**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB THSS 13-02 Department of Transportation
**SPONSOR(S):** Transportation & Highway Safety Subcommittee; Artiles
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1132

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Transportation & Highway Safety Subcommittee | 13 Y, 0 N | Johnson | Miller |

## SUMMARY ANALYSIS

The bill is a comprehensive bill relating to the Department of Transportation (DOT). Among the revisions, the bill:

- Repeals the "Florida Transportation Corporation Act" and related auditing authority.
- Extends the Florida Transportation Commission's oversight authority to the Mid-Bay Bridge Authority.
- Implements Space Florida's request to further integrate space transportation programs with DOT's programs and processes and annually sets aside $15 million for spaceport projects.
- Creates the Strategic Airport Investment Initiative.
- Prohibits DOT from entering into any new lease-purchase agreements with various authorities.
- Authorizes DOT to enter into contracts with community development districts for routine maintenance work on the State Highway System within district boundaries.
- Extends DOT's authority to improve and maintain roads that provide access to state parks.
- Clarifies that the threshold to bid on construction contracts in excess of $250,000 is determined by DOT's proposed budget estimate.
- Modifies the terms and conditions under which DOT may sell or lease properties acquired for rights-of-way.
- Clarifies DOT's authority and responsibilities when DOT receives an unsolicited proposal to enter into a lease of DOT property for joint public-private development.
- Allows DOT to share in the revenue generated from parking meters and other time limit devices on state roads under the jurisdiction of DOT.
- Revises certain membership requirements for Metropolitan Planning Organizations.
- Broadens the eligibility for intercity bus companies to compete for federal and state program funding.
- Clarifies DOT's authority to undertake ancillary development within rail corridors owned by the State.
- Authorizes the Orlando-Orange County Expressway Authority to enter into 99 year leases.
- Revises provisions related to environmental mitigation for transportation projects.
- Provides some additional exemptions to environmental permitting requirements
- Addresses issues related to trespassing on railroad property.

**The bill contains a potential unfunded mandate on municipalities and counties; therefore, a two-thirds vote may be required for passage.**

Several provisions have a fiscal impact on the state or local government. See the Fiscal Analysis & Economic Impact Statement of this analysis.

The bill has an effective date of July 1, 2013.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill is a comprehensive bill related to the Department of Transportation (DOT). For ease of understanding, this analysis is arranged by topic.

**Transportation Corporations (Sections 1 and 22)**

Current Situation
Sections 339.401 through 339.421, F.S., set out the Florida Transportation Corporation Act. The Act was created in 1988 to allow certain corporations authorized by the DOT to secure and obtain rights-of-way for transportation systems and to assist in the planning and design of such systems.[1] According to legislative findings, the following factors contributed to the creation of the Act:

- New transportation facilities and systems were needed to combat present and future traffic congestion;
- Because state funds were limited, design of these facilities and systems required new and alternative means; and
- Authorizing nonprofit corporations to act on behalf of DOT was essential to the continued economic growth of the state.[2]

The Act contains various statutory provisions related to the formation, operation, and dissolution of these corporations. According to DOT, this act has never been used.

Proposed Changes
The bill repeals the Florida Transportation Corporation Act in ss. 339.401 through 339.421, F.S. The bill also repeals s. 11.45(3)(m), F.S., authorizing the Auditor General to audit these corporations.

**Review of Mid-Bay Bridge Authority (Section 2)**

Current Situation
The Florida Transportation Commission (FTC) is responsible for monitoring the efficiency, productivity, and management of authorities created under chs. 348 and 349, F.S.,[3] and any authority created under ch. 343, F.S.,[4] which is not monitored by the Florida Statewide Passenger Rail Commission.[5] There is no state entity currently charged with monitoring the Mid-Bay Bridge Authority which was created by special law.[6]

Proposed Changes
The bill amends s. 20.23(2)(b)8., F.S., giving the FTC oversight authority over the Mid-Bay Bridge Authority.

**Florida Statewide Passenger Rail Commission (Section 2)**

Current Situation

[1] S. 3, ch. 88-271, L.O.F.
[2] S. 339.403, F.S.
[3] The transportation authorities created pursuant to ch. 348, F.S., are the Miami-Dade Expressway Authority, Tampa-Hillsborough County Expressway Authority, Orlando-Orange County Expressway Authority, Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority. The Jacksonville Transportation Authority is created under ch. 349, F.S.
[4] The transportation authorities created under ch. 343, F.S. are the South Florida Regional Transportation Authority, Central Florida Regional Transportation Authority, Northwest Florida Transportation Corridor Authority, and Tampa Bay Area Regional Transportation Authority.
[5] S. 20.23(2)(b)8., F.S.
[6] Ch. 2000-411, L.O.F.

The Florida Statewide Passenger Rail Commission was created in 2009.[7] The primary functions of the commission are:

1. Monitor the efficiency, productivity, and management of all publicly-funded passenger rail systems in the state.[8]
2. Advise DOT on policies and strategies used in the planning, designing, building, operating, financing, and maintaining a coordinated statewide system for passenger rail service.
3. Evaluate passenger rail policies and provide advice and recommendations on passenger rail operations in the state.

DOT currently provides administrative support and service to the Florida Statewide Passenger Rail Commission.[9] The commission last met in July 2012.

Proposed Changes
The bill amends s. 20.23(3)(d), F.S., removing provisions that reasonable expenses of the commission are subject to the approval by the Secretary of Transportation and that DOT is to provide administrative support to the commission.

The bill also provides that the executive director and the assistant executive director of the FTC are to serve as the executive director and assistant executive director of the Florida Statewide Passenger Rail Commission. Additionally, the staff of the FTC is to provide administrative support and service to the Florida Statewide Passenger Rail Commission.

**Position Title Change (Section 3)**

Current Situation
DOT requested approval from the Department of Management Service (DMS) to change the title of an existing Senior Management Services (SMS) class, State Public Transportation and Modal Administrator to State Freight and Logistics Administrator. DMS approved this title change on September 2, 2011, but the statutes do not reflect this title change.

Proposed Change
The bill amends s. 110.205(2)(j), F.S., changing the position of State Public Transportation and Modal Administrator to State Freight and Logistics Administrator to reflect the title change approved by DMS.

**Wreckers (Section 4)**

Current Situation
Section 316.515(8), F.S., allows wreckers to tow disabled vehicles where the combination of wrecker and towed vehicle are over legal weight, provided that the wrecker is operating under a special use permit. This provision was passed during in 1997 after agreement with the wrecker industry that in exchange for the ability to tow disabled vehicles to a location of their choice (instead of to the closest repair facility), overweight permits would be obtained. Also in 1997, s. 316.550(4), F.S., authorized DOT to issue such overweight permits.

However, s. 316.530(3), F.S.,[10] allowing wreckers to tow disabled vehicles where the combination of wrecker and towed vehicle are over the legal weight without a special use permit, was inadvertently overlooked and still remains in current law, despite the direct conflict with subsequently passed legislation.

