



Transportation & Tourism Appropriations Subcommittee

**Monday, April 17, 2017
2:00 PM – 3:30 PM
Reed Hall (102 HOB)**

Meeting Packet

REVISED

**Richard Corcoran
Speaker**

**Clay Ingram
Chair**



The Florida House of Representatives

Appropriations Committee

Transportation & Tourism Appropriations Subcommittee

Richard Corcoran
Speaker

Clay Ingram
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AGENDA

Monday, April 17, 2017

Reed Hall (102 HOB)

2:00 PM – 3:30 PM

- I. Call to Order/Roll Call
- II. Opening Remarks by Chair Ingram
- III. Consideration of the following bills:

CS/HB 97 Certificates of Title for Motor Vehicles by Transportation & Infrastructure Subcommittee, Pigman

CS/HB 865 Department of Transportation by Transportation & Infrastructure Subcommittee, Williamson


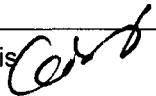
HB 1163 Agency Rulemaking by Spano

HB 1387 Express Lanes by Nuñez

- IV. Closing Remarks/Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 97 Certificates of Title for Motor Vehicles
SPONSOR(S): Transportation & Infrastructure Subcommittee, Pigman & others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	15 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee		Cobb 	Davis 
3) Government Accountability Committee			

SUMMARY ANALYSIS

Current law requires a surviving spouse who wishes to keep a motor vehicle owned by the deceased spouse to retitle the vehicle in the surviving spouse's name upon payment of a \$75.25 fee.

The bill prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) and tax collectors from charging a surviving spouse any fee or service charge, excluding an expedited title fee, if applicable, for a motor vehicle certificate of title when the title is being issued solely to remove the deceased co-owner from the title.

The Revenue Estimating Conference met on March 24, 2017, and estimated that the committee substitute has a negative recurring annual impact of \$238,329 to the General Revenue Fund, \$111,740 to state trust funds, and a negative, insignificant recurring annual impact to local government revenues.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In Florida, most vehicles are required to have a certificate of title. However, there are exceptions for mopeds, motorized bicycles, and trailers weighing less than 2,000 pounds.¹ A person is required to apply for a title in his or her name after purchasing a new vehicle, bringing a vehicle into Florida, or at any time the ownership of a vehicle changes.² A certificate of title is a record that proves ownership of a vehicle, which can be a certificate in either paper or electronic form, and is authorized or stored by the DHSMV.³ The application for a certificate of title requires, if applicable, information including, but not limited to, the:

- Owner's, co-owner's, or lessee's names, mailing addresses, dates of birth, and driver license numbers;
- Vehicle identification number;
- Make, manufacturer, year, body, and color of the vehicle;
- Lienholder information; and
- Odometer declaration.⁴

Section 319.28, F.S., relates to the transfer of ownership of a motor vehicle by operation of law. More specifically, s. 319.28(1)(c), F.S., provides that if a surviving spouse wishes to dispose of a vehicle rather than retain it for his or her own use that he or she is not required to obtain a certificate of title in his or her own name, but may assign to the transferee the certificate of title that was issued to the decedent. However, if the surviving spouse wishes to retain the motor vehicle, he or she is required to obtain a certificate of title in his or her own name.

Fees and Service Charges

Sections 319.32 and 319.234, F.S., set the fees and service charges for various certificate of title related transactions.

For transferring a motor vehicle title to a surviving spouse, the normal title fees apply, which for a standard electronic title with no lien is \$75.25. The fees are distributed as follows:

- Base Title fee of \$48 goes to General Revenue.
- Odometer Fee of \$1 goes to the Highway Safety Operating Trust Fund.
- Title Security Fee of \$1 goes to General Revenue.
- State Transportation Title Fee of \$21 goes to the Department of Transportation.
- Title Service Fee of \$4.25 goes to the agency processing the certificate of title, either DHSMV or the county tax collector.

Co-owning a Vehicle⁵

Motor vehicles can be registered in the names of two or more persons as co-owners of the vehicle. Names conjoined with the word "or" are held in joint tenancy. Co-owners are deemed to have granted one another the absolute right to dispose of the title and interest in a motor vehicle, or place a lien or encumbrance on the motor vehicle. As part of joint tenancy, the signature of any co-owner constitutes proper endorsement. Upon the death of any co-owner under this form of title, any interest in the vehicle passes to the surviving co-owner. Names conjoined with the word "and" require the signature of each co-owner to transfer a title, or place a lien or encumbrance on the vehicle.

¹ DHSMV, *FAQs on Getting a Hassle Free Title*, <http://www.flhsmv.gov/dmv/faqtitle.html> (last visited Jan. 30, 2017).

² *Id.*

³ Section 319.001(1), F.S.

⁴ DHSMV, *Application for Certificate of Title With/Without Registration*, <http://www.flhsmv.gov/dmv/forms/BTR/82040.pdf> (last visited Jan. 30, 2017).

⁵ Sections 319.22(2) and 319.235, F.S.

DHSMV indicated that 22.63 percent of Florida vehicles are co-owned, but the number of these vehicles co-owned by spouses is unknown.⁶

Transfer of Ownership- Death of Spouse

A surviving spouse who inherits the deceased spouse's motor vehicle may dispose of the vehicle without being required to obtain a certificate of title in his or her name.⁷ If the married couple are co-owners of the vehicle with names appearing conjoined by an "or" on the title, it is not necessary for the surviving spouse to apply for a new title, as he or she already has absolute rights to the vehicle. However, if the names are conjoined by "and" and the surviving spouse wishes to maintain ownership of the vehicle, the surviving spouse is required to apply for a certificate of title in order to remove the name of the deceased spouse.

Proposed Changes

The bill prohibits the DHSMV and tax collectors from charging a surviving spouse any fee or service charge (excluding an expedited title fee, if applicable) for issuance of a motor vehicle certificate of title when the title is being issued solely to remove the deceased spouse as a co-owner. The fee waiver is only applicable if the vehicle is co-owned by both the surviving and deceased spouse with both names on the certificate of title.

B. SECTION DIRECTORY:

Section 1 amends s. 319.32, F.S., relating to fees, service charges and their disposition.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 24, 2017, the Revenue Estimating Conference reviewed the committee substitute and determined that it would result in the following negative recurring fiscal impact to state government revenues:

Fiscal Year	General Revenue	Trust Funds	Total
2017-2018	\$238,329	\$111,740	\$350,069
2018-2019	\$243,408	\$114,121	\$357,529
2019-2020	\$248,390	\$116,458	\$364,848
2020-2021	\$253,704	\$118,949	\$372,653
2021-2022	\$259,591	\$121,709	\$381,300

2. Expenditures:

DHSMV indicates that approximately 225 hours, or the equivalent of \$7,875 in FTE and contracted resources will be required in order to implement the bill. These costs can be absorbed within existing resources.⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁶ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference: SB164/HB 97* (Jan. 20, 2017), <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/pdf/page14-16.pdf> (Jan. 31, 2017).

⁷ Section 319.28(1)(c), F.S.

⁸ DHSMV bill analysis of SB 164, page 4.

1. Revenues:

On March 24, 2017 the Revenue Estimating Conference reviewed the committee substitute and determined that it would result in a negative, insignificant fiscal impact to local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Surviving spouses will see a reduction in the cost of transferring certificates of title motor vehicles.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2017, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment clarified that the fee waiver is only applicable if the vehicle is co-owned by the surviving and deceased spouse with both names on the certificate of title. Additionally, it prohibits tax collectors and DHSMV from charging any fee or service charge, with an exception for expedited title fees, if applicable.

The analysis is written to the committee substitute.

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A bill to be entitled
An act relating to certificates of title for motor vehicles; amending s. 319.32, F.S.; prohibiting the Department of Highway Safety and Motor Vehicles and the tax collector from charging any fee or service charge, except the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle solely to remove a deceased coowner from a title registered in the names of two persons if the other coowner is the surviving spouse; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) is added to section 319.32, Florida Statutes, to read:


319.32 Fees; service charges; disposition.-

(7) Notwithstanding any other provision of this section, the department and the tax collector may not charge any fee or service charge, except the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle solely to remove a deceased coowner from a title registered in the names of two persons if the other coowner is the surviving spouse.

Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 865 Department of Transportation
SPONSOR(S): Transportation & Infrastructure Subcommittee; Williamson and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee		Cobb B.C.	Davis 
3) Government Accountability Committee			

SUMMARY ANALYSIS

This bill is a comprehensive bill relating to the Department of Transportation (DOT). In summary, the bill:

- Increases the allowable weight of natural gas-fueled vehicles on the Interstate Highway System.
- Authorizes DOT to request permission from the Federal Highway Administration (FHWA) to conduct bridge inspections at risk-based intervals.
- Increases the maximum dollar threshold for rapid response contracts issued by DOT.
- Makes the validation of turnpike revenue bonds optional instead of mandatory.
- Provides that amendments to DOT's work program for certain emergency repairs are not subject to Legislative Budget Commission approval.
- Repeals the Highway Beautification Council, but retains highway beautification grants within DOT.
- Requires DOT approval for certain contracts issued by the South Florida Regional Transportation Authority (SFRTA).
- Provides that funds provided to SFRTA by DOT may not be committed without DOT's approval of SFRTA's expenditures.
- Prohibits DOT from providing certain funding until SFRTA cancels a specified contract.
- Requires DOT to provide a fiscal analysis regarding the redesignation of certain district boundaries and district headquarters.

