or which is no longer in compliance with regulations due to changed conditions. Nonconforming signs must remain substantially the same as they were on the effective date of the regulations that made them nonconforming. Reasonable repair and maintenance of the sign is not a change which would terminate nonconforming rights. Nonconforming signs may continue as long as they are not destroyed, abandoned, or discontinued. When a state road is widened and a non-conforming sign is located on right-of-way needed for construction, the nonconforming sign must be acquired by DOT through negotiation or condemnation, or relocated to a conforming site. If a conforming site is not available because of local zoning or sign regulations, the state bears the cost of acquiring the sign. Acquisition costs include the value of the sign structure and the sign owner's lost advertising revenues based on the remaining economic life of the sign.

The bill authorizes nonconforming signs to be relocated to another nonconforming location adjacent to an improved road's new right-of-way. Such a relocation procedure would be subject to federal approval. The size of the sign could not be increased when relocated. If local regulations prohibit a non-conforming sign from being relocated, the sign would not be relocated if the local government assumes responsibility for paying for the sign's acquisition.

Section 49. Outdoor Advertising/Small Business Sign Size Florida' permitting system to control the erection of signs lists 15 categories of signs that do not require a permit. Signs not exceeding 8 square feet located at a road junction with a state highway denoting the distance and direction to a small business do not require a permit if located in a rural area and a hardship is created for a small business because it is not visible from the road junction with the state highway system. The bill amends s. 479.16(15), F.S., to increase the size allowed for such signs to 16 square feet.

Section 50. Repeal of the Florida High-Speed Rail Transportation Act: The bill repeals ss. 341.3201-341.386, F.S., which is the very detailed and structured process that DOT followed in awarding a franchise to build a high speed rail project. In January 1999 the Governor stopped previously appropriated expenditures for the high-speed rail project. The Governor's Fiscal Year 1999-2000 Executive Budget proposal to the Legislature redirected high-speed rail funds to other transportation projects. Further, preliminary Legislative budgets for both the House of Representatives and the Senate redirect high-speed rail funds to other transportation projects. The \$6.3 billion high-speed rail system was planned for completion in 2006 along a route connecting Tampa, Orlando, and Miami with trains traveling at speeds up to 200 miles per hour. However, a U.S. General Accounting Office report expressed doubts about the project's economic viability, including estimated ridership levels and the ability of the project's sponsors to secure financing. The Governor cited the report as a factor in terminating the project. Other provisions of law will allow DOT to continue to pursue innovative transportation system development, with implementation of such projects requiring legislative approval.

Section 51. Effective Date The bill becomes effective upon becoming law

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Section 44. Inspection of Hazardous Materials on Florida Rail Lines The bill authorizes DOT to conduct hazardous materials inspections on Florida rail lines, including the loading, unloading and labeling of hazardous materials at shipping, receiving and transfer facilities. This would impact the private sector as manufacturers, shippers and receivers of hazardous materials would periodically and randomly be subject to inspections.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

Section 2. Right-of-Way Acquisition and Bridge Construction Bonds Amending the statute to allow a \$135 million annual transfer for debt service would support additional bonding capacity of \$475 million in 30-year bonds at a 5% interest rate. After debt service is subtracted, this provision would add \$370 million to the 5-year work program. The increase in the cap allowed for debt service will require up to \$31.5 million of transportation revenues annually to fund the additional debt service for the life of the bonds (\$135 million proposed cap minus current cap of \$103.5 million). The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding. The issuance of additional bonds will provide additional funding for the purchase of right-of-way and bridge repairs/replacements. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding. This financing technique provides a benefit to the public by providing new or improved transportation services in a more timely manner. Because DOT uses private sector construction companies to build roads and bridges, the private sector will also benefit from this change.