[7] Ch. 2009-271, L.O.F.
[8] This includes authorities created under chs. 343, 349, or 163, F.S. Part V of ch. 163, F.S. allows for two or more contiguous counties, municipalities, or political subdivisions to develop a charter for a regional transportation authority.
[9] Currently an assistant secretary of DOT serves as the executive director of the Statewide Passenger Rail Commission.
[10] This provision was originally passed as s. 306.205(3), F.S., in 1976.

As the 1997 changes rendered the provisions of s. 316.530(3), F.S., obsolete, the last-passed provisions of s. 316.515(8), F.S., and 316.550(4), F.S., have since been enforced, as they relate to wreckers towing vehicles and the penalties to be assessed for violations.

With respect to federal law, states are authorized to permit nonvisible loads and vehicles exceeding the Federal maximum weight limits upon the issuance of special permits in accordance with state law. Federal regulations[11] authorize states to treat emergency response vehicles as nondivisble. As a result, states are authorized to issue special permits to wreckers and tow trucks that are responding to actual road emergencies, authorizing these vehicles to operate in excess of the maximum weight limits.

Proposed Changes
The bill repeals obsolete s. 316.530(3), F.S., which allows wreckers to tow disabled vehicles were the combination of wrecker and towed vehicle are over the legal weight limit, thereby eliminating the direct conflict in state law.

**CMV/Auxiliary Power Units (Section 5)**

Current Situation
Section 756 of the Energy Policy Act of 2005, "Idle Reduction and Energy Conservation Deployment Program," amended Title 23 U.S.C. 127(a)(12) to allow for a national 400 pound exemption on the maximum weight limit on the interstate system for the additional weight of idling reduction technology (auxiliary power units" or "APUs")[12] on heavy-duty vehicles. Section 316.545(3)(c), F.S., was created in 2010[13] to provide for a 400-pound reduction in the gross weight of commercial motor vehicles equipped with idling reduction technology when calculating a penalty for exceeding maximum weight limits. The reauthorized Federal-aid highway program, Moving Ahead for Progress in the 21st Century (MAP-21) further amended Title 23 U.S.C. 127(a)(12) to increase from 400 to 550 pounds the allowable exemption for additional weight from APUs.

Proposed Changes
The bill amends s. 316.545(3)(c), F.S., increasing the maximum weight limit for APUs from 400 to 550 pounds to conform to federal law.

**Spaceports (Sections 6 and 23)**

Current Situation
Spaceports have been considered a transportation mode in Florida Statutes since 1999. Since that time, DOT has worked closely with Space Florida to provide space transportation infrastructure. DOT programmed $16 million in spaceport projects in both fiscal years 2011-2012 and 2012-2013.

As part of Space Florida's mission is to support and promote commercial space industry in the state, it has provided DOT with proposals designed to better integrate space transportation programs with DOT's programs and processes and provide a consistent source of funding for infrastructure projects.

Proposed Changes
The bill amends s. 331.360, F.S., relating to the spaceport system plan.

The bill amends Space Florida's requirements for a spaceport system plan to require that the plan address statewide spaceport goals and the need for expansion and modernization of space transportation facilities within spaceport territories.[14] The bill authorizes DOT to include relevant

[11] 23 CFR 658.5
[12] An APU is a portable, truck-mounted system that can provide climate control and power for trucks without idling, keeping drivers comfortable during rest periods while reducing negative economic impact (fuel costs) and environmental impact (greenhouse gases and other pollutants ,as well as noise).
[13] Ch. 2010-255, L.O.F.
[14] Section 331.303(18), F.S., defines "spaceport territory" as" the geographical area designated in s. 331.304 and as amended or changed in accordance with s. 331.329."

portions of the plan in DOT's 5-year work program. In addition, the bill sets out parameters for DOT's promotion of aerospace transportation facilities development and improvement.

Beginning in fiscal year 2013-2014, a minimum of $15 million annually is authorized from the State Transportation Trust Fund (STTF) to fund space transportation projects. The funds are to come from the funds dedicated to public transportation projects.[15] However, DOT is prohibited from funding Space Florida's administrative or operational costs.

Before executing an agreement with DOT for funding, Space Florida must provide DOT specific project information in order to demonstrate that the project includes transportation and aerospace benefits. Project information to be provided includes, but is not limited to:

- Project description, characteristics, and scope.
- Project funding sources and costs.
- Project financing considerations with emphasis on federal, local, and private participation.
- Financial feasibility and risk analysis, including efforts to protect the state's investment and ensure project goals are realized.
- Demonstration that the project will encourage, enhance, or create economic benefits.

The bill authorizes DOT to fund up to 50 percent of eligible project costs. If the project meets the following criteria DOT may fund up to 100 percent of eligible project costs:

- Provides important access and on-spaceport capacity improvements;
- Provides capital improvements to strategically position the state to maximize opportunities in the aerospace industry or foster growth and development of a sustainable and world-leading aerospace industry in Florida;
- Meets state goals of an integrated intermodal transportation system; and
- Demonstrates the feasibility and availability of matching funds through federal, local, or private partners.

The bill amends s. 339.55(2), F.S., authorizing the state-funded infrastructure bank to lend capital costs or provide credit enhancements for transportation facilities that provide connectivity to spaceports and for emergency loans for damages incurred to public-use spaceports. It also adds connectivity to spaceports in the criteria to be used in evaluating projects for assistance from the infrastructure bank.

**Strategic Airport Investment Initiative (Section 7)**

Current Situation

In 2012, the Legislature created a strategic investment initiative program within DOT's seaport program.[16] DOT does not have a similar investment initiative or authority for its aviation program.

Proposed Changes

The bill creates s. 332.007(11), F.S., authorizing DOT to fund strategic airport investment projects that meet the following criteria:

- Provide important access and on-airport capacity improvements;
- Provide capital improvements to strategically position the state to maximize opportunities in international trade logistics, and the aviation industry;
- Achieve state goals of an integrated intermodal transportation system; and
- Demonstrate the feasibility and availability of matching funds through federal, local, or private partners.

Strategic airport investment projects meeting these requirements may be funded at up to 100 percent of the project's cost.

[15] This is pursuant to s. 206.46(3), F.S. DOT is required by this section to program a minimum of 15 percent of non-exempt STTF revenues for public transportation projects.

[16] Ch. 2012-174, L.O.F.

**Lease Purchase Agreements (Section 8)**

Current Situation
DOT is authorized to enter into lease-purchase agreements with regional transportation authorities and expressway authorities by which DOT may agree to pay, from state funds other than the revenues of an expressway authority or other facility, the costs of operations, maintenance, repair, and rehabilitation of authority facilities.

Proposed Changes
The bill amends s. 344.044(16), F.S., providing that effective July 1, 2013, and notwithstanding any other law to the contrary, DOT may not enter into any lease-purchase agreement with any expressway authority, regional transportation authority, or other entity. This does not invalidate any lease-purchase agreement authorized and existing as of July 1, 2013, and does not limit DOT's authority under the public private partnership statute.[17]

**Maintenance Contracts/Community Development Districts (Section 9)**

Current Situation
Section 335.055, F.S., authorizes DOT to enter into contracts with counties and municipalities for routine maintenance work on the State Highway System (SHS) within the geographical boundaries of the county or municipality, but does not have the authority to do so with community development districts. A community development district is a local unit of special-purpose government limited to the performance of certain specialized functions.[18]

Proposed Changes
The bill amends s. 335.055, F.S., authorizing DOT to enter into contracts with community development districts for routine maintenance work on the SHS within their geographic boundaries.