DOT expects an insignificant decrease in revenues associated with allowing heavier natural gas-fueled vehicles to operate on the highways. Other provisions of the bill will have an indeterminate fiscal impact on DOT. The South Florida Regional Transportation Authority may likely see a significant reduction in state-sponsored funding because of certain provisions in the bill. See Fiscal Analysis for details.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

Truck Weights - Natural Gas Vehicles (Section 2)

Current Situation

Federal Regulations - On December 4, 2015, the federal Fixing America's Surface Transportation (FAST) Act was signed into law.¹ The FAST Act allows states to increase the allowable weight of natural gas vehicles by an amount equal to the difference between the weight attributable to the vehicle's natural gas tank and fueling system and the weight of a comparable diesel tank and fueling system, up to a maximum gross vehicle weight of 82,000 pounds when operating on the Interstate Highway System.² This allows states to increase the gross vehicle weight limit for natural gas fueled vehicles on the Interstate Highway System without the Federal Highway Administration (FHWA) withholding funding from DOT.³

Maximum Vehicle Weights - In Florida, with respect to the Interstate Highway System, the overall gross weight of a vehicle or combination of vehicles, including all enforcement tolerances, is determined by a formula.⁴ However, such overall gross weight of any vehicle or combination of vehicles may not exceed 80,000 pounds, including all enforcement tolerances.⁵

According to DOT, since the weight increase authorized by the FAST Act is not currently allowed under Florida law, DOT developed a permit process allowing natural gas-fueled vehicles at the Federal weight limits. Previously, these vehicles were not required to obtain permits. To date, DOT has not issued any of these permits, which may be due to the industry being unaware that they need to obtain a permit and how to obtain a permit.⁶

Presently, there are several cases before the Commercial Motor Vehicle Review Board (CMVRB)⁷ regarding citations issued for operating overweight natural gas-fueled vehicles. A number of commercial motor vehicle operators assumed the change in Federal law allowed them to legally operate in Florida, without requiring any additional permits from DOT. The CMVRB is not granting relief or refunds for these citations because they are based on violations of current Florida Statutes regarding maximum vehicle weight.⁸

Unlawful Weights and Loads - A person violating the state's overloading provisions⁹ is presumed to have damaged this state's highways by reason of overloading, and a fine is assessed as follows:

- Ten dollars if the weight in excess of the maximum allowed weight, is 200 pounds or less.¹⁰

¹ Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, 129 Stat. 1312.

² Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, § 1410, 129 Stat. 1312, 1411.

³ 23 USC § 127 (2012).

⁴ FLA. STAT. § 316.535(4). The formula is $W = 500 * ((L * N / (N - 1)) + 12 * N + 36)$, where L is the distance in feet between the extremes of any group of two or more consecutive axles, N is the number of axles in the group under consideration, and W represents the overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds.

⁵ FLA. STAT. § 316.535(4) (2017).

⁶ DOT Legislative Proposal: Natural Gas Fueled Vehicles - Truck Weights. (Copy on file with Transportation & Infrastructure Subcommittee.)

⁷ The Commercial Motor Vehicle Review Board is created in s. 316.545(7), F.S.

⁸ DOT Legislative Proposal: Natural Gas Fueled Vehicles - Truck Weights.

⁹ Maximum weight provisions are generally provided in s. 316.535(3), F.S.

¹⁰ FLA. STAT. § 316.545(3)(a)1. (2017).

- Five cents per pound for each pound of weight in excess of the maximum allowed weight if the excess weight is greater than 200 pounds.¹¹
- If the gross weight¹² of the vehicle or combination of vehicles does not exceed the maximum allowable gross weight, the maximum fine for the first 600 pounds of unlawful axle weight is \$10.¹³

For a vehicle equipped with fully functional idle-reduction technology, the fine is calculated by reducing the actual gross vehicle weight or the internal bridge weight by the certified weight of the idle-reduction technology or by 550 pounds, whichever is less.¹⁴ The vehicle operator is required to present written certification of the weight of the idle-reduction technology and demonstrate or certify that the idle-reduction technology is fully functional.¹⁵ This additional weight is not allowed for vehicles such as dump trucks, garbage trucks, concrete mixing trucks, and trucks constructed for a special type of work or use.¹⁶

Proposed Changes

The bill creates s. 316.545(3)(c), F.S., providing that for a vehicle fueled by natural gas, the fine is calculated by reducing the actual gross vehicle weight by the certified weight difference between the natural gas tank fueling system and a comparable diesel tank and fueling system.¹⁷ Upon the request of any weight inspector or law enforcement officer, the vehicle operator is required to present written certification identifying the weight of the natural gas tank and fueling system and the difference in weight of a comparable diesel tank and fueling system. The written certification is required to originate from the vehicle manufacturer or the installer of the natural gas tank and fueling system.

The actual gross vehicle weight for vehicles fueled by natural gas may not exceed 82,000 pounds, excluding the weight allowed for idle-reduction technology.

This additional weight is not allowed for vehicles such as dump trucks, garbage trucks, concrete mixing trucks, and trucks constructed for a special type of work or use.

Bridge Inspections (Section 3)

Current Situation

Federal Law - FHWA bridge inspection standards establish the inspection frequency of bridges.¹⁸ In general, routine inspections occur at regular intervals not to exceed 24 months.¹⁹ However, certain bridges require more frequent inspections considering factors such as age, traffic characteristics, and known deficiencies.²⁰ With written FHWA approval, certain bridges may be inspected at greater than 24 month intervals, not to exceed 48 months.²¹ Longer intervals may be appropriate when past inspection findings and analysis justifies increasing the inspection interval.²²

¹¹ FLA. STAT. § 316.545(3)(a)2. (2017).

¹² Section 316.003(27). F.S., defines "gross weight" as the weight of a vehicle without load plus the weight of any load thereon.

¹³ FLA. STAT. § 316.545(3)(a)3. (2017).

¹⁴ FLA. STAT. § 316.545(3)(b) (2017).

¹⁵ FLA. STAT. § 316.545(3)(b) (2017).

¹⁶ These vehicles are described in s. 316.535(6), F.S; FLA. STAT. § 316.545(3)(b) (2017).

¹⁷ Thus, the formula would be: gross vehicle weight – [(natural gas tank + fueling system) – (comparable diesel tank + fueling system)].

¹⁸ 23 C.F.R. § 650, pt. c (2016).

¹⁹ 23 C.F.R. § 650.311 (2016).

²⁰ 23 C.F.R. § 650.311(a)(2) (2016).

²¹ 23 C.F.R. § 650.311(a)(3) (2016).

²² 23 C.F.R. § 650.311(a)(3) (2016).

For underwater inspections, underwater structural elements are inspected at regular intervals not to exceed 60 months.²³ However, certain underwater structural elements require inspection at less than 60 month intervals.²⁴ Criteria to determine the level and frequency to which underwater structural elements are inspected considers factors such as construction material, environment, age, scour characteristics, condition rating from past inspections and known deficiencies.²⁵ However, certain underwater structural elements may be inspected at greater than 60 month intervals, not to exceed 72 months, with written FHWA approval.²⁶ This may be appropriate when past inspection findings and analysis justifies the increased inspection interval.²⁷

Fracture critical members²⁸ are inspected at intervals not to exceed 24 months.²⁹ However, certain fracture critical members require inspection at less than 24-month intervals.³⁰ Criteria to determine the level and frequency to which fracture critical members are inspected consider factors such as age, traffic characteristics, and known deficiencies.³¹

FHWA has adopted a risk-based inspection system providing for more frequent inspections for bridges in poor condition and less frequent inspections for bridges in good condition. Sixteen states have adopted the FHWA risk-based bridge inspection cycle.³²

Florida Law - Florida Statutes requires safety inspection of bridges at regular intervals, not to exceed two years, each bridge on a public transportation facility is inspected for structural soundness and safety for the passage of traffic on such bridge.³³ The thoroughness with which bridges are to be inspected depends on factors such as age, traffic characteristics, state of maintenance, and known deficiencies.³⁴ The governmental entity responsible for maintaining the bridge is responsible for performing inspections and preparing inspection reports.³⁵

Proposed Changes

The bill amends s. 335.074(2), F.S., changing the required bridge inspection interval from a time frame not to exceed two years to intervals as required by FHWA. This aligns the state statute with federal law and, subject to FHWA approval, allows DOT to establish a risk-based bridge assessment program as other states have done.

Rapid Response Contracts (Section 4)

Current Situation

DOT may enter into contracts for the construction and maintenance of all roads on the State Highway System³⁶ or the State Park Road System³⁷ or of any roads placed under its supervision.³⁸ DOT may

²³ 23 C.F.R. § 650.311(b)(1) (2016).

²⁴ 23 C.F.R. § 650.311(b)(2) (2016).

²⁵ 23 C.F.R. § 650.311(c)(2) (2016).

²⁶ 23 C.F.R. § 650.311(b)(3) (2016).

²⁷ 23 C.F.R. § 650.311(b)(3) (2016).

²⁸ 23 CFR § 650.305 defines "fracture critical member" as "a steel member in tension, or with a tension element, whose failure would probably cause a portion or the entire bridge to collapse.

²⁹ 23 C.F.R. § 650.311(c)(1) (2016).

³⁰ 23 C.F.R. § 650.311(c)(2) (2016).

³¹ 23 C.F.R. § 650.311(c)(2) (2016).

³² The sixteen states are: Arizona, Arkansas, California, Connecticut, Illinois, Minnesota, Mississippi, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Washington, and West Virginia.

³³ FLA. STAT. § 335.074(1) (2017).

³⁴ FLA. STAT. § 335.074(2) (2017).

³⁵ FLA. STAT. § 335.074(2) (2017).

³⁶ Section 334.03(24), F.S., defines "State Highway System" as the interstate system and all other roads within the state which were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state's jurisdiction after that date by mutual consent with another

also enter into contracts for the construction and maintenance of rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities.³⁹

When DOT determines that it is in the best interest of the public for reasons of public concern, economy, improved operations or safety, and only when circumstances dictate rapid completion of the work, DOT may enter into contracts, up to the amount of \$120,000, for construction and maintenance without advertising and receiving competitive bids.⁴⁰ DOT may enter into these contracts only upon a determination that the work is necessary for one of the following reasons:⁴¹

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

In such instances DOT is required to make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract. However, when the work exists within the limits of an existing contract, DOT is required to make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract.⁴² DOT often uses these contracts for items such as sinkhole and guardrail repairs.⁴³

According to DOT, the increase in construction cost due to inflation has limited the usefulness of the rapid response contracting statute. The current threshold of \$120,000 for rapid response contracts was established in 2002. According to DOT, increasing the rapid response contract amount to \$250,000 will account for increased construction costs and extend DOT's ability to quickly respond to construction and maintenance needs that are in the best interest of safety and the economy.⁴⁴

Proposed Changes

The bill amends s. 337.11(6)(c), F.S., increasing the maximum amount of a rapid response contract that DOT may enter into from \$120,000 to \$250,000.

