

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/CS/SB 502

SPONSOR: Finance and Taxation Committee, Governmental Oversight and Productivity Committee, Transportation Committee and Senator Sebesta

SUBJECT: The Department of Transportation

DATE: February 28, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McAuliffe	Meyer	TR	Favorable/CS
2.	Wilson	Wilson	GO	Favorable/CS
3.	Keating	Johansen	FT	Favorable/CS
4.			AGG	
5.			AP	
6.				

I. Summary:

The bill significantly amends ss. 338.221 – 338.241, F.S., which is related to the Florida Turnpike. The Turnpike District is recreated as the “Turnpike Enterprise.”

The bill authorizes Motor Carrier Compliance officers holding a safety inspector certification from the Commercial Vehicle Safety Alliance, to stop commercial motor vehicles without reason for the purpose of vehicle and driver inspection. The section is further amended to establish a Florida Department of Transportation (FDOT) “reserve officer program,” similar to existing programs in other agencies, by providing for appointment of part-time and/or auxiliary law enforcement officers. The bill also updates federal commercial truck regulations in the statutes.

The bill clarifies the FDOT has specific authority to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Beeline-East Expressway, Sunshine Skyway Bridge, and Pinellas Bayway toll facilities to provide funding for needed transportation projects on the State Highway System in the counties in which they are located.

The bill increases the right-of-way and bridge cap from \$135 million to \$200 million.

The bill further raises the limit on local government cash advances to the FDOT from \$100 million to \$150 million.

The bill amends s. 337.107, F.S., to add right-of-way services to those activities that can be included in a design-build contract. It also amends s. 337.11, F.S., authorizing the DOT to combine right-of-way services and design and construction phases of a building, a major bridge,

a limited access facility, or a rail corridor project into a single contract, which is referred to as a design-build contract.

In addition, FDOT will be able to advertise and award design-build contracts despite the fact not all of the right-of-way or easements necessary to complete the project have been deeded to the state or to a local governmental entity.

This bill substantially amends ss. 20.23, 206.46, 316.302, 316.535, 316.545, 334.044, 337.025, 337.107, 337.11, 338.165, 338.22, 338.221, 338.223, 338.227, 338.2275, 338.234, 338.235, 338.239, 338.241, 338.251, 339.12, 339.135, 553.80, and creates ss. 338.2215, 338.2216 of the Florida Statutes.

II. Present Situation:

Turnpike Enterprise

In 1953, the Legislature created an independent Florida State Turnpike Authority to finance, build and operate the Sunshine State Parkway. By 1964, the original 265-mile Mainline, connecting Miami to Wildwood, was completed. With the passage of the State Government Reorganization Act of 1969, the authority was dissolved and oversight responsibility of the Florida Turnpike shifted to FDOT. Since 1994, the Florida Turnpike has been the FDOT's eighth "district," with ultimate oversight by the FDOT Secretary.

Today, the Florida Turnpike is 449 miles long, and includes the Beeline West in Orange County, the Veterans Expressway near Tampa, the Suncoast Parkway in Hillsborough, Pasco and Hernando Counties, the Sawgrass Expressway in Brevard County, and the Polk Parkway. It is the fourth-largest toll highway system in the United States, and has 174 employees.

In 1999, the Turnpike District generated \$311 million in toll revenues and \$8 million in concession revenues. This reliable and steady stream of revenues supports the repayment of state bonds issued to build turnpike projects, and finances their operation and maintenance. One of the reasons the Florida Turnpike is financially solid is that its projects are required by law to generate sufficient revenue to pay at least 50 percent of its bond debt service by the end of its fifth year in operation, and to pay at least 100 percent of its debt service by the end of its 15th year.