**Access to State Parks (Section 10)**

Current Situation
Section 335.06, F.S. requires DOT to maintain roads that provide access to state parks if the roads are part of the SHS. If the access road is part of the county road or city street system, the appropriate local government is required to maintain the road.

Proposed Changes
The bill amends s. 335.06, F.S. authorizing DOT to improve and maintain roads that are part of the county road system or city street system if they provide access to a state park. If DOT does not maintain the road, the appropriate county or municipality shall maintain the road.

**Contractor Vehicle Registration (Section 11)**

Current Situation
Section 337.11(13), F.S., requires each road or bridge construction or maintenance contract let by DOT to contain a provision requiring the contractor to provide proof to DOT, in the form of a notarized affidavit from the contractor, that all motor vehicles that he or she operates or causes to be operated in this state are registered in compliance with ch. 320, F.S.[19]

Proposed Changes
The bill amends s. 337.11(13), F.S., requiring each road or bridge construction contract or maintenance contract let by DOT to require all motor vehicles operated by the contractor in this state to be registered in compliance with ch. 320, F.S, thereby eliminating the requirement of proof to DOT in the form a notarized affidavit from the contractor.

[17] S. 334.30, F.S.
[18] S. 190.003 (6), F.S.
[19] Chapter 320, F.S., relates to motor vehicle licenses.

**Bid Qualification (Section 12)**

Current Situation
Section 337.14(1), F.S., requires that persons "desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified...." Section 337.14(2), F.S. provides: "Certification shall be necessary in order to bid on a road, bridge, or public transportation construction contract of more than $250,000." The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "...with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."

This law could be interpreted as being tied to a bid amount; i.e., so long as the bid is not in excess of $250,000, a person would not be required to first be certified prior to bidding. Such an interpretation could result in a non-qualified person being the low bidder at $249,999, thereby providing that person a competitive advantage over other bidders who are certified as qualified to perform the required construction services.

Another interpretation is that current law requires that a person must be certified as qualified to bid on construction contracts in excess of $250,000 *as determined by DOT's proposed budget estimate*. Consistent with that interpretation, DOT's Bid Solicitation Notices currently advise: "A prequalified contractor must have a current certificate of qualification in accordance with Rule 14-22, F.A.C. on the date of the letting to bid on construction projects over $250,000 as established by the Department's budget."

Revisions to s. 337.14(1), F.S., in 2012, with respect to financial statements submitted in connection with the performance of construction contracts of less than $1 million expressly tied that submission to proposed budget estimates and have highlighted the need to clarify that the determining factor regarding bidders for projects in excess of $250,000 should likewise be expressly tied to DOT's proposed budget estimate.

Proposed Changes
The bill amends s. 337.14, F.S., clarifying that the determining factor regarding bidders for projects in excess of $250,000 is tied to DOT's budget estimate. This provides internal statutory consistency and consistency between the statute and rule.

**Identification of Potential Bidders (Section 13)**

Current Situation
Section 337.168(2), F.S., currently provides that a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1) for the period which begins two working days prior to the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. DOT maintains a website that posts a list of persons who have requested or obtained bid packages, plans, or specifications for a given project.[20] Accordingly, DOT takes the lists down two working days prior to the deadline for obtaining bid packages, plans, or specifications. However, the lists include the identity of persons who requested or obtained bid packages, plans, or specifications before the two-day period of exemption begins.

Proposed Changes
The bill amends s. 337.168(2), F.S., clarifying an existing public records exemption by providing that a document that reveals the identify of a person who has requested or obtained from DOT, a bid

[20] http://www.dot.state.fl.us/cc-admin/Letting_Project_Info.shtm: To access a list, click on a letting date in the near future under "2013 Lettings" and then choose "Proposal Holders" under "Important Letting Documents." (Last visited March 12, 2013).

package, plan, or specifications pertaining to any project to be let by DOT before the two working days before the deadline for obtaining such materials remains a public record.

**Surplus Property (Section 14)**

Current Situation
DOT is authorized to sell property acquired as right-of-way which is no longer needed for the construction, operation, and maintenance of a transportation facility. Sale of properties valued at $10,000 or less may be sold by negotiated sale. Properties valued at more than $10,000 are to be sold by sealed bid or public auction, unless such sale would create an inequity. A public auction is required to be held at the site of the improvement being sold.

DOT is also authorized to convey a leasehold interest in any property acquired as right-of-way. All leases are required to be by competitive bid except when the lease is with 1) the owner from whom the property was acquired, 2) a holder of a leasehold estate existing at the time of acquisition, or 3) the owner holding title to privately owned abutting property where public bidding would create an inequity. Leases are restricted to a 5-year term with one 5-year renewal term.

Proposed Changes
The bill provides that DOT may contract for auction services used in the conveyance of real or personal property or the conveyance of leasehold interest.[21] The contractor may retain a portion of the proceeds as compensation for its services.

The bill provides that the inventory of real and personal property include a statement of each piece of reality, structure, or severable item.

The bill provides that property may be disposed of through negotiations, sealed competitive bids, auctions, or by any other means DOT determines to be in its best interest. No sale can occur at a price less than DOT's current estimate of value, except as provided below. DOT may afford right of first refusal to the local government or other political subdivision in the jurisdiction in which the parcel is situated except in certain transactions.

The bill provides that no lease can occur at a price less than DOT's current estimate of value.

All leases are to be through negotiations, sealed competitive bids, auctions, or by any other means DOT deems to be in its best interest.

If, at DOT's discretion, a lease to anyone other than the abutting property owner or tenant would be inequitable, the property may be leased to the abutting owner or tenant for no less than DOT's current estimate of value.

The bill clarifies that a lease may be extended for an additional 5 years, except if the property is being used for a public purpose, then the lease is exempt from the term limits.

The bill provides that DOT's estimates of value are to be prepared in accordance with DOT guidelines and rules for the valuation of real property. When the value of the property exceeds $50,000, as determined by DOT estimate, the sale will be at a negotiated price not less than fair market value as determined by an independent appraisal prepared in accordance with DOT procedures, guidelines and rules for the valuation of property, the cost of which shall be paid by the party seeking the purchase of the property.

The bill provides that nothing contained in s. 337.25, F.S., modifies the requirements of s. 73.013, F.S.[22]

[21] This is pursuant to s. 287.055, F.S.
[22] Chapter 73.013, F.S. relates to conveyance of property taken by eminent domain; preservation of government entity communications services eminent domain limitation; exception to restrictions on power of eminent domain.

**Unsolicited Lease Proposals (Section 15)**

Current Situation
DOT may request proposals for the lease of its property for joint public-private development or commercial development. DOT may also receive and consider unsolicited proposals for such uses. The statute provides little guidance concerning the process to be followed for consideration of unsolicited proposals, providing that only DOT publish notice of receipt of the proposal and inform affected local governments.