Turnpike Bond Validation (Sections 1 and 5)

Current Situation

Bond Validation - Chapter 75, F.S., establishes certain criteria for bond validation. Bond validation is a judicial process through which the legality of a proposed bond issue may be determined in advance of its issuance. It serves to assure bondholders that future court proceedings will not invalidate a government's pledge to repay the bonds. Validation is generally not necessary for established borrowing programs, such as Turnpike bonds, where any legal issues relating to the bonds have been

governmental entity, but not including roads so transferred from the state's jurisdiction. These facilities shall be facilities to which access is regulated.

³⁷ Section 334.03(25), F.S., defines "State Park Road System" as roads embraced within the boundaries of state parks and state roads leading to state parks, other than roads of the State Highway System, the county road systems, or the city street systems.

³⁸ FLA. STAT. § 337.11(1) (2017).

³⁹ FLA. STAT. § 337.11(1) (2017).

⁴⁰ FLA. STAT. § 337.11(6)(c) (2017).

⁴¹ FLA. STAT. §§ 337.11(6)(c)1.-3. (2017).

⁴² FLA. STAT. § 337.11(6)(c) (2017).

⁴³ DOT Bill Proposal: Rapid Response Contracts-Price Cap Increase. Copy on file with the Transportation & Infrastructure Subcommittee.

⁴⁴ DOT Bill Proposal: Rapid Response Contracts-Price Cap Increase. Copy on file with the Transportation & Infrastructure Subcommittee.

resolved previously. Validation is optional for almost all bonds issued by the Division of Bond Finance, including Public Education Capital Outlay Bonds and University Revenue Bonds. If a constitutional or statutory question arises for a proposed bond issue, a complaint for validation may be filed in circuit court even if validation is not required.

State Bond Act - Any bonds issued pursuant to the State Bond Act⁴⁵ are validated in the manner prescribed by chapter 75, F.S.⁴⁶ In any action to validate turnpike revenue bonds,⁴⁷ the complaint is filed in the circuit court of the county where the seat of state government is located, the required notice⁴⁸ is published in a newspaper of general circulation in the county where the complaint is filed, and in two other newspapers of general circulation. The complaint and order of the circuit court is served only on the state attorney of the circuit in which the action is pending.⁴⁹

Turnpike Revenue Bonds - DOT is authorized to borrow money as provided by the State Bond Act for the purpose of paying all or any part of the cost of any one or more legislatively approved Turnpike projects.⁵⁰ The principal of, and the interest on, Turnpike revenue bonds is payable only from revenues pledged for their payment.⁵¹

Proposed Changes

The bill creates s. 338.227(5), F.S., providing that notwithstanding s. 215.82, F.S., Turnpike revenue bonds are not required to be validated, but may be validated at the option of the Division of Bond Finance. A complaint regarding such validation is filed in the circuit court of the county in which the seat of state government is situated. The required notice is published only in the county in which the complaint is filed. The complaint and order of the circuit court is served on the state attorney of the circuit in which the action is pending.

The bill also amends s. 215.82, F.S., removing a cross-reference.

DOT Work Program (Section 6)

Current Situation

In general, s. 339.135, F.S., provides for DOT's work program, which lists transportation projects which DOT plans to undertake in the next five fiscal years. More specifically, s. 339.135(7), F.S., establishes procedures related to adding, advancing, deferring, or deleting projects or major phases from the list of projects. These actions are prepared as work program amendments, which are subject to notice and consultation procedures in s. 216.177, F.S.,⁵² and public notice provisions for other stakeholders.

Section 339.135(7)(e), F.S., authorizes the DOT Secretary to request from Executive Office of the Governor (EOG) the ability to amend DOT's adopted work program when an emergency⁵³ exists, and the emergency relates to the repair or rehabilitation of any state transportation facility. The EOG may approve the amendment to the adopted work program and amend that portion of the DOT's approved

⁴⁵ FLA. STAT. §§ 215.57-.83 (2017).

⁴⁶ FLA. STAT. § 215.82 (2017); *see also* FLA. STAT. § 215.82(2) (2017).

⁴⁷ Turnpike revenue bonds are issued pursuant to s. 338.227, F.S.

⁴⁸ Notice is required pursuant to s. 75.06, F.S.

⁴⁹ FLA. STAT. § 215.616(6) (2017).

⁵⁰ FLA. STAT. § 338.227(1) (2017).

⁵¹ FLA. STAT. § 338.227(1) (2017).

⁵² Section 216.177, F.S., provides for appropriations acts, statement of intent, violation, notice, review and objection procedures.

⁵³ Section 252.34(4), F.S., defines "emergency" as "any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

budget if a delay due to notification requirements⁵⁴ would be detrimental to the state's interests. However, DOT immediately notifies the parties specified in the notification requirements and provides such parties written justification for the emergency action within seven days after the EOGs approval of the amendment to the adopted work program and DOT's budget. The adopted work program may not be amended under s. 339.135(7)(e), F.S., without DOT's Comptroller certifying that there are sufficient funds available pursuant to DOT's 36-month cash forecast and applicable statutes.

In 2016, the Legislature created s. 337.135(7)(h), F.S., requiring that any work program amendment that also adds a new project, or phase of a new project, to the adopted work program in excess of \$3 million is subject to approval by the Legislative Budget Commission.

Subsequent to the passage of the 2016 legislation, DOT's inspection and investigation into a differentially settled sidewalk along Main Street over Hogans Creek in Duval County revealed multiple structural deficiencies with the supporting culvert structure. The circumstances were dire enough to warrant closing Main Street at the location. Further inspection revealed full structure replacement as the most efficient alternative to restore the roadway to full service. In response, DOT declared an emergency⁵⁵ to prevent harm and danger to vehicular, bicycle, and pedestrian traffic, and to accelerate repair in order to restore roadway operation. The Hogans Creek culvert replacement cost of \$4,436,307 was added to the list of projects making up DOT's work program and contracts were executed in order to protect the public and restore operation of the roadway. DOT believes that the ability to take immediate action to protect life, health and safety is critical.⁵⁶

However, according to DOT, it is unclear if emergency events are exempt from s. 339.135(7)(h), F.S., requiring LBC review and approval for certain amendments to DOT's work program.

Proposed Changes

The bill amends s. 339.135(7)(e), F.S., exempting from work program amendments related to emergency repairs which exceed the \$3 million threshold from the LBC review and approval requirements in s. 339.135(7)(h), F.S.

Florida Highway Beautification Council (Section 7)

Current Situation

Section 344.044, F.S., provides DOT's powers and duties. This section stipulates that **at least** 1.5 percent of the amount contracted for construction projects is allocated by DOT on a statewide basis for the purchase of plant materials.⁵⁷

Florida Highway Beautification Council - Established in 1987,⁵⁸ s. 339.2405, F.S., creates the Florida Highway Beautification Council (council) within DOT. The council has seven members appointed by the Governor. One member must be a licensed landscape architect, one member must be a representative of the Florida Federation of Garden Clubs, Inc., one member must be a representative of the Florida Nurserymen and Growers Association, one member must be a representative of DOT as designated by the Secretary of DOT,⁵⁹ one member must be a representative of the Department of Agriculture and Consumer Services, and two members must be private citizens. Council members serve at the pleasure of the Governor.⁶⁰

⁵⁴ Notification requirements are provided in s. 339.135(7)(d), F.S.

⁵⁵ DOT declared the emergency as it is defined in s. 337.11, relating to DOT's contracting authority, s. 339.135(7)(e), F.S., relating to DOT's work program, and s. 252.34(4), F.S., which defines "emergency" as it relates emergency management.

⁵⁶ Legislative Budget Commission Meeting Packet, September 12, 2016. EOG Number W2017-0026.

⁵⁷ FLA. STAT. § 334.044(26) (2017).

⁵⁸ Chapter 87-121, L.O.F.

⁵⁹ The head of DOT is the DOT Secretary.

⁶⁰ FLA. STAT. § 339.2405(1) (2017).

The council meets no less than semiannually. Four members constitute a quorum for the purpose of exercising all of the council's powers. A vote of the majority of the members present is sufficient for all council actions.⁶¹

Council members are prohibited from participating in any discussion or decision to recommend grants to any qualified local government with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.⁶²

The council's duties include:⁶³

- Provide information to local governments and local highway beautification councils regarding the state highway beautification grants program.
- Accept grant requests from local governments.
- Review grant requests for compliance with council rules.
- Establish rules for evaluating and prioritizing the grant requests. The rules must include, but are not limited to, an examination of each grant's aesthetic value, cost-effectiveness, level of local support, feasibility of installation and maintenance, and compliance with state and federal regulations. Rules adopted by the council which it uses to evaluate grant applications must take into consideration the contributions made by the highway beautification project in preventing litter.
- Maintain a prioritized list of approved grant requests. The list must include recommended funding levels for each request and, if staged implementation is appropriate, funding requirements for each stage must be provided.
- Assess the feasibility of planting and maintaining indigenous wildflowers and plants, instead of sod groundcovers, along the rights-of-way of state roads and highways. In making such assessment, the council must utilize data from other states which include indigenous wildflower and plant species in their highway vegetative management systems.

The council may, at the request of the Secretary of DOT, review and make recommendations on any other highway beautification matters relating to the State Highway System.⁶⁴ The Secretary provides from existing personnel such staff support services to the council as are necessary to enable the council to fulfill its duties and responsibilities.⁶⁵

Local highway beautification councils may be created by local governmental entities or by the Legislature. Prior to being submitted to the council, a grant request must be approved by the local government or governments of the area in which the project is located.⁶⁶

The Secretary, after receiving recommendations from the council, awards grants to local governmental entities that have submitted grant requests for beautification of roads on the State Highway System and which requests are on the council's approved list. The grants are awarded in the order they appear on the council's prioritized list and in accordance with available funding.⁶⁷

State highway beautification grants may be requested only for projects to beautify through landscaping roads on the State Highway System.⁶⁸ The grant request is required to identify all costs associated with the project, including sprinkler systems, plant materials, equipment, and labor.⁶⁹ A grant provides for

⁶¹ FLA. STAT. § 339.2405(3) (2017).

⁶² FLA. STAT. § 339.2405(5) (2017).

⁶³ FLA. STAT. § 339.2405(7)(a) (2017).

⁶⁴ FLA. STAT. § 339.2405(7)(b) (2017).

⁶⁵ FLA. STAT. § 339.2405(8) (2017).