Section 3. Grant Anticipation Revenue Bonds: The bill authorizes a bond program for Federal Aid Highway Construction and allows a pledge of up to 10 percent of the state's future federal-aid allocations as payment for debt service. The bill would allow the state to issue bonds with a maximum term of 12 years backed by a pledge of future federal-aid funds. Florida will receive an average of \$1.24 billion of federal aid annually for highway transportation purposes during federal fiscal years 1999 through 2004. Under the bill, up to 10 percent (\$124 million) of annual federal aid may be pledged for debt service. Assuming a 4.25 percent interest rate and a 10 year term, this provision will allow over \$1 billion in bonds to be issued. After debt service is subtracted this bond issue would add \$840 million to the 5-year work program. This funding could be used to advance project phases of major transportation projects and to add new transportation projects to the work program. The department would incur recurring annual

costs for the debt service transfers for as long as bonds are outstanding. Because DOT uses private sector construction companies to build roads and bridges, the private sector will also benefit from this provision.

Section 4. Fixed Guideway Transportation Financing/Bonding The bill authorizes DOT or commuter rail authorities and regional transportation authorities to issue bonds to fund fixed guideway projects; each party would be contractually liable for an equal share of debt service. DOT's share of debt service would be payable from, and limited to, two percent of all state revenues deposited into the STTF. These debt service payments would be part of the 15 percent of transportation revenues committed to public transportation projects pursuant to s. 206.46, F.S. The local share would be payable from any available revenues other than revenues of the DOT.

State transportation tax revenues are projected to total nearly \$1.7 billion in the current fiscal year. Two percent of this amount (about \$33 million in FY 1999-00) would be available annually for debt service under this proposal. This could generate up to \$600 million from the sale of bonds. After debt service is subtracted and the local match is added, this provision would add \$550 million to the 5-year work program. Since the annual debt service is based on a percentage of STTF revenues (similar to the Department's "Amendment 4" bond program), bonding capacity will grow in the future as state transportation tax revenues increase. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding.

This proposal will permit accelerated financing of fixed guideway projects and would permit the Department to assist in the financing of fixed guideway projects where the demand for financing exist today, rather than waiting many years to accumulate adequate financing. The public will receive the benefits of the fixed guideway systems sooner, and local governments will be better able to incorporate these public transportation systems into their growth management and local comprehensive planning initiatives. Because private construction firms will be used to construct fixed guideway systems, the private sector will also benefit from this change. Projects must first be submitted to and approved by an act of the Legislature before it can be funded under this bond program.

Section 14. Commercial Motor Vehicles/Registration Penalties: Current law provides a penalty for driving a truck with an expired license plate or registration; the penalty is based on the weight and configuration of the truck and can exceed \$2,000, plus the payment of the appropriate registration fee. The bill provides a maximum penalty charge of \$1,000 for operating a truck where the registration or license plate has not been expired more than 90 days. This penalty is in addition to payment of the appropriate registration fee for the truck. Because of the way data on these violations is currently collected, the fiscal impact of this change cannot be determined. According to DOT, there were 1,199 truck registration violations in 1997 with a penalty in excess of \$1,000. If all of these penalties met the criteria of the bill and were reduced to \$1,000, the net loss of revenue would be in excess of \$800,000.

Section 31. Suits By and Against DOT This provision of the bill could allow additional contractual claims to be made against DOT. If additional claims are made, DOT would incur the legal costs of litigating the claims, and the costs of payments to contractors for additional damages if the suits are successful. These costs would be paid from the STTF. If contractors are successful in bringing more claims against DOT, they will benefit from payments for additional damages. The effect of the bill's changes on the amount and scope of litigation against DOT is unknown and largely depends on how these changes are interpreted by the courts.