Proposed Changes
The bill amends s. 337.251(2), F.S. providing statutory guidance regarding unsolicited lease proposals. It changes the time period in which DOT will accept other proposals for the lease of a particular property from 60 days to 120 days. It requires DOT to establish an application fee for the submission of proposals by rule. The fee must be sufficient to pay the anticipated costs of evaluating the proposals. DOT may engage the services of private consultants to assist in the evaluation. Before approval, DOT must determine that the proposed lease:

- Is in the public's best interest;
- Would not require state funds to be used;
- Would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease.

**Parking Meters (Section 16)**

Current Situation
Parking meters or other parking time limit devices currently exist within the right-of-way limits of state roads under DOT's jurisdiction, or charge fees for parking in spaces provided within the right-of-way limits. The fees collected from the meters currently benefit the local government and are not shared with the state. The extent of this practice is unknown, but DOT has been requested to identify locations where such meters are being used.

Proposed Changes
The bill create s. 337.408(8), F.S., providing that parking meters or other such parking time limit devices, which regulate designated parking spaces located within the right-of-way limits of a state road, may be installed when permitted by DOT. Counties and municipalities would be required to remit to DOT fifty percent of the revenue generated from any fees collected by meter or such other device installed or already existing within the right-of-way limits of a state road. The funds received would be deposited into the STTF and used for transportation purposes in accordance with state law.[23]

**Toll Interoperability (Section 17)**

Current Situation
HB 599[24] and SB 1998[25] both passed in 2012 and both contained language relating to DOT's authority to enter into agreements with public or private transportation facility owners (whose systems become interoperable with DOT's systems) for the use of DOT systems to collect and enforce tolls, fares, administrative fees, and other applicable charges due in connection with use of the owner's facility. However, the bills are not identical. Part of the last-passed version contained in HB 599 is potentially ambiguous, leading to more than one possible interpretation, and part of the needed language passed in HB 599 was not included in SB 1998.

Proposed Changes

[23] Section 339.08, F.S.
[24] Ch. 2012-174, L.O.F.
[25] Ch. 2012-128, L.O.F.

The bill replaces potentially ambiguous language passed in HB 599 with the unambiguous language passed in SB 1998 and includes the needed language from HB 599, thereby avoiding any confusion that might result from ambiguous language or from statutory construction rules.

**Beeline East/Navarre Bridge (Section 18)**

Current Situation
Section 338.165(4), F.S., authorizes DOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in DOT's adopted work program. The Navarre Bridge is now-county owned and no longer uses toll revenue. The Beeline-East Expressway (renamed the Beachline East Expressway) became part of the Turnpike Enterprise on July 1, 2012.[26] The references to these facilities in s. 338.165(4), F.S., are now obsolete.

Proposed Changes
The bill amends s. 338.165(4), F.S., removing the Beeline-East Expressway and the Navarre Bridge from the list of facilities where DOT may request the Division of Bond Finance to issue bonds secured by toll revenues.

**Alligator Alley (Section 19)**

Current Situation
Section 338.28, F.S., provides that any excess funds after facility operation and maintenance, contractual obligations, reconstruction and restoration, and the development and operation of a fire station at mile marker 63 of Alligator Alley may be transferred to the Everglades Trust Fund of the South Florida Water Management District.

Proposed Changes
The bill amends s 338.26(3), F.S., providing that Alligator Alley toll revenues may be used to *design and construct* instead of *develop and operate* a fire station at mile marker 63 on Alligator Alley. The fire station may be used by Collier County or another appropriate local government entity. Additionally, any excess funds may be transferred to the Everglades Fund of the South Florida Water Management District.

The bill also deletes s. 338.26(4), F.S., authorizing the South Florida Water Management District to issue revenue bonds using Alligator Alley toll revenue as security for the bonds. It does not appear that there are any bonds outstanding secured with Alligator Alley toll revenues.

**Noise Mitigation (Section 20)**

Current Situation
All DOT highway projects, regardless of funding source, must be developed in conformity with federal standards for noise abatement contained in 23 C.F.R. 772 as such regulations existed on July 13, 2011, and s. 335.17(2), F.S. Noise barriers are a significant additional cost for DOT's turnpike and interstate widening and other capacity improvement projects. Section 339.09(1), F.S., encourages and permits DOT to use funds to construct and maintain noise mitigation facilities or walls upon the request of the proper authorities.

Proposed Changes
The bill amends s. 339.09(1), F.S., providing that DOT is not required to fund noise mitigation projects adjacent to existing transportation facilities where DOT is not constructing capacity improvements.

**Metropolitan Planning Organizations (Section 21)**

[26] Ch. 2012-128, L.O.F.

Current Situation

Federal law and rule[27] require a metropolitan planning organization (MPO) be designated in each urbanized area[28] or contiguous urbanized areas. In addition, federal law and rules specifies the requirements for MPO transportation planning and programming activities. These requirements are updated after each federal transportation authorization bill enacted by Congress.

State law also includes provisions governing MPO activities. Section 339.175, F.S., paraphrases or restates some key federal requirements (e.g., for MPO designation, planning boundaries, responsibilities). In addition, state law includes provisions that go beyond the federal requirements. For example, federal requirements regarding MPO membership are very general, while state law is more specific. State law requires the voting membership of MPOs include no fewer than 5 and no more than 19 apportioned members. The exact number is to be determined on an equitable geographic-population ratio basis by the Governor based on agreement among the affected local governments. There are other provisions in state law concerning MPO voting membership, such as the minimum number of county commissioners. The Governor reviews the composition of each MPO's membership in conjunction with the decennial census and reapportions the MPO membership as needed to comply with state law.

Florida is unique in having more MPOs than any state.[29] In numerous regions in Florida there are multiple MPOs designated for a single urbanized area (Southeast, Southwest, Central, Tampa Bay, Panhandle). In those instances where MPOs have reached the 19 member cap as prescribed in state law and the desire is to: 1) consolidate two or more MPOs or 2) expand the MPO planning boundary of an existing MPO to include an expanded urbanized area boundary the currently membership cap restricts the ability of the MPO to add additional members. Current law also provides that in metropolitan areas in which authorities or other agencies have been or may be created by law to perform transportation functions and are performing transportation functions that are not under the jurisdiction of a general-purpose local government represented on the M.P.O., the authority or agency must be provided voting membership on the M.P.O. This limits the M.P.O.s ability to provide for appropriate membership to transportation agencies while remaining under the statutory membership cap.

Proposed Changes

The bill amends s. 339.175, F.S., relating to MPOs. It provides that the limitation on voting members does not apply to MPOs redesignated after the effective date of the act as a result of an expansion of an MPO to include a new urbanized area or the consolidation of two or more MPOs.

The bill provides that at the request of a majority of the affected units of general-purpose local government comprising an MPO, the Governor and a majority of units of general-purpose local government shall apportion the voting membership on the applicable MPO among the various governmental entities within the metropolitan planning area.

The bill also provides that any county operating under a home rule charter adopted pursuant to s. 11, Art. VIII of the Constitution of 1885, as preserved by s. 6(e), Art. VIII of the Constitution of 1968, is to be designated a separate MPO coterminous with the boundaries of the county.