⁶⁶ FLA. STAT. § 339.2405(9) (2017).

⁶⁷ FLA. STAT. § 339.2405(10) (2017).

⁶⁸ FLA. STAT. § 339.2405(11) (2017).

⁶⁹ FLA. STAT. § 339.2405(11) (2017).

the costs of purchase and installation of a sprinkler system, the cost of plant materials and fertilizer, and may provide for the costs for labor associated with the installation of the plantings.⁷⁰

The council annually submits to the Secretary a proposal recommending the level of grant funding.⁷¹

Department of Transportation - Currently, each DOT district⁷² appoints a District Highway Beautification Council Grant Manager who works with the District Landscape Architect and State Transportation Landscape Architect to promote the grant program and assist applicants through the grant process. Each District Grant Manager compiles a district-wide list to the State Transportation Landscape Architect, who compiles a statewide list. The council then ranks all submitted applications. After the council ranks each project, the State Transportation Landscape Architect produces a ranked list of the projects and grants are awarded in the ranked order until the remaining budget is not sufficient to fund the next ranked project.

Below are the landscaping budget and highway beautification line item from the General Appropriations Act for each of the past five years:

Fiscal Year	Landscaping Budget	Highway Beautification Line Item
2012-2013	\$43,226,736	\$1,000,000
2013-2014	\$52,612,493,	\$1,000,000
2014-2015	\$53,052,665	\$1,800,000
2015-2016	\$50,168,127	\$1,817,000
2016-2017	\$65,272,208	\$1,800,000

Proposed Changes

The bill amends s. 339.2405, F.S., eliminating the Florida Highway Beautification Council. The bill also provides that the Secretary makes final highway beautification grant decisions based on input from District Grant Managers, District Landscape Architects, and the State Transportation Landscape Architect. Local governments will continue to have input regarding the selection of landscaping projects through their local DOT districts.

Additionally, DOT would no longer be responsible for the administrative operation and travel expenses associated with the Florida Highway Beautification Council.

South Florida Regional Transportation Authority (Sections 8 through 11)

Part II of Ch. 343, F.S., is the South Florida Regional Transportation Authority (SFRTA) Act. SFRTA provides Tri-Rail commuter rail service in Palm Beach, Broward, and Miami-Dade counties.

Current Situation

Definitions (Section 8)

Section 343.52, F.S., provides definitions relating to the South Florida Regional Transportation Act.

SFRTA (Section 9)

Section 343.53, F.S., creates SFRTA.

SFRTA Powers and Duties (Section 10)

⁷⁰ FLA. STAT. § 339.2405(11) (2017).

⁷¹ FLA. STAT. § 339.2405(12) (2017).

⁷² DOT consists of seven geographic districts, the turnpike enterprise, and the rail enterprise.

Included in SFRTA'S powers and duties are provisions allowing it to contract for the procurement of various goods and services.⁷³

SFRTA Funding (Section 11)

Generally, s. 343.58, F.S., provides the statutory funding for SFRTA. More specifically, s. 348.58(4), F.S., provides that effective July 1, 2010, until as provided below, DOT is required to annually transfer from the State Transportation Trust Fund (STTF) to SFRTA the amounts specified below.

- If SFRTA becomes responsible for maintaining and dispatching the South Florida Rail Corridor:
 - \$15 million from the STTF to SFRTA for operations, maintenance, and dispatch; and
 - An amount no less than the work program commitments equal to \$27.1 million for fiscal year 2010-2011, as of July 1, 2009, for operating assistance to the authority and corridor track maintenance and contract maintenance for the South Florida Rail Corridor.
- If SFRTA does not become responsible for maintaining and dispatching the South Florida Rail Corridor:
 - \$13.3 million from the STTF to SFRTA for operations; and
 - An amount no less than the work program commitments equal to \$17.3 million for fiscal year 2010-2011, as of July 1, 2009, for operating assistance to the authority.

SFRTA is currently responsible for maintaining and dispatching on the South Florida Rail Corridor; therefore, the first funding scenario is in effect.

Funding required by s. 343.58(4), F.S. may not be provided from the funds dedicated to the Florida Rail Enterprise.⁷⁴

SFRTA may not commit these DOT-provided funds without DOT approval, which may not be unreasonably withheld.⁷⁵ At least 90 days before advertising any procurement or renewing any existing contract that will rely on state funds for payment, SFRTA is required to notify DOT of the proposed procurement or renewal and the proposed terms of the procurement or renewal.⁷⁶ If DOT, within 60 days after receiving the notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, SFRTA may not proceed with the proposed procurement or renewal. Failure of DOT to object in writing within 60 days after notice is deemed consent.⁷⁷

To enable DOT to evaluate SFRTA's proposed uses of state funds, SFRTA annually provides DOT with its proposed budget for the following fiscal year and provides DOT with any additional documentation or information required by DOT for its evaluation of the proposed uses of the state funds.

The statutory required funding ceases upon commencement of an alternate dedicated local funding source sufficient for SFRTA to meet its responsibilities for operating, maintaining, and dispatching the South Florida Rail Corridor.⁷⁸ SFRTA and DOT are required to cooperate in the effort to identify and implement such an alternate dedicated local funding source before July 1, 2019.⁷⁹ Upon commencement of the alternate dedicated local funding source, DOT conveys to SFRTA a perpetual commuter rail easement in the South Florida Rail Corridor and all of DOT's right, title, and interest in rolling stock, equipment, tracks, and other personal property owned and used by DOT for the operation and maintenance of the commuter rail operations in the South Florida Rail Corridor.⁸⁰

In recent correspondence with SFRTA, DOT expressed concern regarding SFRTA's accountability for DOT-provided state funds used for SFRTA's operation and maintenance costs. This concern was

⁷³ FLA. STAT. § 343.54 (2017).

⁷⁴ Funds are dedicated to the Florida Rail Enterprise pursuant to s. 201.15(4)(a)4., F.S.

⁷⁵ FLA. STAT. § 348.58(4)(c)1. (2017).

⁷⁶ FLA. STAT. § 348.58(4)(c)1. (2017).

⁷⁷ FLA. STAT. § 348.58(4)(c)1. (2017).

⁷⁸ FLA. STAT. § 348.58(4)(d) (2017).

⁷⁹ FLA. STAT. § 348.58(4)(d) (2017).

⁸⁰ FLA. STAT. § 348.58(4)(d) (2017).

heightened by the SFRTA's board's decision to award a long-term operations and maintenance contract after unilaterally rejecting all but one of the proposals submitted.⁸¹

Proposed Changes

Definitions (Section 8)

The bill amends s. 343.52, F.S., defining "department" as the Department of Transportation. The bill also alphabetizes the definitions in that section.

SFRTA (Section 9)

The bill amends s. 343.53(2), F.S., conforming a cross-reference.

SFRTA Power and Duties (Section 10)

The bill creates s. 343.54(4), F.S., prohibiting SFRTA from entering into a contract or other agreement, or renewing or extending any existing contract or other agreement, which may be funded, in whole or in part, with DOT provided funds without the DOT's prior review and written approval of SFRTA's proposed expenditures.

SFRTA's Funding (Section 11)

The bill amends s. 348.58(4)(c), F.S., providing that funds provided to SFRTA by DOT may not be committed by SFRTA without prior review and written approval by DOT of SFRTA's expenditures.

The bill creates s. 348.58(4)(e), F.S., prohibiting DOT from providing SFRTA funding under s. 343.58(4), F.S., until SFRTA withdraws, cancels, or otherwise terminates its Notice of Intent for Contract Award Request for Proposal 16-010 "Operating Services" approved by SFRTA's board on January 27, 2017. Before entering into a new contract for the services that were the subject of that request for proposal, SFRTA is required to obtain DOT's written approval of all terms and conditions of a new procurement and contract that were the subject of the RFP to ensure that SFRTA has sufficient revenues to fund the contract.

DOT Districts (Section 12)

Current Situation

Section 20.23, F.S., creates DOT as a decentralized agency. DOT's operations are organized into seven districts, each headed by a district secretary, and a turnpike enterprise and a rail enterprise, each headed by an executive director.⁸² In order to provide for efficient operations and to expedite the decision-making process, DOT is required to provide for maximum decentralization to the districts.⁸³

While s. 20.23(4)(a), F.S., provides the headquarters of each of the DOT districts and enterprises, the counties contained in each district are not provided in statute. The districts and counties served are as follows:

⁸¹ Letter from DOT Secretary Jim Boxhold to Jack Stephens, Executive Director of SFRTA. January 27, 2017. Copy on file with Transportation & Infrastructure Subcommittee.

⁸² FLA. STAT. § 2023(4)(a) (2017).

⁸³ Section 20.23(4)(a), F.S.

DOT District	Headquarters (County)	Counties Served
1	Bartow (Polk)	Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Polk, Sarasota.
2	Lake City (Columbia)	Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, Union
3	Chipley (Washington)	Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Santa Rosa, Wakulla, Walton, Washington
4	Ft. Lauderdale (Broward)	Broward, Indian River, Martin, Palm Beach, St. Lucie
5	DeLand (Volusia)	Brevard, Flagler, Lake, Marion, Orange, Osceola, Seminole, Sumter, Volusia
6	Miami (Miami-Dade)	Miami-Dade, Monroe
7	Tampa (Hillsborough)	Citrus, Hernando, Hillsborough, Pasco, Pinellas.

Section 20.23(4)(a), F.S., also requires the headquarters for the Turnpike Enterprise to be located in Orange County and the headquarters for the Rail Enterprise to be located in Leon County.

Section 20.23(4)(d), F.S., provides that DOT's district director for the Fort Myers Urban Office⁸⁴ is responsible for developing the 5-year Transportation Plan for Charlotte, Collier, DeSoto, Glades, Hendry, and Lee counties. The Fort Myers Urban Office also is responsible for providing policy, direction, local government coordination, and planning for those counties.

Proposed Changes

The bill provides that on or before October 31, 2017, DOT must submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a fiscal analysis of the following:

- Moving DOT's District 1 headquarters to Lee County;
- Making Polk County part of DOT District 5;
- Relocating DOT's District 5 headquarters to Polk County; and
- Making DOT's DeLand office an urban office located within DOT District 5.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.82, F.S., to remove a cross-reference.

Section 2. Amends s. 316.545, F.S., relating to unlawful weights and loads.