Because it is a significant revenue-generator and outsources more than 80 percent of its activities (including many toll-collection duties), the Florida Turnpike has been mentioned as one of the better examples of state government that could be privatized. Separate studies by KPMG and the Infrastructure Management Group (IMG), Inc., evaluated the potential of privatizing the Florida Turnpike. Released in early 2001, these studies concluded that outright privatization would result in short-term cash flow benefits to the state, but could raise long-term public policy concerns. These studies seemed to support a middle ground, between outright privatization or retaining the status quo. The IMG study seemed to support turning the system into an enterprise (utilizing private-sector business practices but remaining under state oversight), while KPMG favorably discussed making the system into an independent authority.

Office of Motor Carrier Compliance

Currently, Florida law requires a law enforcement officer to have a reason to believe a vehicle or driver is operating in an unsafe condition to stop and inspect the vehicle or the vehicle's driver. Court cases have held that stops without cause for administrative safety inspections are permissible because the operations of commercial motor vehicles is a "closely regulated industry" integrally related to the public safety. Many states already allow stops without cause to conduct inspections of vehicles and drivers. Because the trucking industry requires inspections of their vehicles to receive safety ratings, inspection by the FDOT officers (or other law enforcement officers when properly trained and certified) is not opposed.

Further, during the last few years, the Department's Motor Carrier Compliance Officers have been called upon to increase their activities outside traditional traffic enforcement duties, including working security for FDOT facilities and infrastructure, assisting other agencies with protective operations for state officials and special events, and counter drug operations such as "Operation River Walk" in Miami. Officers have also been asked to serve process and do "stand by" security details for FDOT officials, legislative committees, and tribunals such as the State Commercial Vehicle Review Board. Since the recent terrorist attacks, the Department's Motor Carrier Compliance Officers are participating in additional duties relating to the security of our transportation system in general and, more specifically, the security of commercial motor vehicles, their drivers, and protection against other threats such as bombs, hazardous materials, weapons, and theft of commercial cargo.

There is currently no central statutory definition of the primary mission, powers, and responsibilities of the Office of Motor Carrier Compliance to establish clear guidance to prosecutors and judges regarding MCCO authority.

Further, the FDOT has general authority over the State Highway System, certain federally delegated responsibilities for the Interstate System, and general responsibilities for public transportation systems. In terms of federal transportation regulations or federally delegated responsibilities to the FDOT, Florida Statutes periodically need to be reviewed for compliance and accuracy with federal law.

Truck Weight Limits

Section 316.535, F.S., regulates the weights of trucks, based on their axle spacing. During the 2000 legislative session, s. 316.540, F.S., was identified as an obsolete section of law and repealed. However, upon further review in the interim, FDOT came to the conclusion that one subsection in the repealed law was necessary, because without it, there would be no weight limits on concrete mixers, septic tank pump trucks, dump trucks and other "special use trucks" that do not comply with the standard axle spacing.

Bond Issues

Section 206.46(2), F.S., provides that from the revenues deposited into the State Transportation Trust Fund a maximum of 7 percent annually shall be transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund as needed to meet the requirements of the bonds

issued or an amount sufficient to pay for the debt service. The right-of-way and bridge bond cap is \$135 million.

Section 338.165, F.S., provides for use of toll revenues for improvements to the State Highway System within the county or counties in which the toll facility is located. Currently toll revenues from the Beeline-East Expressway are being utilized for four-laning State Road 520. The current work program includes plans to issue approximately \$54 million in revenue bonds backed by Beeline-East revenues. According to the Division of Bond Finance, statutory changes are required to clarify the FDOT's ability to use bond proceeds for projects other than on the specific facility generating the revenue pledged.

Local Government Reimbursement

Section 339.12, F.S., guides the FDOT on the acceptance of monetary aid and contributions from federal, local and other governmental entities. There are different accounting processes for handling a situation where a local government is advancing money to the FDOT in order to expedite a state road project of community importance, and where a local government agrees to expend its own funds and perform the work. In the latter example, local governments are reimbursed their actual costs, pursuant to s. 339.12(5), F.S.

In addition, under s. 339.12(4), F.S., FDOT may enter into agreements with a city or county, whereby the FDOT accepts up to \$100 million from the local government to perform a transportation improvement project that is a priority for the city or county, but not in the agency's 5-year work program. The local government is reimbursed later through a legislative appropriation.