**Definition of Intercity Bus Service (Section 24)**

Current Situation

The Federal Transit Administration's Intercity Bus Program[30] is administered by DOT. Its purpose is to support and maintain intercity bus service in order to preserve service through rural areas. DOT provides matching funds as required by s. 339.135(4), F.S. Intercity bus service means regularly scheduled bus service for the general public which:

[27] 23 U.S.C. 134, 23C.F.R. 450 Part C

[28] An urbanized area is defined by the U.S. Bureau of the Census and has a population of 50,000 or more.

[29] Florida currently has 26 MPOs.

[30] 49 U.S.C. 5311(f)

- operates with limited stops on fixed routes connecting two or more urban areas not in close proximity;
- has the capacity for transporting passenger baggage;
- makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available;
- maintains scheduled information in the National Official Bus Guide; and
- provides package express service incidental to passenger transportation.[31]

Florida's statutory definition for "intercity bus service" is more restrictive than the federal definition, limiting the number of companies able to compete for funding in Florida.[32]

Proposed Changes
The bill amends s. 341.031(11), F.S., revising the definition of "intercity bus service" to remove the requirements that the bus service maintain scheduled information in the National Official Bus Guide and provide package express service incidental to passenger transportation.

**Intermodal Development Program (Section 25)**

Current Situation
Section 341.053 was originally enacted in 1990.[33] DOT was later required to develop an intermodal development plan, which, among other things, prioritized statewide infrastructures investment found by the Freight Stakeholders Task Force to be priority projects. The Freight Stakeholder Task Force was dissolved in 1999. Subsection 341.053(6), F.S. defines the types of projects DOT is authorized to fund from this program.

While there was a Central Office funding component the first few years of the program's existence, it has been entirely district-directed for at least the past 10 years with funds allocated to the districts based on the statutory formula of equal parts of population and fuel tax collections. There is currently no procedure or policy guiding use of the funds, relying instead on district implementation of this statute. There are some differences in interpretation between districts concerning the allowable use of funds.

Proposed Changes
The bill amends s. 341.053, F.S., relating to intermodel development programs. It adds spaceports to the intermodal development program. The bill deletes language in s. 341.053(2), F.S., requiring the creation of an intermodal development plan, and provides that the Intermodal Development Program will be used to support statewide goals as outlined in the Florida Transportation Plan, the Freight Mobility and Trade Plan, or the appropriate DOT modal plan. The bill also deletes current 341.053(5), F.S., which provided a limitation on funding levels for particular transportation authorities or systems; and modifies existing 341.053(6), F.S., to clarify that program funds can be used for planning studies and for constructing freight facility projects. Program funds may also be used to fund projects that connect spaceports and intermodal logistic centers with other transportation modes and terminals. The bill also allows the use of program funds on projects that assist in the movement of people or goods at airports, spaceports, intermodal logistics centers and seaports.

**Rail Ancillary Development (Section 26)**

Current Situation
DOT is responsible for developing and implementing a statewide rail program. As part of the program, DOT is authorized to acquire, operate, and manage rail corridors to provide new rail service. The definition of "rail corridor" in s. 341.301, F.S., specifically includes ancillary development within a DOT-owned rail corridor, and that section defines "ancillary development" to include "any lessee or licensee of the department, including other governmental entities, vendors, retailers, restaurateurs, or contract

[31] S. 341.031(11), F.S.
[32] Currently only one company qualifies for funding.
[33] Ch. 90-136, L.O.F.

service providers, within a department owned rail corridor, except for providers of commuter rail service, intercity passenger rail service, or freight rail service. The term includes air and subsurface rights, services that provide a local network for devices for transmitting data over wireless networks, and advertising." However, current law does not clearly and specifically authorize DOT to engage in ancillary development on all state-owned rail corridors. In contrast, DOT is explicitly authorized to undertake similar development activities in a DOT-owned high speed rail corridor.[34]

Proposed Changes
The bill creates s. 341.302(17)(d), F.S., authorizing DOT to undertake ancillary development that DOT determines to be appropriate as a source of revenue for the establishment, construction, operation, or maintenance of any rail corridor owned by the state. Such ancillary developments must be consistent, to the extent feasible, with applicable local government comprehensive plans and local land development regulations and otherwise be in compliance with ss. 341.302 through 341.303, F.S.[35]

**Toll Facilities Revolving Trust Fund (Sections 27 and 28)**

Current Situation
The Toll Facilities Revolving Trust Fund was repealed in 2012.[36] However, references to the trust fund remain in statute.

Proposed Changes
The bill amends ss. 343.82(3)(d) and 343.922(4), F.S., deleting references to the repealed Toll Facilities Revolving Trust Fund.

**Orlando Orange County Expressway Authority Lease (Section 29)**

Current Situation
Section 348.754 (2)(d), F.S., authorizes the Orlando Orange County Expressway Authority (OOCEA) to enter into and make leases for terms not exceeding 40 years.

Proposed Changes
The bill amends s. 348.754(2)(d), F.S., authorizing the OOCEA to enter into and make leases for terms not exceeding 99 years. This 99 year maximum lease term is consistent with DOT's current authority to make leases.

**Environmental Permitting (Section 30)**

Current Situation
Generally, DEP's Environmental Resource Permitting program regulates most alterations to land surfaces in the state, which are not specifically exempt from regulation or rule.

Specifically, part IV of Ch. 373, F.S., regulates the construction, alteration, operation, maintenance or repair, abandonment and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant work and works. This includes items such as clearing of land, building a structure, removing a road, digging a pond, crossing a ditch, developing a subdivision and any work in wetlands and other surface waters such as filling a wetland, constructing or modifying a dock, boardwalk or bulkhead, installing or repairing utility and transmission lines and dredging of channels and canals. Section 373.406, F.S. contains a number of exemptions from DEP regulations including certain agricultural activities and activities with a minimal environmental impact.

Proposed Change
The bill creates s. 373.406(13), F.S., providing that an environmental resource permit (ERP) is not required for alterations to manmade ponds or drainage ditches constructed entirely in uplands, except

[34] S. 341.836, F.S.
[35] Section 341.302, F.S., relates to rail program; duties and responsibilities of the department and s. 341.303, F.S., relates to funding authorization and appropriations; eligibility and participation.
[36] Ch. 2012-128, L.O.F.

for the discharge of fill material into waters of the United States, including wetlands that are subject to federal jurisdiction.

The bill also creates s. 373.406(14), F.S., prohibiting a permit from being required for activities affecting wetlands created solely by the unreasonable and negligent flooding by an adjoining landowner, except for the discharge of fill material into waters of the United States, including wetlands that are subject to federal jurisdiction.

**Environmental Mitigation (Section 31)**

Current Situation

Under existing law, DOT and participating transportation authorities offset adverse environmental impacts of transportation projects through the use of mitigation banks and other mitigation options, including the payment of funds to water management districts (WMDs) to develop and implement mitigation plans. The mitigation plan is developed by the WMDs and is ultimately approved by the Department of Environmental Protection (DEP). The ability to exclude a project from the mitigation plan is provided to DOT, a participating transportation authority, or a WMD.