Section 3. Amends s. 335.074, F.S., relating to the safety inspection of bridges.

Section 4. Amends s. 331.11, F.S., relating to DOT's contracting authority.

Section 5. Amends s. 338.227, F.S., relating to turnpike revenue bonds.

Section 6. Amends s. 339.135, F.S., relating to DOT's work program.

Section 7. Amends s. 339.2405, F.S., relating to the Florida Highway Beautification Council.

Section 8. Amends s. 343.52, F.S., relating to definitions.

Section 9. Amends s. 343.53, F.S., relating to the South Florida Regional Transportation Authority.

Section 10. Amends s. 343.54, F.S., relating to the powers and duties of the South Florida Regional Transportation Authority.

Section 11. Amends s. 343.58, F.S., providing county funding for the South Florida Regional Transportation Authority.

Section 12. Requires DOT to perform a fiscal analysis regarding the redesignation of specified offices.

Section 13. Provides an effective date of July 1, 2017.

⁸⁴ The Fort Myers Urban Office is located in DOT District 1.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DOT estimates an indeterminate but insignificant negative fiscal impact associated with additional weight allowances for natural gas-fueled vehicles because of the reduction in penalties assessed and collected by the State due to the increased weight limits.

2. Expenditures:

DOT estimates a reduction in costs of approximately \$500,000 associated with conducting bridge inspections at risk-based intervals.

There may be some cost savings to the Division of Bond Finance associated with bond validation being optional for turnpike revenue bonds. The amount is indeterminate, but is expected to be insignificant.

DOT should see a reduction in costs associated with eliminating the Highway Beautification Council and the administrative costs associated with the council. The amount is indeterminate, but is expected to be insignificant.

DOT would not be obligated to provide SFRTA \$42.1 million in financial assistance if SFRTA does not unwind its award for procurement of an operating services contract.⁸⁵

DOT may incur some additional expenditures associated with conducting a fiscal analysis regarding its districts. The amount is indeterminate, but is expected to be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Operators of natural gas-fueled commercial vehicles will see a reduction in overweight fines associated with the increase in weight allowed for those vehicles.

There may be some reduced costs to the private sector with the increased dollar threshold for rapid response contracts since these contracts do not require securing a surety bond.

D. FISCAL COMMENTS:

SFRTA may see a reduction of approximately \$42.1 million in state-sponsored funding associated with provisions of the bill.⁸⁶ However, it may be able to mitigate the loss in revenue by taking certain actions provided for in the bill.

⁸⁵ DOT bill analysis of HB 865. Page 6.

⁸⁶ Id.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Transportation & Infrastructure Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Made a technical change to the natural gas vehicles language.
- Required DOT to conduct a fiscal analysis regarding the alignment and headquarters of some of its districts.

This analysis is written to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

1 A bill to be entitled
2 An act relating to the Department of Transportation;
3 amending s. 215.82, F.S.; conforming provisions to
4 changes made by the act; amending s. 316.545, F.S.;
5 providing for assessment and calculation of a fine for
6 unlawful weight and load of a vehicle fueled by
7 natural gas; requiring written certification of
8 certain weight information; providing gross vehicle
9 weight requirements; providing an exception; amending
10 s. 335.074, F.S.; requiring inspection of certain
11 bridges at intervals required by the Federal Highway
12 Administration; amending s. 337.11, F.S.; revising the
13 amount for which the department may enter into certain
14 construction and maintenance contracts; amending s.
15 338.227, F.S.; providing requirements for the
16 validation of turnpike revenue bonds and related
17 complaints; amending s. 339.135, F.S.; waiving
18 requirements for approval of certain work program
19 amendments by the Legislative Budget Commission under
20 certain conditions; amending s. 339.2405, F.S.;
21 deleting provisions relating to the Florida Highway
22 Beautification Council; transferring certain powers
23 and duties of the council to the department; amending
24 s. 343.52, F.S.; defining the term "department";
25 amending s. 343.53, F.S.; conforming a cross-

26 reference; amending s. 343.54, F.S.; prohibiting the
 27 South Florida Regional Transportation Authority from
 28 entering into certain contracts or agreements without
 29 department approval of the authority's expenditures;
 30 amending s. 343.58, F.S.; prohibiting certain funds to
 31 be committed by the authority without department
 32 approval of the authority's expenditures; prohibiting
 33 certain funds to be provided to the authority by the
 34 department except under certain circumstances;
 35 providing requirements for entering into certain new
 36 contracts; requiring the department to submit to the
 37 Governor and Legislature a fiscal analysis regarding
 38 the revision of certain district boundaries and
 39 headquarters; providing an effective date.

40
 41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Subsection (2) of section 215.82, Florida
 44 Statutes, is amended to read:

45 215.82 Validation; when required.—

46 (2) Any bonds issued pursuant to this act which are
 47 validated shall be validated in the manner provided by chapter
 48 75. In actions to validate bonds to be issued in the name of the
 49 State Board of Education under s. 9(a) and (d), Art. XII of the
 50 State Constitution and bonds to be issued pursuant to chapter

51 | 259, the Land Conservation Program, the complaint shall be filed
52 | in the circuit court of the county where the seat of state
53 | government is situated, the notice required to be published by
54 | s. 75.06 shall be published only in the county where the
55 | complaint is filed, and the complaint and order of the circuit
56 | court shall be served only on the state attorney of the circuit
57 | in which the action is pending. In any action to validate bonds
58 | issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1),
59 | Art. XII of the State Constitution or issued pursuant to s.
60 | 215.605 ~~or s. 338.227~~, the complaint shall be filed in the
61 | circuit court of the county where the seat of state government
62 | is situated, the notice required to be published by s. 75.06
63 | shall be published in a newspaper of general circulation in the
64 | county where the complaint is filed and in two other newspapers
65 | of general circulation in the state, and the complaint and order
66 | of the circuit court shall be served only on the state attorney
67 | of the circuit in which the action is pending; provided,
68 | however, that if publication of notice pursuant to this section
69 | would require publication in more newspapers than would
70 | publication pursuant to s. 75.06, such publication shall be made
71 | pursuant to s. 75.06.

72 | Section 2. Paragraphs (c) and (d) of subsection (3) of
73 | section 316.545, Florida Statutes, are redesignated as
74 | paragraphs (d) and (e), respectively, and a new paragraph (c) is
75 | added to that subsection to read:

76 316.545 Weight and load unlawful; special fuel and motor
 77 fuel tax enforcement; inspection; penalty; review.—

78 (3)

79 (c)1. For a vehicle fueled by natural gas, the fine is
 80 calculated by reducing the actual gross vehicle weight by the
 81 certified weight difference between the natural gas tank and
 82 fueling system and a comparable diesel tank and fueling system.
 83 Upon request by any weight inspector or law enforcement officer,
 84 the vehicle operator must present written certification that
 85 identifies the weight of the natural gas tank and fueling system
 86 and the difference in weight of a comparable diesel tank and
 87 fueling system. The written certification must originate from
 88 the vehicle manufacturer or the installer of the natural gas
 89 tank and fueling system.

90 2. The actual gross vehicle weight for vehicles fueled by
 91 natural gas may not exceed 82,000 pounds, excluding the weight
 92 allowed for idle-reduction technology under paragraph (b).

93 3. This paragraph does not apply to those vehicles
 94 described in s. 316.535(6).

95 Section 3. Subsection (2) of section 335.074, Florida
 96 Statutes, is amended to read:

97 335.074 Safety inspection of bridges.—

98 (2) At regular intervals as required by the Federal
 99 Highway Administration ~~not to exceed 2 years~~, each bridge on a
 100 public transportation facility shall be inspected for structural

101 soundness and safety for the passage of traffic on such bridge.
 102 The thoroughness with which bridges are to be inspected shall
 103 depend on such factors as age, traffic characteristics, state of
 104 maintenance, and known deficiencies. The governmental entity
 105 responsible for ~~having~~ maintenance of ~~responsibility for~~ any
 106 such bridge is ~~shall be~~ responsible for having inspections
 107 performed and reports prepared in accordance with this section
 108 ~~the provisions contained herein.~~

109 Section 4. Paragraph (c) of subsection (6) of section
 110 337.11, Florida Statutes, is amended to read:

111 337.11 Contracting authority of department; bids;
 112 emergency repairs, supplemental agreements, and change orders;
 113 combined design and construction contracts; progress payments;
 114 records; requirements of vehicle registration.-

115 (6)

116 (c) When the department determines that it is in the best
 117 interest of the public for reasons of public concern, economy,
 118 improved operations, or safety, and only when circumstances
 119 dictate rapid completion of the work, the department may, up to
 120 the amount of \$250,000 ~~\$120,000~~, enter into contracts for
 121 construction and maintenance without advertising and receiving
 122 competitive bids. The department may enter into such contracts
 123 only upon a determination that the work is necessary for one of
 124 the following reasons:

125 1. To ensure timely completion of projects or avoidance of

126 undue delay for other projects;

127 2. To accomplish minor repairs or construction and
 128 maintenance activities for which time is of the essence and for
 129 which significant cost savings would occur; or

130 3. To accomplish nonemergency work necessary to ensure
 131 avoidance of adverse conditions that affect the safe and
 132 efficient flow of traffic.

133
 134 The department shall make a good faith effort to obtain two or
 135 more quotes, if available, from qualified contractors before
 136 entering into any contract. The department shall give
 137 consideration to disadvantaged business enterprise
 138 participation. However, when the work exists within the limits
 139 of an existing contract, the department shall make a good faith
 140 effort to negotiate and enter into a contract with the prime
 141 contractor on the existing contract.

142 Section 5. Subsection (5) is added to section 338.227,
 143 Florida Statutes, to read:

144 338.227 Turnpike revenue bonds.—

145 (5) Notwithstanding s. 215.82, bonds issued pursuant to
 146 this section are not required to be validated pursuant to
 147 chapter 75 but may be validated at the option of the Division of
 148 Bond Finance. A complaint about such validation must be filed in
 149 the circuit court of the county in which the seat of state
 150 government is situated. The notice required to be published by

151 s. 75.06 must be published only in the county in which the
 152 complaint is filed. The complaint and order of the circuit court
 153 must be served only on the state attorney of the circuit in
 154 which the action is pending.