Design-Build Contracts

Chapter 337, F.S., describes FDOT's contracting and acquisition processes. In particular, s. 337.107, F.S., gives FDOT the authority to enter into contracts, using state procurement guidelines, to purchase right-of-way or related services for transportation corridors and facilities. Section 337.11, F.S., governs the FDOT's overall contracting authority; one of its provisions prohibits the advertisement of bids and the publication of bid notices for projects until title to the affected right-of-way has either been vested in the FDOT or a local government, and all railroad crossing and utility agreements have been executed.

Traditionally, individual phases of a transportation project are separately bid and awarded. Florida's DOT is among a handful of state transportation agencies that are awarding contracts to one provider who agrees to perform multiple project tasks. In Florida, these are called "design-build contracts," because the bidders agree to design and build the entire project. The FDOT is examining the feasibility of expanding this type of contract to include even more activities, but lacks specific statutory authority, pursuant to s. 337.11(7)(a), F.S., to combine more than the design and construction phases of buildings (including rest areas and weight stations), a major bridge, or a railroad corridor. In fiscal year 2000-2001, FDOT has programmed in its budget to spend \$349.4 million on design-build projects, primarily to widen or replace bridges.

CS/SB 24B passed the Legislature during Special Session B in 2001. The bill amends s. 337.107 F.S., to add right-of-way services to those activities that can be included in a design-build contract.

CS/SB 24B further amended s. 337.11(7)(a), F.S., to make all types of transportation projects, except for resurfacing and minor bridge projects, eligible for a design-build contract at the FDOT's discretion. Because the FDOT has already committed approximately \$90 million in innovation projects, this is necessary to allow approximately \$400 million of the projects in the transportation portion of the Governor's Economic Stimulus Plan to be expedited in the next six to eight months. This expansion of eligible design-build contracts also includes intelligent transportation systems. CS/SB 24B repeals the enhanced design-build provisions on June 30, 2003.

The FDOT also has interpreted s. 337.025, F.S., related to "innovative highway projects," to include design-build contracts for all types of transportation work. The FDOT is limited to spending no more than \$120 million annually for innovative highway projects, so most of these projects have been small resurfacing jobs. In fiscal year 2000-2001, the FDOT has programmed into its budget to spend about \$74 million on projects in this category.

The FDOT also is trying to promote "fast-tracking" of small construction and maintenance projects, meaning contracts that do not need to be competitively bid. Currently, s. 337.11(6), F.S., sets the threshold at \$60,000 for projects that do not have to go through competitive bid. As construction and materials costs have increased, FDOT staff considers the \$60,000 cap too low.

Section 287.055, F.S., is known as the "Consultants' Competitive Negotiation Act", which was adopted to guarantee the competitive selection of professional services in public projects. Professional services include those services provided by architects, engineers, and surveyors.

III. Effect of Proposed Changes:

Turnpike Enterprise

The bill significantly amends ss. 338.221 – 338.241, F.S., which is related to the Florida Turnpike. The Turnpike District is recreated as the "Turnpike Enterprise." The term "enterprise" is not defined; instead, it is described in context as an entity that has the autonomy and flexibility to be able to pursue "innovations as well as the best practices found in the private sector in management, finance, organization, and operation." To facilitate the most efficient and effective management, the turnpike enterprise is exempt from the DOT's policies, procedures and standards, except as provided in s. 287.055, F.S., the "Consultants' Competitive Negotiation Act". A major change in how the Turnpike Enterprise will operate differently than the Turnpike District is that no longer will its toll road projects have to eventually generate enough toll revenue to repay the bond debt incurred to build them. Under the bill, "economically feasible" is redefined as meaning "the revenues of the proposed turnpike project in combination with those of the existing turnpike system are sufficient to service the debt of the outstanding turnpike bonds to safeguard investors."