More specifically s. 373.4137, F.S., enacted in 1996,[37] created mitigation requirements for specified transportation projects. Historically, the statute directed DOT and transportation authorities[38] to fund, and the WMD to develop and implement, mitigation plans to mitigate these impacts. In 2012, HB 599[39] modified the statute to reflect that adverse impacts be offset by the use of mitigation banks and any other option that satisfies state and federal requirements. "Other" mitigation options include DOT's payment of funds to develop and implement mitigation plans. The mitigation plan is based on an environmental impact inventory created by DOT reflecting habitats that would be adversely impacted by transportation projects listed in the next three years of DOT's tentative work program. DOT provides funding in its work program to DEP or WMDs for its mitigation requirements. To fund the programs, the statute direct DOT and the authorities to pay $75,000, as adjusted by a calculation using the CPI, per impacted acre.[40]

The statute provides that WMD developed mitigation plans should use sound ecosystem management to address significant water resource needs and focus on activities of DEP and WMDs in wetlands and surface waters, including preservation, restoration and enhancement, as well as control of invasive and exotic vegetation. WMDs must also consider the purchase of credits from public and private mitigation banks when such purchase provides equal benefit to water resources and is the most cost effective option. Before each transportation project is added to the WMD mitigation plan, DOT must investigate the use of mitigation bank credits considering cost-effectiveness, time saved, transfer of liability and long-term maintenance. Final approval of the mitigation plan rests with DEP.

DOT and the participating expressway authorities are required to transfer funds to pay for mitigation of that year's projected impact acreage resulting from projects identified in the inventory. Quarterly, the projected impact acreage and costs are reconciled with the actual impact acreage, and costs and the balances are adjusted.

Under existing law, the statute provides for exclusion of specific transportation projects from the mitigation plan at the discretion of DOT, participating transportation authorities and the WMDs.

Proposed Changes

The bill provides that mitigation should take place in a manner that promotes efficiency, timeliness in project delivery, and cost effectiveness.

[37] Ch. 96-238, L.O.F.
[38] The statute applies to transportation authorities created in ch. 348 or 349, F.S.
[39] Ch. 2012-174, L.O.F.
[40] The current cost per acre is $107,457.

Environmental impact inventories for transportation projects proposed by DOT or a transportation authority[41] shall be developed as follows:

- By July 1 of each year, DOT or a transportation authority submits to the WMDs a list of its projects in its adopted work program and an environmental impact inventory of habitat impacts and the anticipated amount of mitigation needed to offset impacts. The environmental impact inventory is based on the rules adopted pursuant to part IV of ch. 373, F.S.,[42] s. 404 of the Clean Water Act[43] and DOT's plan of construction for transportation projects in the next three years of the tentative work program. DOT or a transportation authority may also include in its environmental impact inventory the habitat impacts and anticipated amount of mitigation needed for any future transportation project. DOT and each transportation authority may use current year funds to fund mitigation activities for future projects.

- The environmental impact inventory describes habitat impacts, including location, acreage, and type; the proposed amount of mitigation needed based on the functional loss as determined the Uniform Mitigation Assessment Method (UMAM),[44] which identifies the potential number of mitigation credits needed for the impacted site, and identification of the proposed mitigation option, state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list of threatened species, endangered species, and species of special concern affected by the proposed project.

Before projects are identified for inclusion in a WMD mitigation plan, DOT must consider using credits from a proposed mitigation bank. DOT must consider criteria related to:

- Availability of suitable and sufficient mitigation bank credits within the transportation project's area,
- Ability to satisfy commitments to regulatory and resource agencies, availability of suitable and sufficient mitigation purchased or developed,
- ability to complete existing WMD or DEP suitable mitigation sites initiated with DOT mitigation funds, and
- Ability to satisfy state and federal requirements including long-term maintenance and liability.

To implement the mitigation option identified in the environmental impact inventory, DOT may purchase credits for current and future use directly from a mitigation bank, purchase mitigation service through WMDs; purchase mitigation service from DEP for mitigation on state lands; conduct its own mitigation; or purchase other mitigation services which meet state and federal requirements. Funding for the identified impact inventory shall be included in DOT's work program.[45]

For mitigation implemented by the WMD or DEP, the amount paid each year shall be based on mitigation services provided pursuant to an approved WMD mitigation plan. The WMDs or DEP may request payment no sooner than 30 days before the funds are needed to pay for activities associated with development or implementation of permitted mitigation meeting the federal requirements[46] in the approved mitigation plan. The amount programmed each year shall correspond to an estimated cost per credit of $150,000 multiplied by the projected number of credits identified in the environmental impact inventory. Every two years, DOT will adjust the estimated cost per credit based on the average cost per credit paid. Each quarter, the projected amount of mitigation will be reconciled with the actual amount of mitigation needed for projects as permitted, including permit modifications. The programming of funds will be adjusted to reflect the mitigation as permitted. If the WMD excludes a project from an approved mitigation plan, cannot timely permit a mitigation site or if the proposed mitigation does not meet state and federal requirements, DOT may use the associated funds to purchase mitigation bank

[41] The statute applies to transportation authorities established pursuant to ch. 348 or ch. 349, F.S.
[42] Part IV of ch. 373, F.S., relates to the management and storage of surface waters.
[43] 33 USC s. 1344
[44] UMAM is adopted in ch. 62-345, F.A.C. Information on UMAM is available at: http://www.dep.state.fl.us/water/wetlands/mitigation/umam.htm (Last visited February 18, 2013).
[45] DOT's work program is developed pursuant to s. 339.135, F.S.
[46] Federal Requirements are pursuant to part 33 USC 1322 and 33 CFR 332.

credits or any other mitigation option that satisfies state and federal requirements. Upon final payment, the obligation of DOT or the participating transportation authority is satisfied and the WMD or DEP will have continuing responsibility for mitigation projects.

Beginning with the March 2014 WMD mitigation plans, each WMD or DEP shall invoice DOT for mitigation services rendered in planning and implementing the mitigation sites, including planning, design, construction, maintenance, and monitoring, and other costs necessary to meet state and federal requirements. When the WMD identifies the use of mitigation bank credits as part of the mitigation plan, the WMD must exclude that purchase from its mitigation plan and DOT must purchase the identified mitigation bank credits.

In order to prepare and implement mitigation plans to be adopted by the WMDs before March 1, 2013, for transportation impacts based on the July 1, 2012, environmental impact inventory, the funds identified in DOT's work program or participating transportation authorities' escrow accounts shall correspond to a cost per acre of $75,000 multiplied by the projected acres of impact as identified in the environmental impact inventory. The cost per acre is adjusted by the percent change in the Consumer Price Index compared to the September 30, 1996, base year. Payment is limited to mitigation activities identified in the first year of the 2013 mitigation plan and if the transportation project is permitted and is in DOT's adopted work program, or equivalent for a transportation authority. When implementing the mitigation activities necessary to offset the permitted transportation impacts as provided in the approved mitigation plan, the WMD shall maintain records of the costs incurred in implementing the mitigation. These costs include, conceptual planning, and acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet federal requirements. To the extent monies paid to a WMD exceed the amount spent in implementing the mitigation to offset the permitted transportation impacts, these funds shall be refunded to DOT or the participating transportation authority. This provision expires June 30, 2014.

