

TRANSPORTATION

HB 591 — The Department of Transportation

by Transportation Committee and Rep. K. Smith (CS/CS/SB 972 by Transportation Committee; Fiscal Policy Committee; and Senator Casas; CS/SB 1314 by Transportation Committee and Senator Webster)

FDOT Financing

The bill increases from 6 percent (capped at \$115 million) to 7 percent (capped at \$135 million) the revenues that may be annually transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund from State Transportation Trust Fund funds.

The bill authorizes the Florida Department of Transportation (FDOT) to pledge future federal aid for the payment of debt service on bonds issued, allowing FDOT to raise up to \$800 million in bonds.

The bill further: provides FDOT must guarantee loans for certain businesses affected by major construction projects; authorizes FDOT and local governments to enter into an interlocal agreement to provide financing for fixed-guideway projects; expedites funding for ports; allows FDOT the option to secure and administer federal loans for existing rail projects; raises the amount FDOT is authorized to enter into contracts for innovative highway projects from \$60 million to \$120 million; provides FDOT must allocate 50 percent of discretionary highway capacity funds to the FIHS; provides for the Small County Road Assistance Program; and, provides funds repaid by the Tampa-Hillsborough County Expressway Authority to the Toll Facilities Revolving Trust Fund are to be loaned back to the authority for specified purposes.

FDOT Internal Operations

The bill: changes the name of The Office of Construction to the Office of Highway Operations; provides for Transportation Commission review of highway, transit, rail, seaport, intermodal and aviation systems, and major FDOT policy initiatives; clarifies the jurisdiction and responsibility for operation and maintenance of roads; authorizes FDOT to designate public roads as scenic highways; authorizes FDOT to enter into contracts for construction or maintenance of roadway and bridge elements without competitive bidding

for category 4 (\$60,000 or less) projects; deletes the provision for the owner-controlled insurance plan; eliminates intermediate delinquency as grounds for suspension or revocation of a contractor's certificate of qualification to bid on construction contracts in excess of \$250,000; and provides a pledge to turnpike bondholders to restrict the sale or lease of portions of the turnpike.

The bill further: provides FDOT appraisers are not obligated to report violations of state professional licensing laws to the Department of Business and Professional Regulation; removes the schedule of contract amount categories used by FDOT to calculate liquidated damages to be paid by a contractor and allows FDOT to adjust the categories; requires surety bonds posted by successful bidders on FDOT construction contracts be payable to the FDOT; revises provisions concerning the State Arbitration Board by increasing the amount of a contractual claim that goes before the board; amends the arbitration fee schedule; authorizes FDOT to purchase options to purchase land; authorizes the purchase and sale of replacement housing on state funded projects.

The bill: authorizes a fixed-guideway system operating within the FDOT's right-of-way to operate at any safe speed; allows FDOT to contract directly with the utility company for clearing and grubbing work necessary for utility relocation; adds 7 new planning factors as per TEA-21; clarifies the roles of the short and long range plans; authorizes FDOT to create a common self-retention insurance fund; authorizes FDOT to conduct hazardous materials inspections at manufacturers' and shippers' facilities on Florida rail lines; adds economic development as one of the purposes of the transportation code; extends the current authorization for the FDOT's model classification plan; updates FDOT program objectives; and, redefines the mission of FDOT with more emphasis on intermodal travel choices

Commercial Trucks

The bill updates references to the current federal safety regulations, and provides a penalty cap of \$1,000 for a commercial vehicle which has not been expired for more than 90 days. The bill further provides an exemption from the International Registration Plan for unloaded trucks entering state for repairs or for picking up newly purchased truck.

Planning/Metropolitan Planning Organizations

The bill requires the Department of Community Affairs and the FDOT to submit to the Legislature, on or before December 1, 1999, proposed legislative language implementing the revenue neutral recommendations of the Transportation and Land Use Study Committee.

The bill adds 7 new planning factors as per TEA-21 for MPOs, and keeps some of the current planning factors; clarifies MPO boundaries; provides for MPO reapportionment for Dade and Broward counties.

Outdoor Advertising

The bill clarifies the definition of a commercial or industrial zone for the purposes of outdoor advertising and corrects a glitch in sign size. The bill provides FDOT flexibility to lower the reinstatement fee for outdoor advertising permits if the owner demonstrates a good faith error prior to FDOT removing the sign, and provides competing applications for the same site will not be approved until the sign with the expired permit has been removed.