Other changes include:

- The Turnpike Enterprise is not bound by a cap on the amount of money to be spent on innovative highway projects; the authority of the enterprise to plan, design, build and maintain the Florida Turnpike system is expressed;
- The FDOT may adopt rules pertaining to the enterprise's ability to use procurement procedures that are alternatives to those in chapters 255, 287 and 337, F.S.;
- The enterprise may automatically carry forward each fiscal year its unexpended funds;
- Transfers the Office of Toll Operations to the turnpike enterprise;
- The FDOT may enter into contracts or licenses with persons to create business opportunities on the turnpike system; and
- Florida Highway Patrol Troop K is officially recognized as the preferred law enforcement troop of the Turnpike Enterprise. The enterprise's executive director may contract with the Department of Highway Safety and Motor Vehicles for additional officers to patrol the turnpike system.

The Florida Building Code as it pertains to toll collection facilities under the jurisdiction of the turnpike enterprise of the DOT shall be enforced exclusively by the turnpike enterprise.

The word "district" is replaced throughout with "enterprise," and other cross-reference changes are made in these sections.

Section 206.46, F.S., is amended to increase the right-of-way and bridge bond cap from \$135 million to \$200 million.

Office of Motor Carrier Compliance

Section 316.302(8), F.S., is amended to authorize Motor Carrier Compliance officers or other duly appointed agents holding a safety inspector certification from the Commercial Vehicle Safety Alliance, to stop commercial motor vehicles without reason for the purpose of vehicle and driver inspection. The proposal would also restore language concerning the removal of unsafe vehicles inadvertently deleted 1995. The section is further amended to update s. 316.302 (1), F.S., related to requirements for drivers of commercial motor vehicles. It changes the date of relevant federal rules and regulations from March 1, 1999, to October 1, 2001.

Further, s. 334.044, F.S., is amended to provide a central statutory definition of the primary mission, powers, and responsibilities of the Office of Motor Carrier Compliance and assist in responding to the additional responsibilities of the office and in establishing clear guidance to prosecutors and judges regarding MCCO authority. The Office may employ sworn law enforcement officers with full law enforcement powers, including the power to make arrests, carry firearms, serve court processes and seize contraband. Contraband is defined to mean "illegal drugs" in order to avoid confusion with the Department of Agriculture and Consumer Services law enforcement definition of "contraband" which includes illegal fruits and vegetables.

The section is further amended to establish a FDOT "reserve officer program," similar to existing programs in other agencies, by providing for appointment of part-time and/or auxiliary law enforcement officers. This program would allow the FDOT to take advantage of retired

officers who could return to work on a part-time basis, currently employed officers in state and local agencies who could be cross-designated as MCCO officers, and citizen volunteers.

Truck Weight Limits

A new subsection (6) is added to s. 316.535, F.S., to include weight limits on certain specialty trucks, and to specify they have to meet all safety and operational requirements under law. Section 316.545, F.S., is amended to add a cross-reference, in light of the amendment to s. 316.535, F.S.

Bond Issues

Section 338.165, F.S., is amended to clarify that the FDOT has specific authority to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Beeline-East Expressway, Sunshine Skyway Bridge, and Pinellas Bayway toll facilities to provide funding for needed transportation projects on the State Highway System in the counties in which they are located. Bonding the Sunshine Skyway toll revenues would provide for approximately \$130 million for funding transportation projects in Pinellas, Manatee and Hillsborough Counties. Bonding the Beeline-East toll revenues would provide for approximately \$54 million for funding transportation projects in Brevard and Orange Counties.

Local Government Reimbursement

Section 339.12(5), F.S., is amended so that the words “compensation” and “compensate” replace, where appropriate, the words “reimbursement” and “reimburse.” Agency accountants have said the changes more accurately reflect the situation.

Further, subsection (4) of s. 339.12, F.S., is amended to raise the limit on local government cash advances from \$100 million to \$150 million.

Design- Build Contracts

Section 337.11, F.S., is amended authorizing the DOT to combine right-of-way services with design-build contracts from July 1, 2003 through June 30, 2005. The bill amends s. 337.107, F.S., to add right-of-way services to those activities that can be included in a design-build contract.