155 Section 6. Paragraph (e) of subsection (7) of section
 156 339.135, Florida Statutes, is amended to read:

157 339.135 Work program; legislative budget request;
 158 definitions; preparation, adoption, execution, and amendment.—

159 (7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

160 (e) Notwithstanding paragraphs (d), ~~and~~ (g), and (h) and
 161 ss. 216.177(2) and 216.351, the secretary may request the
 162 Executive Office of the Governor to amend the adopted work
 163 program when an emergency exists, as defined in s. 252.34, and
 164 the emergency relates to the repair or rehabilitation of any
 165 state transportation facility. The Executive Office of the
 166 Governor may approve the amendment to the adopted work program
 167 and amend that portion of the department's approved budget if a
 168 delay incident to the notification requirements in paragraph (d)
 169 would be detrimental to the interests of the state. However, the
 170 department shall immediately notify the parties specified in
 171 paragraph (d) and provide such parties written justification for
 172 the emergency action within 7 days after approval by the
 173 Executive Office of the Governor of the amendment to the adopted
 174 work program and the department's budget. The adopted work
 175 program may not be amended under this subsection without

176 certification by the comptroller of the department that there
 177 are sufficient funds available pursuant to the 36-month cash
 178 forecast and applicable statutes.

179 Section 7. Section 339.2405, Florida Statutes, is amended
 180 to read:

181 339.2405 Florida highway beautification grants Council.-

182 (1) The department shall ~~There is created within the~~
 183 ~~Department of Transportation the Florida Highway Beautification~~
 184 ~~Council. It shall consist of seven members appointed by the~~
 185 ~~Governor. All appointed members must be residents of this state.~~
 186 ~~One member must be a licensed landscape architect, one member~~
 187 ~~must be a representative of the Florida Federation of Garden~~
 188 ~~Clubs, Inc., one member must be a representative of the Florida~~
 189 ~~Nurserymen and Growers Association, one member must be a~~
 190 ~~representative of the department as designated by the head of~~
 191 ~~the department, one member must be a representative of the~~
 192 ~~Department of Agriculture and Consumer Services, and two members~~
 193 ~~must be private citizens. The members of the council shall serve~~
 194 ~~at the pleasure of the Governor.~~

195 ~~(2) Each chair shall be selected by the council members~~
 196 ~~and shall serve a 2-year term.~~

197 ~~(3) The council shall meet no less than semiannually at~~
 198 ~~the call of the chair or, in the chair's absence or incapacity,~~
 199 ~~at the call of the head of the department. Four members shall~~
 200 ~~constitute a quorum for the purpose of exercising all of the~~

201 ~~powers of the council. A vote of the majority of the members~~
 202 ~~present shall be sufficient for all actions of the council.~~

203 ~~(4) The council members shall serve without pay but shall~~
 204 ~~be entitled to per diem and travel expenses pursuant to s.~~
 205 ~~112.061.~~

206 ~~(5) A member of the council may not participate in any~~
 207 ~~discussion or decision to recommend grants to any qualified~~
 208 ~~local government with which the member is associated as a member~~
 209 ~~of the governing body or as an employee or with which the member~~
 210 ~~has entered into a contractual arrangement.~~

211 ~~(6) The council may prescribe, amend, and repeal bylaws~~
 212 ~~governing the manner in which the business of the council is~~
 213 ~~conducted.~~

214 ~~(7)(a) The duties of the council shall be to:~~

215 ~~(a)1.~~ Provide information to local governments and local
 216 highway beautification councils regarding the state highway
 217 beautification grants program.

218 ~~(b)2.~~ Accept grant requests from local governments.

219 ~~(c)3.~~ Review grant requests for compliance with department
 220 ~~council~~ rules.

221 ~~(d)4.~~ Establish rules for evaluating and prioritizing the
 222 grant requests. The rules must include, but are not limited to,
 223 an examination of each grant's aesthetic value, cost-
 224 effectiveness, level of local support, feasibility of
 225 installation and maintenance, and compliance with state and

226 federal regulations. Rules adopted by the department council
 227 which it uses to evaluate grant applications must take into
 228 consideration the contributions made by the highway
 229 beautification project in preventing litter.

230 (e)5. Maintain a prioritized list of approved grant
 231 requests. The list must include recommended funding levels for
 232 each request and, if staged implementation is appropriate,
 233 provide funding requirements for each stage ~~shall be provided.~~

234 ~~6. Assess the feasibility of planting and maintaining~~
 235 ~~indigenous wildflowers and plants, instead of sod groundcovers,~~
 236 ~~along the rights-of-way of state roads and highways. In making~~
 237 ~~such assessment, the council shall utilize data from other~~
 238 ~~states which include indigenous wildflower and plant species in~~
 239 ~~their highway vegetative management systems.~~

240 ~~(b) The council may, at the request of the head of the~~
 241 ~~department, review and make recommendations on any other highway~~
 242 ~~beautification matters relating to the State Highway System.~~

243 ~~(8) The head of the department shall provide from existing~~
 244 ~~personnel such staff support services to the council as are~~
 245 ~~necessary to enable the council to fulfill its duties and~~
 246 ~~responsibilities.~~

247 (2)(9) Local highway beautification councils may be
 248 created by local governmental entities or by the Legislature.
 249 Before ~~Prior to~~ being submitted to the department council, a
 250 grant request must be approved by the local government or

251 governments of the area in which the project is located.

252 (3)~~(10)~~ The head of the department,~~after receiving~~
 253 ~~recommendations from the council,~~ shall award grants to local
 254 governmental entities that have submitted grant requests for
 255 beautification of roads on the State Highway System and which
 256 requests are on the ~~council's~~ approved list. The grants shall be
 257 awarded in the order they appear on the ~~council's~~ prioritized
 258 list and in accordance with available funding.

259 (4)~~(11)~~ State highway beautification grants may be
 260 requested only for projects to beautify through landscaping
 261 roads on the State Highway System. The grant request shall
 262 identify all costs associated with the project, including
 263 sprinkler systems, plant materials, equipment, and labor. A
 264 grant shall provide for the costs of purchase and installation
 265 of a sprinkler system and~~7~~ the cost of plant materials and
 266 fertilizer~~7~~ and may provide for the costs for labor associated
 267 with the installation of the plantings. Each local government
 268 that receives a grant shall be responsible for any costs for
 269 water, for the maintenance of the sprinkler system, for the
 270 maintenance of the landscaped areas in accordance with a
 271 maintenance agreement with the department, and, except as
 272 otherwise provided in the grant, for any costs for labor
 273 associated with the installation of the plantings. The
 274 department may provide, by contract, services to maintain such
 275 landscaping at a level not to exceed the cost of routine

276 maintenance of an equivalent unlandscaped area.

277 ~~(12) The council shall annually submit to the head of the~~
 278 ~~Department of Transportation a proposal recommending the level~~
 279 ~~of grant funding.~~

280 Section 8. Section 343.52, Florida Statutes, is amended to
 281 read:

282 343.52 Definitions.—As used in this part, the term:

283 (1)~~(3)~~ "Area served" means Miami-Dade, Broward, and Palm
 284 Beach Counties. However, this area may be expanded by mutual
 285 consent of the authority and the board of county commissioners
 286 of Monroe County. The authority may not expand into any
 287 additional counties without the department's prior written
 288 approval.

289 (2)~~(1)~~ "Authority" means the South Florida Regional
 290 Transportation Authority.

291 (3)~~(2)~~ "Board" means the governing body of the authority.

292 (4) "Department" means the Department of Transportation.

293 (5)~~(7)~~ "Feeder transit services" means a transit system
 294 that transports passengers to or from stations within or across
 295 counties.

296 (6) "Member" means the individuals constituting the board.

297 (7)~~(5)~~ "Transit facilities" means property, avenues of
 298 access, equipment, or buildings built and installed in Miami-
 299 Dade, Broward, and Palm Beach Counties which are required to
 300 support a transit system.

301 ~~(8)(4)~~ "Transit system" means a system used for the
 302 transportation of people and goods by means of, without
 303 limitation, a street railway, an elevated railway having a fixed
 304 guideway, a commuter railroad, a subway, motor vehicles, or
 305 motor buses, and includes a complete system of tracks, stations,
 306 and rolling stock necessary to effectuate passenger service to
 307 or from the surrounding regional municipalities.

308 Section 9. Paragraph (d) of subsection (2) of section
 309 343.53, Florida Statutes, is amended to read:

310 343.53 South Florida Regional Transportation Authority.—

311 (2) The governing board of the authority shall consist of
 312 10 voting members, as follows:

313 (d) If the authority's service area is expanded pursuant
 314 to s. 343.54(6) ~~343.54(5)~~, the county containing the new service
 315 area shall have two members appointed to the board as follows:

316 1. The county commission of the county shall elect a
 317 commissioner as that commission's representative on the board.
 318 The commissioner must be a member of the county commission when
 319 elected and for the full extent of his or her term.

320 2. The Governor shall appoint a citizen member to the
 321 board who is not a member of the county commission but who is a
 322 resident and a qualified elector of that county.

323 Section 10. Subsections (4) and (5) of section 343.54,
 324 Florida Statutes, are renumbered as subsections (5) and (6),
 325 respectively, and a new subsection (4) is added to that section

326 to read:

327 343.54 Powers and duties.—

328 (4) Notwithstanding any other provision of this part, the
 329 authority may not enter into, extend, or renew any contract or
 330 other agreement that may be funded, in whole or in part, with
 331 funds provided by the department without the prior review and
 332 written approval by the department of the authority's proposed
 333 expenditures.

334 Section 11. Paragraph (c) of subsection (4) of section
 335 343.58, Florida Statutes, is amended, and paragraph (e) is added
 336 to that subsection, to read:

337 343.58 County funding for the South Florida Regional
 338 Transportation Authority.—

339 (4) Notwithstanding any other provision of law to the
 340 contrary and effective July 1, 2010, until as provided in
 341 paragraph (d), the department shall transfer annually from the
 342 State Transportation Trust Fund to the South Florida Regional
 343 Transportation Authority the amounts specified in subparagraph
 344 (a)1. or subparagraph (a)2.