Eminent Domain

The bill creates s. 73.015, F.S., establishing a presuit negotiation process in eminent domain proceedings which requires that all condemning authorities provide notice, a written offer of compensation, and, if requested, a copy of the appraisal report upon which the offer is based, to the property owner before instituting condemnation litigation. It requires notification of the proposed condemnation action to business owners located on the land to be taken, and requires business owners seeking business damages to provide the condemning authority with a written offer of business damages along with copies of business records which substantiate the business damage claim. The bill defines “business records.” A business owner must follow this procedure of submitting a written offer of business damages or the court must strike a business damage defense during a subsequent condemnation trial, unless the business owner demonstrates a good faith justification for failing to provide a written offer.

The bill provides that the condemning authorities shall pay all reasonable costs and attorney’s fees incurred on behalf of a fee or business owner during the presuit negotiation process, including fees and costs incurred during mediation. This requirement only applies to governmental condemning authorities seeking to take property for road right of way. Attorney’s fees for presuit negotiation for business damage claims are based on factors set forth in s. 73.092(2), F.S.; for example, the rate customarily charged for comparable services, the time spent on the case and the expertise of the attorney, rather than a calculation of the benefit the attorney achieves for the client. In addition, the floor for calculating benefits for business damage claims if the case is ultimately litigated is defined as the rejection or the making of a counter offer by the condemning authority to the written offer made by the business owner. The bill amends s. 73.092(1)(a), F.S., to clarify provisions relating to the calculation of attorney’s fees for business damage claims. Finally, no prejudgment interest shall be paid on costs and attorney’s fees under the requirements of the bill.

The bill reduces the number of years in which a business must be established in order to qualify for business damages in right-of-way condemnation proceedings from 5 years to 4 years. This provision “sunsets” January 1, 2003.

The bill repeals ss. 337.27(2), 348.008(2), 348.759(2), and 348.957(2), F.S. These sections authorize the Department of Transportation (DOT), and several other condemning authorities to take an entire parcel of land, even if the entire parcel is not needed for the government project, where the acquisition costs would be less or equal to acquiring a portion of the property. The bill also amends s. 127.01(1)(b), F.S., regarding county condemnation authority, and s. 166.401(2), F.S., regarding municipal condemnation authority, to eliminate a cross reference to s. 337.72(2), F.S. In addition, the bill repeals s. 337.271, F.S., which sets forth an acquisition negotiation process for the DOT.

Other Issues

The bill: deregulates electric bicycles; provides the duty to yield to public transit vehicles reentering the flow of traffic; provides for an audit of ports; provides for a mitigation study by OPPAGA; defines the terms “hardship purchase” and “protective purchase”; provides for the mitigation of impacts to wetlands and other sensitive habitats; provides flexibility in the appropriation of the charter county transit system surtax; authorizes Miami-Dade County to abolish tolls if a local source of funding is provided; allows reapportionment by the Miami-Dade County MPO.

The bill further: authorizes local governments to request the Department of Transportation to install and maintain speed zones for federally funded Headstart programs located on roads maintained by the department; and, modifies St. Lucie Expressway Authority provisions to include bridges and bonding flexibility; and, provides technical statutory revisions.

If approved by the Governor, these provisions take effect July 1, 1999.

Vote: Senate 39-0; House 116-0

CS/HB 311 — DOT & Public Authorities/Law Suits

by Judiciary Committee and Rep. Fuller (CS/SB 240 by Fiscal Policy Committee and Senators Sebesta, Lee, Casas, Latvala and Clary)

The committee substitute specifies conditions under which suits may be brought by and against the Department of Transportation on contract claims and on any public works project for which the public authority requires a performance and payment bond.

The committee substitute: limits the application of the committee substitute to contract claims arising from breach of an express provision or an implied covenant of a written agreement or directive; provides 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, specifically provides sovereign immunity of the state and its political subdivisions is not waived from equitable claims and equitable remedies.

The committee substitute further: deletes the owner controlled insurance program; revises provisions concerning the State Arbitration Board by increasing the amount of a contractual claim that goes before the board and amends the arbitration fee schedule.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.

Vote: Senate 39-0; House 117-0

HIGHWAY SAFETY AND MOTOR VEHICLES

CS/CS/SB 1270 — Highway Safety and Motor Vehicles

by Transportation Committee; Fiscal Policy Committee; and Senators Casas and Forman

This committee substitute implements numerous changes to laws relating to programs administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Substantive issues included in the committee substitute relate to traffic control, highway safety, motor vehicles, drivers' licenses, motor vehicle emissions inspection, and vessels. Major provisions of the committee substitute are summarized below.

Uniform Traffic Control

This committee substitute amends s. 316.1958, F.S., to provide a law enforcement officer or a parking enforcement specialist may not issue a ticket for parking in a disabled parking space until first determining if the vehicle is transporting a resident of another state who is the owner of the out-of-state disabled parking permit.

In addition, the committee substitute amends s. 316.640(1)(d), F.S., to authorize airport authorities to employ parking enforcement specialists. The committee substitute provides such parking enforcement specialists are not authorized to carry a weapon or make arrest.