Before March 1 of each year, each WMD, in consultation with DEP, the United States Army Corps of Engineers, DOT, participating transportation authorities and other appropriate governments, and other interested parties, including mitigation banks, shall develop a plan for complying with mitigation requirements. In developing the plans, the WMDs must use sound ecosystem management practices to address significant water resource needs. The WMDs must also consider DEP and WMD activities such as surface water improvement management projects and lands identified for potential acquisition for preservation, restoration, or enhancements, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that the activities comply with the mitigation requirements. For transportation projects for which the WMD is implementing mitigation, the mitigation plan will identify the site where the WMD will mitigate for the transportation project, the scope of the mitigation activities, the functional gain at each mitigation site as determined through UMAM, describe how mitigation offsets the impacts of each transportation project, and a schedule of mitigation activities. WMDs must maintain records of costs incurred and payments received for implementing mitigation activities to offset impacts of permitted transportation projects. To the extent monies paid to a WMD exceed the amount expended in implementing the mitigation to offset the permitted transportation impacts, these funds will be refunded. The mitigation plan shall be submitted to the WMD governing board, or its designee, for review and approval. Subsequent to governing board approval, the mitigation plan must be submitted to DEP for approval. The plan may not be implemented until it is submitted to and approved, in part or in its entirety, by DEP.

Specific projects may be excluded from the mitigation plan upon the election of DOT, a transportation authority or the appropriate WMD. Neither DOT nor a participating transportation authority shall exclude a transportation project from the mitigation plan when mitigation is scheduled in the current fiscal year, except if the transportation project is removed from DOT's work program or a transportation authority's funding plan, the mitigation cannot be timely permitted, or the proposed mitigation does not meet state or federal requirements. If a project is removed from the work program or the mitigation plan, costs expended by the WMD prior to removal are eligible for reimbursement from DOT or the transportation authority.

When determining which projects to include or exclude from the mitigation plan, DOT shall investigate using credits from a permitted mitigation bank before those projects are submitted for inclusion in a WMD plan. DOT shall exclude a project from the mitigation plan when the investigation results in the conclusion that the use of credits from a permitted mitigation bank promotes efficiency, timeliness in project delivery, cost effectiveness and transfers responsibility of success for long-term maintenance.

The WMD ensures that federal mitigation requirements are met for the impacts identified by the environmental impact inventory, by implementation of the approved mitigation plan to the extent funding is provided by DOT, or a transportation authority. In developing and implementing the mitigation plan, the WMD shall comply with federal permitting requirements. During the federal permitting process, the WMD may deviate from the approved mitigation plan in order to comply with federal permitting requirements upon notice and coordination with DOT or a participating transportation authority.

The WMD mitigation plans are to be annually updated to reflect the most recent DOT work program and transportation authority project list and may be amended throughout the year. Before amending the mitigation plan to include new projects, DOT shall consider mitigation banks and other available mitigation options that meet state and federal requirements. Each update and amendment of the mitigation plan shall be submitted to the governing board of the WMD or its designee for approval.

**Railroad Trespassing (Section 32, 33, and 34)**

Current Situation

Under the current trespass laws, a person who enters onto railroad property (i.e., tracks or railroad beds) cannot be found guilty of trespassing unless the person has been given prior verbal notice, the land is fenced or cultivated, or the owner of the railroad tracks has posted signs every 500 feet on each side of the tracks.[47]

Like any other property, railroad companies are not required by law to post "no trespassing" signs on their property. However, railroad companies are required to post "no trespassing" signs on their property if they want trespassers to be arrested without first having to provide prior verbal notice to the trespasser that he or she has entered onto privately owned land. It is not trespassing where a person wanders onto land that is undeveloped, and that person has no idea that the land is privately owned because he or she was not given any prior notice through a verbal warning or posted signs.

Section 810.09, F.S., provides that it is a first-degree misdemeanor to enter, uninvited, onto property that is not a structure or conveyance[48] if prior notice against entering has been given by verbal communication, or by posting, fencing or cultivation as described in s. 810.011, F.S.[49] Section 810.011(5), F.S., provides that the definition for "posted land" is land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land. The signs must contain the words "no trespassing" and meet certain minimum size requirements.

Section 810.12, F.S., provides that "the unauthorized entry by any person into or upon any enclosed and posted land shall be prima facie evidence of the intention of such person to commit an act of trespass."

These trespassing laws presume that individuals know or should know that they are not authorized to enter fenced or cultivated lands, or lands that have "no trespassing" signs around the property. In this same respect, people should know that railroad tracks and railroad beds are privately owned property in the same way that people know fenced, cultivated, or otherwise developed property is privately owned.

Proposed Changes

[47] Section 810.011(5), F.S.

[48] "Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. Section 810.011, F.S.

[49] Section 810.011, F.S., provides definitions for "posted land", "fenced land", and "cultivated land".

The bill revises the definition of "posted land" in s. 810.011(5), F.S., providing that if a person enters upon stationary rails or roadbeds that are owned or leased by a railroad or railway company, and such rails or roadbeds are readily recognizable to a reasonable person as being the property of a railroad or railway company or identified by conspicuous fencing or signs indicating that the property is owned or leased by a railroad or railway company, then ss. 810.09[50] and 810.12[51] shall apply, irrespective of any failure to give notice by posting.

The bill also provides that the posted land provisions shall not apply to currently existing rights of access and egress to pertinent facilities and right-of-way by officers or representatives of labor organizations to perform duties or activities protected under the Railway Labor Act or the National Labor Relations Act.

The bill creates s. 810.09(2)(c)2., F.S., providing that if a person is engaged in a lawful hunting activity and enter upon the stationary rails or roadbeds that are owned or leased by a railroad company where notice of posting is not required, he or she is not trespassing for a temporary entry upon railroad or railway company property in the course of lawful hunting activities.

The bill creates s. 810.09(2)(j), F.S., providing that if the offender trespasses on stationary rails or roadbeds that or owned or leased by a railroad or railway company where notice is not provided in the offender is not engaged in any other unlawful activity, the following penalties shall apply:

- For a first offense a civil citation may be issued.[52]
- For a second or subsequent offense a misdemeanor of the first degree.[53]

In order to incorporate the amendments to s. 810.011, F.S., the bill reenacts s. 260.0125(1)(b).

**Effective Date (Section 35)**

The bill has an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1 Amends s. 11.45, F.S., relating to definitions; duties; authorities; reports; rules of the Auditor General.

Section 2 Amends s. 20.23, F.S., relating to the Department of Transportation.

Section 3 Amends s. 110.205, F.S., relating to career service; exemptions.

Section 4 Amends s. 316.530, F.S., relating to towing requirements.

Section 5 Amends s. 316.545, F.S., relating to weight and load unlawful; special fuel and motor tax enforcement; inspection; penalty; review.

Section 6 Amends s. 331.360, F.S., relating to the spaceport system plan.

Section 7 Amends s. 332.007, F.S., relating to administration and financing of aviation and airport programs and projects; state plan.