345 (c)1. Funds provided to the authority by the department
 346 under this subsection may not be committed by the authority
 347 without the prior review and written approval ~~by~~ of the
 348 department of the authority's expenditures, ~~which may not be~~
 349 ~~unreasonably withheld. At least 90 days before advertising any~~
 350 ~~procurement or renewing any existing contract that will rely on~~

351 | ~~state funds for payment, the authority shall notify the~~
 352 | ~~department of the proposed procurement or renewal and the~~
 353 | ~~proposed terms thereof. If the department, within 60 days after~~
 354 | ~~receipt of notice, objects in writing to the proposed~~
 355 | ~~procurement or renewal, specifying its reasons for objection,~~
 356 | ~~the authority may not proceed with the proposed procurement or~~
 357 | ~~renewal. Failure of the department to object in writing within~~
 358 | ~~60 days after notice shall be deemed consent. This requirement~~
 359 | ~~does not impair or cause the authority to cancel contracts that~~
 360 | ~~exist as of June 30, 2012.~~

361 | 2. To enable the department to evaluate the authority's
 362 | proposed uses of state funds, the authority shall annually
 363 | provide the department with its proposed budget for the
 364 | following authority fiscal year and shall promptly provide the
 365 | department with any additional documentation or information
 366 | required by the department for its evaluation of the proposed
 367 | uses of the state funds.

368 | (e) Funds may not be provided to the authority by the
 369 | department under this subsection until the authority withdraws,
 370 | cancels, or otherwise terminates the authority's Notice of
 371 | Intent for Contract Award for Request for Proposal 16-010,
 372 | "Operating Services," approved by the authority board on January
 373 | 27, 2017. Before entering into a new contract for the services
 374 | that were the subject of Request for Proposal 16-010, the
 375 | authority must obtain the department's written approval of all

376 terms and conditions of a new procurement and contract for the
377 services that were the subject of such request for proposal to
378 ensure that the authority has sufficient revenues to fund the
379 contract.

380 Section 12. On or before October 31, 2017, the Department
381 of Transportation shall submit to the Governor, the President of
382 the Senate, and the Speaker of the House of Representatives a
383 fiscal analysis of the following: relocating the department's
384 District 1 headquarters to Lee County; including Polk County in
385 the department's District 5; relocating the department's
386 District 5 headquarters to Polk County; and making the
387 department's DeLand office an urban office located within the
388 department's District 5.

389 Section 13. This act shall take effect July 1, 2017.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Transportation & Tourism
 2 Appropriations Subcommittee

3 Representative Drake offered the following:

4
 5 **Amendment (with directory and title amendments)**

6 Remove lines 345-379 and insert:

7 (c)1. Funds provided to the authority by the department
 8 under this subsection constitute state financial assistance
 9 provided to a nonstate entity to carry out a state project
 10 subject to ss. 215.97 and 215.971. The department shall provide
 11 the funds in accordance with the terms of a written agreement to
 12 be entered into between the authority and the department, which
 13 shall provide for department review, approval, and audit of
 14 authority expenditure of such funds and shall include such other
 15 provisions as are required by applicable law. The department is
 16 specifically authorized to agree to advance the authority 25

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Amendment No. 1

17 percent of the total funds provided under this subsection for a
18 state fiscal year at the beginning of each state fiscal year,
19 with monthly payments over the fiscal year on a reimbursement
20 basis as supported by invoices and such additional documentation
21 and information as the department may reasonably require and a
22 reconciliation of the advance against remaining invoices in the
23 last quarter of the fiscal year ~~may not be committed by the~~
24 ~~authority without the approval of the department, which may not~~
25 ~~be unreasonably withheld. At least 90 days before advertising~~
26 ~~any procurement or renewing any existing contract that will rely~~
27 ~~on state funds for payment, the authority shall notify the~~
28 ~~department of the proposed procurement or renewal and the~~
29 ~~proposed terms thereof. If the department, within 60 days after~~
30 ~~receipt of notice, objects in writing to the proposed~~
31 ~~procurement or renewal, specifying its reasons for objection,~~
32 ~~the authority may not proceed with the proposed procurement or~~
33 ~~renewal. Failure of the department to object in writing within~~
34 ~~60 days after notice shall be deemed consent. This requirement~~
35 ~~does not impair or cause the authority to cancel contracts that~~
36 ~~exist as of June 30, 2012.~~

37 2. To enable the department to evaluate the authority's
38 proposed uses of state funds, the authority shall annually
39 provide the department with its proposed budget for the
40 following authority fiscal year and shall promptly provide the
41 department with any additional documentation or information

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Amendment No. 1

42 required by the department for its evaluation of the proposed
43 uses of the state funds.

44

45

46

47

D I R E C T O R Y A M E N D M E N T

48

Remove lines 335-336 and insert:

49

343.58, Florida Statutes, is amended to read:

50

51

52

T I T L E A M E N D M E N T

53

Remove lines 30-36 and insert:

54

amending s. 343.58, F.S.; providing that certain funds

55

provided to the authority constitute state financial

56

assistance; requiring a written agreement for provision of

57

such funds; authorizing the department to advance a certain

58


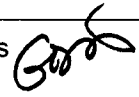
amount of funds under certain circumstances; requiring the

59

department to submit to the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1163 Agency Rulemaking
SPONSOR(S): Spano and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1640

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Whittaker	Harrington
2) Transportation & Tourism Appropriations Subcommittee		Cobb 	Davis 
3) Government Accountability Committee			

SUMMARY ANALYSIS

A Statement of Estimated Regulatory Costs (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule, as well as the potential impact on agencies and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule, however, a SERC must be prepared if the proposed rule will have a negative impact on small businesses or increase regulatory costs more than \$200,000 within one year after implementation.

The bill requires an agency to prepare a SERC before the adoption, amendment, or repeal of any rule other than an emergency rule.

The bill requires the Department of State (department) to maintain a website open to the public for the sole purpose of publishing SERCs. Agencies must provide all SERCs to the department for publication on the website. If an agency revises a SERC, the revised SERC must also be provided to the department for publication on the website. The bill further requires an agency to include a link on the agency website to the department's website. The department's website must be accessible to the public and may not require the use of login credentials for a person to access a SERC.

The bill also removes the requirement that the agency head approve certain rulemaking notices.

The Department of State estimates that the bill will result in a nonrecurring impact of \$1,000,000 and a recurring impact of \$150,000 due to costs related to the dedicated SERC website and associated database.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rulemaking

The Administrative Procedure Act¹ sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.² Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to “adopt, develop, establish, or otherwise create”³ rules. Agencies do not have discretion whether to engage in rulemaking.⁴ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.⁵ The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁶

An agency begins the formal rulemaking process, upon approval of the agency head, by filing a notice of the proposed rule.⁷ The notice is published by the Department of State in the Florida Administrative Register⁸ and must provide certain information, including the text of the proposed rule, a summary of the agency’s Statement of Estimated Regulatory Costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule.⁹ Although the notice includes a summary of the SERC, if prepared, publication of the SERC is not required.

Statement of Estimated Regulatory Costs

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.¹⁰ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.¹¹ A SERC must be prepared if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than \$200,000 within one year after implementation of the rule.¹²

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule’s impact on small businesses, counties, and cities.¹³

¹ Chapter 120, F.S.

² Section 120.52(16), F.S.

³ Section 120.52(17), F.S.

⁴ Section 120.54(1)(a), F.S.

⁵ Sections 120.52(8) and 120.536(1), F.S.

⁶ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁷ Section 120.54(3)(a)1., F.S.

⁸ Section 120.55(1)(b), F.S.

⁹ Section 120.55(1)(b)1. and 2., F.S.

¹⁰ Section 120.541(2), F.S.

¹¹ Section 120.54(3)(b)1., F.S.

¹² Section 120.54(3)(b)1., F.S.

¹³ Section 120.541(2)(b)-(e), F.S.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.¹⁴

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.¹⁵

At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC must provide the statement to the person who submitted the lower cost regulatory alternative and to the Administrative Procedures Committee and must provide notice on the agency's website that is available to the public.¹⁶

Effect of the Bill

The bill requires an agency to prepare a SERC before the adoption, amendment, or repeal of any rule other than an emergency rule.

The bill also requires the Department of State (department) to maintain a website open to the public for the sole purpose of publishing SERCs. Agencies must provide the department with all SERCs for publication on the website after proper notice is published. Revised SERCs must also be provided to the department for publication after proper notice is published.

The bill further requires an agency to include a link on its webpage to the department's SERC website. The department's website may not require the use of login credentials for a person to access a SERC.

Lastly, the bill removes the requirement that the agency head approve notices for rulemaking.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.54, F.S., requiring an agency to prepare a SERC before adopting, amending, or repealing any rule other than an emergency rule.

Section 2. Amends s. 120.541, F.S., requiring the department to maintain a website that solely includes SERCs; requiring an agency that prepares or revises a SERC to provide the SERC to the department for publication on the website; requiring an agency to include an internet website link to the department's SERC website on the agency website; requiring the department's SERCs website to be accessible to the public; prohibiting the required use of login credentials for internet access to SERCs; conforming provisions to changes made by the act.

Section 3. Amends s. 120.56, F.S., conforming a cross-reference.

Section 4. Provides an effective date of July 1, 2017.

¹⁴ Section 120.541(2)(a), F.S.

¹⁵ Section 120.541(3), F.S.

¹⁶ Section 120.541(1)(d), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of State, the bill will have a significant, negative impact to its expenditures. The department estimates that the bill will result in a nonrecurring impact of \$1,000,000 and a recurring impact of \$150,000 due to costs related to the dedicated SERC website and associated database.¹⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁷ Draft agency bill analysis on file with the Transportation and Tourism Appropriations Subcommittee.
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26 (3) ADOPTION PROCEDURES.—
 27 (a) Notices.—
 28 1. Prior to the adoption, amendment, or repeal of any rule
 29 other than an emergency rule, an agency, ~~upon approval of the~~
 30 ~~agency head,~~ shall give notice of its intended action, setting
 31 forth a short, plain explanation of the purpose and effect of
 32 the proposed action; the full text of the proposed rule or
 33 amendment and a summary thereof; a reference to the grant of
 34 rulemaking authority pursuant to which the rule is adopted; and
 35 a reference to the section or subsection of the Florida Statutes
 36 or the Laws of Florida being implemented or interpreted. The
 37 notice must include a summary of the agency's statement of the
 38 estimated regulatory costs, ~~if one has been prepared,~~ based on
 39 the factors set forth in s. 120.541(2); a statement that any
 40 person who wishes to provide the agency with information
 41 regarding the statement of estimated regulatory costs, or to
 42 provide a proposal for a lower cost regulatory alternative as
 43 provided by s. 120.541(1), must do so in writing within 21 days
 44 after publication of the notice; and a statement as to whether,
 45 based on the statement of the estimated regulatory costs ~~or~~
 46 ~~other information expressly relied upon and described by the~~
 47 ~~agency if no statement of regulatory costs is required,~~ the
 48 proposed rule is expected to require legislative ratification
 49 pursuant to s. 120.541(3). The notice must state the procedure
 50 for requesting a public hearing on the proposed rule. Except

51 | when the intended action is the repeal of a rule, the notice
 52 | must include a reference both to the date on which and to the
 53 | place where the notice of rule development that is required by
 54 | subsection (2) appeared.