Disposition of Traffic Infractions

This committee substitute amends s. 318.1451, F.S., to direct DHSMV to develop and distribute a traffic school reference guide. The committee substitute also establishes certain restrictions on the distribution of information and materials relating to driver improvement schools to the public.

Section 318.15, F.S., is amended to authorize tax collectors to retain the \$25 service fee when reinstating a driver's license. This will allow tax collectors to receive the same service fee as DHSMV and court clerks for reinstating a suspended driver's license. Section 318.15, F.S., is also amended to extend the time from 5 days to 10 days, the Clerk of the Court has to report to the DHSMV a failure to comply with civil penalties.

The committee substitute amends s. 318.36, F.S., to provide civil traffic infractions hearing officers are vested with the same judicial immunity as a judge.

Motor Vehicle Titles and Registration

This committee substitute amends s. 319.14, F.S., to provide the title certificate for long-term lease vehicles (a vehicle leased under written agreement to one person for a period of 12 months or longer) will not be stamped with the lease vehicle brand. Short-term lease vehicles (a vehicle leased under written agreement to one or more persons from time to time for a period of less than 12 months) will continue to receive the lease vehicle brand on the title certificate.

The committee substitute amends s. 320.0657, F.S., to revise the requirements relating to the fleet registration program.

The committee substitute amends s. 320.08058, F.S., to repeal the provision of law providing for the expiration of the Challenger license plate in July of 2001. In addition, the committee substitute authorizes the Department of Veterans' Affairs to redesign the veterans' license plate and adds promotion and marketing as allowable expenses.

Section 320.086, F.S., is amended to make ancient/horseless carriage license plates available to vehicles manufactured prior to 1946. In addition, the committee substitute repeals the collectible designation and redefines antique vehicles as those vehicles manufactured after 1945 and over 30 years old. The committee substitute also creates a category for antique fire fighting and military equipment. Finally, the committee substitute provides motor vehicles manufactured prior to 1975 may use historical plates.

The committee substitute amends s. 320.13, F.S., to restrict the use of dealer plates by disallowing them on tow trucks or wreckers unless the tow truck or wrecker is being

demonstrated for sale. Similarly, the committee substitute restricts the dealer plate from being used to transport another vehicle for the dealership. The committee substitute creates a manufacturer license plate which is to be used by manufacturers in the same manner as dealer plates.

The committee substitute amends s. 320.131, F.S., to provide DHSMV has the discretion to authorize agents or Florida licensed dealers to issue temporary tags in cases where the temporary tag is not specifically authorized, but the applicant demonstrates a need for temporary use of such a tag. This section is also amended to provide criminal penalties for the deliberate misuse of temporary tags to avoid registration requirements (first degree misdemeanor), to avoid the disclosure of the vehicle's true owner (third degree misdemeanor), and the failure to maintain records as required by law and agency rules (second degree misdemeanor.)

Section 320.27, F.S., is amended to provide a dealer license is subject to denial, suspension, or revocation where the dealer sells a vehicle offered in trade by a customer prior to consummation of the sale, exchange, or transfer of a newly acquired vehicle to the customer. In addition, the committee substitute provides a motor vehicle dealer license is subject to denial, suspension, or revocation where the dealer fails to properly post the federally-mandated consumer sales window form.

The committee substitute amends s. 320.30, F.S., to authorize the confiscation and forfeiture of certain vehicles offered for sale in accordance with the Florida Contraband Forfeiture Act. This section also provides guidance regarding ownership and management of the forfeited property by the enforcing law enforcement agency and DHSMV.

The committee substitute repeals s. 320.8249(11), F.S. This subsection exempts licensed mobile home dealers and licensed mobile home manufacturers from the requirement to obtain a license as a mobile home installer. Similarly, the committee substitute amends s. 320.8325, F.S., to provide DHSMV must establish uniform, rather than minimum, standards for the manufacture or installation of anchors, tie-downs, over-the-roof-ties, or other reliable methods for securing mobile homes or park trailers. The committee substitute further adds no entity, other than DHSMV, has the authority to amend these uniform standards.

Driver's Licenses

This committee substitute amends ss. 322.051, and 322.08, F.S., to specify the documents an applicant must provide DHSMV to prove their identity when applying for a driver's license and identification card. The applicant must provide one of the following documents: a valid U.S. passport, a U.S. birth certificate, an alien registration receipt card

(green card), an employment authorization card issued by the U.S. Department of Justice, or proof of nonimmigrant classification provided by the U.S. Department of Justice.

Section 322.1615, F.S., is amended to authorize persons with a learner's driver's license to drive from dark until 10 p.m., instead of from 7:00 p.m. to 10:00 p.m. This provision eliminates the restriction that a person holding a learner's license may not operate a vehicle from dark until 7:00 p.m.