Section 44. Railroad Financing/TEA-21 The bill authorizes DOT to secure and administer federal loans for rail projects. TEA-21 included a new federal credit program entitled "Railroad Rehabilitation and Improvement Financing." This will allow DOT to pursue federal loans for existing railroad capital improvements, to finance these improvements in Florida. According to DOT, it is sometimes more feasible to pursue a federal loan to finance a project rather than a grant or public debt financing. The bill will allow DOT to evaluate and, if appropriate, utilize this option in financing rail capital improvements. This proposal would allow DOT to assist local governments in securing federal loans for rail capital improvements. Any specific funding to be used in repayment of loans or to pay related costs would be specifically identified in the annual tentative work program submitted to the Legislature.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Please see Judiciary Committee comments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

Judiciary Committee staff comments

Section 3 concerns additional bond financing and DOT's Christie Holland represents that the language has been approved by the Division of Bond Finance

Section 26 permits the DOT to enter into contracts for road work in an amount not exceeding Category IV (\$75,000 in the DMS manual of July 1998) upon a determination that the work is necessary for one of three reasons. The section neglects to indicate:(1) that the finding must be in writing; or (2) who may make the finding. Inasmuch as this provision is a substantial departure from general procurement law, it is strongly recommended that an amendment be drafted which addresses these issues.

Section 28 excludes DOT employees who are licensed appraisers pursuant to Chapter 475, Part II, F.S. from the duty to report to DBPR any person the employee knows to be in violation of the grounds for disciplinary actions against appraisers.

Section 31 includes the Miorelli language adopted by this Committee in House Bills 243 and 311, which were combined as CS/HB 311 and CS/HB 243.

Section 48 of the bill contains express intent of the Legislature to limit the state right-of-way acquisition costs and indicates that when billboard relocation is inconsistent with the ordinance of the local government, it shall be the responsibility of the local government to provide the owner of the sign with just compensation for its removal. This section may represent an unfunded mandate.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on Transportation considered HB 1147 on March 17, 1999. A series of amendments were adopted which made the following changes:

Amendment 1 Clarified the language in the original bill related to suits against DOT based on contract claims to: (1) limit the application of the bill to contract claims arising from breach of an express provision or an implied covenant of a written agreement or directive; (2) provide the governmental entity and the contractor with similar private person rights and obligations under a contract, but provides that no liability

may be based upon oral modifications to written contracts or written directives; and (3) specifically provide that the sovereign immunity of the state and its political subdivisions is not waived from equitable claims and equitable remedies.

Amendment 2 Repealed the owner controlled insurance plan provisions of s. 337.11(16), F.S., related to DOT contracts.

Amendment 3 Placed a \$1000 cap on commercial motor vehicle registration penalties when registration has been expired for less than 90 days.

Amendment 4 Authorized bus bench and transit shelter agreements between local governments and suppliers to be of unlimited duration, and allowed these structures at "recognized" bus stops.

Amendment 5 Authorized non-conforming signs to be moved rather than condemned when DOT widens a road; the process is subject to Federal approval.

Amendment 6 Increased cap on innovative contracting program from \$60 million to \$120 million. Deletes provision of amendment related to Design-Build transportation projects.

Amendment 7 Revised DOT program objectives to incorporate DOT Agency Mission Statement and Florida Transportation Plan goals.

Amendment 8 Codified DOT's Policy regarding allocation of discretionary highway funds to provide that at least 50 percent of such funds should be allocated to Florida Intrastate Highway System; the remainder would be allocated to the Districts based on gas tax collections and population.

Amendment 9 Clarified the state's role in seaport planning and financing; established more statewide coordination and control of investments in seaports and intermodal access projects; established a seaport office in the DOT with duties and responsibilities similar to the aviation office to provide greater oversight of the seaport and international trade issues; and strengthened the intermodal development program to direct priority to the FIHS and projects recommended by the Freight Stakeholders Task Group.

Amendment 10 Allowed the Bee Line Mag-Lev project to operate at any safe speed. This is required because of language in the High Speed Rail franchise process limiting other rail systems to a maximum of 120 miles per hour.

Amendment 11 Made a technical correction related to submitting the tentative work program to DEP and Water Management Districts for environmental mitigation purposes.

Amendment 12 Clarified that the duty to yield to public buses applies only when the bus is reentering traffic from a designated pull-out bay; and clarified that the penalty is a moving violation traffic infraction.

The bill as amended was reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Phillip B. Miller

Staff Director:

John R. Johnston

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Jo Ann Levin

Staff Director:

Don Rubottom