Also, s. 337.11(7)(a), F.S., is amended to make all types of transportation projects, except for resurfacing and minor bridge projects, eligible for a design-build contract at the FDOT’s discretion. In addition, FDOT will be able to advertise and award design-build contracts despite the fact that not all of the right-of-way or easements necessary to complete the project have been deeded to the state or to a local governmental entity. However, construction can not begin on any portion of the design-build project until the title to all necessary right-of-way has vested in the FDOT or a local governmental entity, and all railroad crossing and utility agreements have been executed.

Finally, s. 337.11(6), F.S., is amended to raise from \$60,000 to \$120,000 the cap on maintenance and construction projects contracted without a competitive bid. The FDOT expects this will expedite completion of smaller transportation projects that are sometimes held up because of the need to competitively bid out the finishing touches, such as traffic signal improvements.

This bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unknown.

C. Government Sector Impact:

The increase in the right-of-way and bridge bond cap from \$135 million to \$200 million, will make available \$65 million in additional bonding capacity annually.

Bonding the Sunshine Skyway toll revenues would provide for approximately \$130 million for funding transportation projects in Pinellas, Manatee and Hillsborough Counties. Bonding the Beeline-East toll revenues would provide for approximately \$54 million for funding transportation projects in Brevard and Orange Counties.

VI. Technical Deficiencies:

The amendments to s. 316.302, F.S., create a criminal penalty by cross-reference to s. 843.02, F.S. There is, however, no notice of this effect in the title of the bill.

Chapter 287, F.S., has purchasing thresholds for the procurement of commodities and services. Category Four has a nominal cap of \$150,000 in current law. Portions of the transportation code customize purchasing statutes for the unique demands of highway and bridge construction. The

amendments suggested in s. 337.11(6)(c), F.S., in the bill have the effect of nominally increasing the purchasing threshold from \$60,000 to \$120,000, but it leaves the new limit \$30,000 below the level in ch. 287, F.S. A simple cross-reference to ch. 287, F.S., purchasing thresholds would eliminate this dual standard and provide greater clarity of interpretation and the flexibility sought by the bill.

The bill attempts to set the Turnpike Enterprise apart from the department while, at the same time making it a part of the department. The execution of this produces some conflicts. First, the enterprise is given the powers of the department by statute but then the secretary may take them away by fiat. Second, the enterprise may use alternative procurement procedures to those codified in chs. 255 and 337, F.S. There are no other alternative procurement procedures in statute. The effect is to have the agency establish an unknown method unsanctioned by statute. This could lead to challenges to the legal sufficiency of its proposed procedures.

The exemption from the certified forward funds provisions of s. 216.301, F.S., permits the enterprise to carry forward unencumbered funds provided they do not exceed 5 percent of the operating budget. The section from which the exemption is sought includes notification of the legislative branch appropriations committees. As phrased in the bill, that notification will no longer be provided. The applicable standard for expenditure will be “any lawful purpose.” That standard is inclusive of salary and benefits.

VII. Related Issues:

Committee Substitute for Senate Bill 24B, which passed the Legislature and was signed by the Governor, provides for repealing the design-build provisions and returning to the more restrictive design-build provisions on June 30, 2003. This bill retains the original design-build enhancement provisions of CS/SB 24B effectively moving the June 30, 2003 repeal date to June 30, 2005.

The bill provides that the Turnpike Enterprise is “. . . exempt from the department’s policies, procedures, and standards . . .” although the agency Secretary reserves the authority to impose any of them in appropriate circumstances. This phrase is extremely vague and stands in marked contrast to a similar specific exemption afforded charter schools and school districts relative to the Department of Education. Consideration should be given to making any departure from normal business practice a specific grant of authority in which the practice itself is named.

The amendment to the definition of “economically feasible” results in an expanded application of system revenues. This has the effect of removing the current 50 percent/fifth year requirement. A consequence of this will permit the use of revenues in excess of the debt service coverage ratio for other system purposes.

VIII. Amendments:

None.