Section 8 Amends s. 334.044, F.S., relating to DOT powers and duties.

[50] Section 810.09, F.S., relates to trespass in structure or conveyance.
[51] Section 810.12, F.S., relates to unauthorized entry on land, prima facia evidence of trespass.
[52] Civil citations are issued pursuant to s. 985.12, F.S.
[53] Misdemeanors in the first degree are punishable as provided in s. 775.082 or s. 775.083, F.S.

Section 9 Amends s. 335.055, F.S., relating to routine maintenance contracts.

Section 10 Amends s. 335.06, F.S., relating to access roads to the state park system.

Section 11 Amends s. 337.11, F.S., relating to the contracting authority of the department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements for vehicle registration.

Section 12 Amends s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 13 Amends s. 337.168, F.S., relating to confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.

Section 14 Amends s. 337.25, F.S., relating to the acquisition, lease, and disposal of real and personal property.

Section 15 Amends s. 337.251, F.S., relating to lease of property for joint public-private development and areas above or below DOT property.

Section 16 Amends s. 337.408, F.S., relating to the regulation of bus stops, benches, transit shelters, street light poles, parking meters, parking spaces, waste disposal receptacles, and modular news racks within the right of way.

Section 17 Amends s. 338.161, F.S., relating to the authority of DOT or toll agencies to advertise and promote electronic toll collection; expanded use of electronic toll collection system; authority for DOT to collect tolls, fares, and fees for private and public entities.

Section 18 Amends s. 338.165, F.S., relating to the continuation of tolls.

Section 19 Amends s. 338.26, F.S., relating to the Alligator Alley toll road.

Section 20 Amends s, 229.09, F.S., relating to the use of transportation tax revenues; restrictions.

Section 21 Amends s. 339.175, F.S., relating to metropolitan planning organizations.

Section 22 Repeals ss. 339.401 through s. 339.421, F.S., relating to the Florida Transportation Corporation Act.

Section 23 Amends s. 339.55, F.S., relating to state-funded infrastructure bank.

Section 24 Amends s. 341.031, F.S., relating to definitions relating to the Florida Public Transit Act.

Section 25 Amends s. 341.053, F.S., relating to Intermodal Development Program; administration; eligible projects; limitations.

Section 26 Amends s. 341.302, F.S., relating to rail programs; duties and responsibilities of DOT.

Section 27 Amends s. 343.82, F.S., relating to purposes and powers of the Northwest Florida Transportation Corridor Authority.

Section 28 Amends s. 343.922, F.S. relating to powers and duties of the Tampa Bay Area Regional Transportation Authority.

Section 29 Amends s. 348.754, F.S., relating to purposes and powers of the Orlando-Orange County Expressway Authority.

Section 30 Amends s. 373.406, F.S., relating to exemptions to certain environmental permitting requirements.

Section 31 Amends s. 373.4137 relating to mitigation requirements for specified transportation projects.

Section 32 Amends s. 810.011, F.S., relating to definitions related to burglary and trespass.

Section 33 Amends s. 810.09, F.S., relating to trespass on property other than structure or conveyance.

Section 34 Reenacts s. 260.0125, F.S., relating to limitation on liability of private land owners whose property is designated as part of the statewide system of greenways and trails.

Section 26 Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The wrecker permit change keeps Florida in alignment with federal law and avoids any potential loss of federal funds.

   The additional weight for APUs may have an insignificant but indeterminate negative fiscal impact to the STTF if there is a decrease in overweight fines due to the increased allowable weight.

   Improvements to local roads providing access to state parks may have an indeterminate but positive impact on state park revenues.

   Unsolicited lease proposals may bring an indeterminate amount of revenue to DOT due to the fees DOT would be allowed to collect to defray the cost of reviewing the lease proposal.

   An indeterminate but positive fiscal impact is expected from DOT receiving a portion of revenue from parking meters on the state right-of-way.

2. Expenditures:

   The Florida Transportation Commission may incur some expenses associated with its monitoring of the Mid-Bay Bridge Authority. These expenses are expected to be insignificant.

   There is expected to be an insignificant but negative fiscal impact on the Florida Transportation Commission for assuming staffing responsibilities for the Florida Statewide Passenger Rail Commission.

   DOT would see a savings from not funding the operation of the fire station on Alligator Alley.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   If disposal of surplus DOT property becomes more efficient, there will likely be a positive impact to local governments as more of these parcels are returned to the tax rolls.

   An indeterminate but negative fiscal impact to local governments is expected from the state receiving a portion or the revenues from parking meters on the state right-of-way.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The additional weight allowed for APUs has an indeterminate but positive fiscal impact on the trucking industry due to being able to carry a slightly heavier load.

Although not required to by this bill, if Collier County assumes the operating costs of the fire station on Alligator Alley the county would see additional expenses.

Some permitting costs may be avoided due to the bill's exemptions to environmental permitting requirements, but the amount of these costs is indeterminate.

D. FISCAL COMMENTS:

The Space Florida proposal represents a statutory funding change since it establishes a minimum amount of funds to be annually allocated for spaceport projects. Currently, there is no recurring amount dedicated to annually support spaceport funding, however, DOT's work program has provided spaceport funding of $16 million for each of the last two fiscal years.

Projects to be funded as part of the strategic airport investment initiative will be included in DOT's work program budget submitted annually for Legislative approval.

For the off system paving of local roads to state parks any selected project would be included in DOT's work program budget which is submitted annually to the Legislature for approval.

The environmental mitigation projects are included in DOT's work program budget submitted annually for legislative approval. There may be additional tracking and accounting cost implications, however these would be offset by greater accuracy and efficiencies that will streamline these processes.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill takes a portion of municipality and county parking meter revenue collected for parking on state owned transportation facilities and sends it to the STTF. Arguably, this may reduce local governments ability to raise revenue; however, it is not clear whether or not municipalities and counties have the authority to collect this revenue. Therefore, the mandate provision may apply and a two-thirds vote of the full house would be required.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The repeal of the Florida Transportation Corporation Act will allow for the repeal of ch.14-35, F.A.C., which administers the act.

The bill requires DOT to establish an application fee for the submission of unsolicited lease proposals by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Transportation & Highway Safety Subcommittee adopted nine amendments to the PCB, plus an amendment to an amendment. The amendments do the following:

- Provides that DOT is not required to fund noise mitigation projects adjacent to existing transportation facilities where no capacity improvements are being constructed.
- Provides that the funding for Space Florida will come from the funds dedicated for public transportation.
- Removes the requirement that a contractor submit an affidavit that it's motor vehicles are registered in Florida.
- Clarifies that documents revealing the identity of persons requesting or obtaining a bid package remains a public record.
- Removes the maximum of 25 voting members on a combined MPO and provides that Miami-Dade County will remain its own MPO.
- Removes statutory references to the Toll Facilities Revolving Trust Fund which has been repealed.
- Authorizes the Orlando Orange County Expressway Authority to enter into 99 year leases.
- Revises provisions related to environmental mitigation and certain environmental permit exemptions.
- Addresses issues related to trespassing on railroad property.

This analysis is drafted to the PCB as amended.