The committee substitute amends s. 322.2615, F.S., to repeal the requirement a person automatically be given an informal review if he or she fails to appear at the formal hearing. If the hearing officer finds the failure to appear is without just cause, then the driver's license suspension is sustained. The committee substitute also provides a person is to be without a business or employment purpose license for the full 30 or 90 day (depending on the violation) period of suspension following the expiration of the temporary permit.

The committee substitute amends s. 322.28, F.S., to clarify no court may stay the administrative suspension of a driving privilege during judicial review of the DHSMV order resulting in such suspension. This section also clarifies judicial stays are not permitted in .02 DUI cases.

Seizure of Motor Vehicle Plates

This committee substitute amends s. 324.201, F.S., to authorize expansion of the current pilot program to a statewide program once the DHSMV database conversion is completed and the error rate in pilot counties is no more than 2 percent. The program may be expanded to additional counties where a majority of the governing body of the county has requested the program. The committee substitute provides for the repeal of the program effective July 1, 2002.

Motor Vehicle Emissions Inspection

This committee substitute amends ss. 325.2135 and 325.214, F.S., to provide DHSMV may extend the current emissions inspection contracts for a period of time sufficient to implement new contracts resulting from competitive proposals. DHSMV must enter into one or more contracts by June 30, 2000. The contracts must provide for an inspection program in which vehicles 4 model years and older would be inspected every 2 years for hydrocarbon and carbon monoxide emissions (current testing procedures.) The inspection fee is capped at \$19.

The committee substitute provides contracts may not exceed 7 years. In addition, contracts must provide that, after 4 years, DHSMV reserves the right to cancel a contract at any time before the conclusion of the contract term upon 6 months notice to the

contractor. The committee substitute also authorizes DHSMV to amend the contracts if the Legislature enacts legislation changing the number of vehicle model years subject to inspection. Finally, the committee substitute also authorizes DHSMV to amend or cancel the contracts upon statewide implementation of clean fuel requirements promulgated by the United States Environmental Protection Agency.

Vessel Registration and Titling

This committee substitute implements numerous revisions to ch. 327, F.S., and ch. 328, F.S., to make vessel registration and titling requirements and procedures consistent with comparable motor vehicle registration and titling laws. These changes are intended to facilitate procedural conformity, enable the consolidation of various DHSMV databases, and improve overall customer service.

Miscellaneous Provisions

This committee substitute amends s. 715.05, F.S., to require a person in charge of the towing service, garage, repair shop, automotive service, storage, or parking place to notify the insurer of certain unclaimed or impounded motor vehicles.

The committee substitute amends s. 812.014, F.S., to add an additional penalty for petit theft in cases where a person drives off without paying for gasoline offered for retail sale. The additional penalty will be the suspension of the person's driver's license for up to 6 months for a first conviction and one year for subsequent convictions. In addition, the committee substitute provides stealing a stop sign constitutes grand theft of the third degree and a felony of the third degree.

Section 832.06, F.S., is amended to provide the tax collectors recourse for collecting on worthless checks issued in connection with driver's license and identification card transactions.

The committee substitute repeals the section of law (section 14 of ch. 98-223, L.O.F.) passed by the 1998 Legislature which removed the driver's license suspension sanction from the penalty provisions for failure to maintain the required insurance coverage.

The committee substitute enacts numerous technical changes to correct obsolete and incorrect references.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise indicated.

Vote: Senate 30-7; House 113-4

HB 1015 — Driver License/Task Force on Privacy and Technology

by Rep. Feeney and others (CS/SB 1898 by Transportation Committee and Senator Brown-Waite)

This bill repeals subsections (5) and (6) of s. 322.142, F.S., 1998 Supp., thereby repealing the Department of Highway Safety and Motor Vehicles' (DHSMV) authority to sell copies of photographs, electronically stored photographs, and other driver's license and state identification card information when such information is used for the prevention of fraud. As a result, DHSMV is prohibited from releasing driver license photographs and digital images, except for law enforcement purposes.

In addition, this bill amends s. 282.3091, F.S., 1998 Supp., to direct the State Technology Council within the Department of Management Services to create a Task Force on Privacy and Technology. The task force is directed to study and make recommendations to the Governor and the Legislature on the following: privacy issues under the United States and Florida Constitution and laws, the Public Records Act, and the advent of the use of advanced technology; technology fraud, including the illegal use of citizens' identity, credit and other uses; balancing the traditional openness of public records in Florida with the need to protect individuals' privacy and identities; and the sale of public records to private individuals and companies. The task force must present its findings and recommendations to the Governor and the Legislature by February 1, 2000.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 40-0; House 115-0