55 | 2. The notice shall be published in the Florida
 56 | Administrative Register not less than 28 days prior to the
 57 | intended action. The proposed rule shall be available for
 58 | inspection and copying by the public at the time of the
 59 | publication of notice.

60 | 3. The notice shall be mailed to all persons named in the
 61 | proposed rule and to all persons who, at least 14 days prior to
 62 | such mailing, have made requests of the agency for advance
 63 | notice of its proceedings. The agency shall also give such
 64 | notice as is prescribed by rule to those particular classes of
 65 | persons to whom the intended action is directed.

66 | 4. The adopting agency shall file with the committee, at
 67 | least 21 days prior to the proposed adoption date, a copy of
 68 | each rule it proposes to adopt; a copy of any material
 69 | incorporated by reference in the rule; a detailed written
 70 | statement of the facts and circumstances justifying the proposed
 71 | rule; a copy of any statement of estimated regulatory costs that
 72 | has been prepared pursuant to s. 120.541; a statement of the
 73 | extent to which the proposed rule relates to federal standards
 74 | or rules on the same subject; and the notice required by
 75 | subparagraph 1.

76 (b) Special matters to be considered in rule adoption.-
 77 1. Statement of estimated regulatory costs.-Before the
 78 adoption, amendment, or repeal of any rule other than an
 79 emergency rule, an agency must ~~is encouraged to~~ prepare a
 80 statement of estimated regulatory costs of the proposed rule, as
 81 provided by s. 120.541. ~~However, an agency must prepare a~~
 82 ~~statement of estimated regulatory costs of the proposed rule, as~~
 83 ~~provided by s. 120.541, if:~~
 84 a. ~~The proposed rule will have an adverse impact on small~~
 85 ~~business; or~~
 86 b. ~~The proposed rule is likely to directly or indirectly~~
 87 ~~increase regulatory costs in excess of \$200,000 in the aggregate~~
 88 ~~in this state within 1 year after the implementation of the~~
 89 ~~rule.~~
 90 2. Small businesses, small counties, and small cities.-
 91 a. Each agency, before the adoption, amendment, or repeal
 92 of a rule, shall consider the impact of the rule on small
 93 businesses as defined by s. 288.703 and the impact of the rule
 94 on small counties or small cities as defined by s. 120.52.
 95 Whenever practicable, an agency shall tier its rules to reduce
 96 disproportionate impacts on small businesses, small counties, or
 97 small cities to avoid regulating small businesses, small
 98 counties, or small cities that do not contribute significantly
 99 to the problem the rule is designed to address. An agency may
 100 define "small business" to include businesses employing more

101 | than 200 persons, may define "small county" to include those
 102 | with populations of more than 75,000, and may define "small
 103 | city" to include those with populations of more than 10,000, if
 104 | it finds that such a definition is necessary to adapt a rule to
 105 | the needs and problems of small businesses, small counties, or
 106 | small cities. The agency shall consider each of the following
 107 | methods for reducing the impact of the proposed rule on small
 108 | businesses, small counties, and small cities, or any combination
 109 | of these entities:

110 | (I) Establishing less stringent compliance or reporting
 111 | requirements in the rule.

112 | (II) Establishing less stringent schedules or deadlines in
 113 | the rule for compliance or reporting requirements.

114 | (III) Consolidating or simplifying the rule's compliance
 115 | or reporting requirements.

116 | (IV) Establishing performance standards or best management
 117 | practices to replace design or operational standards in the
 118 | rule.

119 | (V) Exempting small businesses, small counties, or small
 120 | cities from any or all requirements of the rule.

121 | b.(I) If the agency determines that the proposed action
 122 | will affect small businesses as defined by the agency as
 123 | provided in sub-subparagraph a., the agency shall send written
 124 | notice of the rule to the rules ombudsman in the Executive
 125 | Office of the Governor at least 28 days before the intended

126 action.

127 (II) Each agency shall adopt those regulatory alternatives
 128 offered by the rules ombudsman in the Executive Office of the
 129 Governor and provided to the agency no later than 21 days after
 130 the rules ombudsman's receipt of the written notice of the rule
 131 which it finds are feasible and consistent with the stated
 132 objectives of the proposed rule and which would reduce the
 133 impact on small businesses. When regulatory alternatives are
 134 offered by the rules ombudsman in the Executive Office of the
 135 Governor, the 90-day period for filing the rule in subparagraph
 136 (e)2. is extended for a period of 21 days.

137 (III) If an agency does not adopt all alternatives offered
 138 pursuant to this sub-subparagraph, it shall, before rule
 139 adoption or amendment and pursuant to subparagraph (d)1., file a
 140 detailed written statement with the committee explaining the
 141 reasons for failure to adopt such alternatives. Within 3 working
 142 days after the filing of such notice, the agency shall send a
 143 copy of such notice to the rules ombudsman in the Executive
 144 Office of the Governor.

145 Section 2. Paragraphs (a) and (b) of subsection (1) of
 146 section 120.541, Florida Statutes, are amended, and subsection
 147 (6) is added to that section, to read:

148 120.541 Statement of estimated regulatory costs.—

149 (1)(a) Within 21 days after publication of the notice
 150 required under s. 120.54(3)(a), a substantially affected person

151 may submit to an agency a good faith written proposal for a
 152 lower cost regulatory alternative to a proposed rule which
 153 substantially accomplishes the objectives of the law being
 154 implemented. The proposal may include the alternative of not
 155 adopting any rule if the proposal explains how the lower costs
 156 and objectives of the law will be achieved by not adopting any
 157 rule. If such a proposal is submitted, the 90-day period for
 158 filing the rule is extended 21 days. Upon the submission of the
 159 lower cost regulatory alternative, the agency ~~shall prepare a~~
 160 ~~statement of estimated regulatory costs as provided in~~
 161 ~~subsection (2), or shall revise its prior statement of estimated~~
 162 regulatory costs, and either adopt the alternative or provide a
 163 statement of the reasons for rejecting the alternative in favor
 164 of the proposed rule.

165 ~~(b) If a proposed rule will have an adverse impact on~~
 166 ~~small business or if the proposed rule is likely to directly or~~
 167 ~~indirectly increase regulatory costs in excess of \$200,000 in~~
 168 ~~the aggregate within 1 year after the implementation of the~~
 169 ~~rule, the agency shall prepare a statement of estimated~~
 170 ~~regulatory costs as required by s. 120.54(3)(b).~~

171 (6) The Department of State shall maintain a website that
 172 solely includes statements of estimated regulatory costs.

173 (a) An agency that prepares a statement of estimated
 174 regulatory costs must provide, after publication of the notice
 175 required under s. 120.54(3)(a), the statement to the department

176 for publication on the website.

177 (b) An agency that revises a statement of estimated
 178 regulatory costs must provide, after publication of the notice
 179 required under paragraph (1)(d), the statement to the department
 180 for publication on the website.

181 (c) An agency must include an Internet website link to the
 182 department's website on the agency's website.

183 (d) The department's website must be accessible to the
 184 public and may not require the use of any login credential in
 185 order for a person to access a statement of estimated regulatory
 186 costs.

187 Section 3. Paragraph (a) of subsection (2) of section
 188 120.56, Florida Statutes, is amended to read:

189 120.56 Challenges to rules.—

190 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

191 (a) A petition alleging the invalidity of a proposed rule
 192 shall be filed within 21 days after the date of publication of
 193 the notice required by s. 120.54(3)(a); within 10 days after the
 194 final public hearing is held on the proposed rule as provided by
 195 s. 120.54(3)(e)2.; within 20 days after the statement of
 196 estimated regulatory costs or revised statement of estimated
 197 regulatory costs, if applicable, has been prepared and made
 198 available as provided in s. 120.541(1)(c) ~~120.541(1)(d)~~; or
 199 within 20 days after the date of publication of the notice
 200 required by s. 120.54(3)(d). The petitioner has the burden to

201 | prove by a preponderance of the evidence that the petitioner
 202 | would be substantially affected by the proposed rule. The agency
 203 | then has the burden to prove by a preponderance of the evidence
 204 | that the proposed rule is not an invalid exercise of delegated
 205 | legislative authority as to the objections raised. A person who
 206 | is not substantially affected by the proposed rule as initially
 207 | noticed, but who is substantially affected by the rule as a
 208 | result of a change, may challenge any provision of the resulting
 209 | proposed rule.

210 | Section 4. This act shall take effect July 1, 2017.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Transportation & Tourism
 2 Appropriations Subcommittee
 3 Representative Spano offered the following:
 4

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Paragraphs (a) and (b) of subsection (3) of
 8 section 120.54, Florida Statutes, are amended to read:

9 120.54 Rulemaking.—

10 (3) ADOPTION PROCEDURES.—

11 (a) Notices.—

12 1. Prior to the adoption, amendment, or repeal of any rule
 13 other than an emergency rule, an agency, ~~upon approval of the~~
 14 ~~agency head,~~ shall give notice of its intended action, setting
 15 forth a short, plain explanation of the purpose and effect of
 16 the proposed action; the full text of the proposed rule or

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17 amendment and a summary thereof; a reference to the grant of
18 rulemaking authority pursuant to which the rule is adopted; and
19 a reference to the section or subsection of the Florida Statutes
20 or the Laws of Florida being implemented or interpreted. The
21 notice must include a summary of the agency's statement of the
22 estimated regulatory costs, if one has been prepared, based on
23 the factors set forth in s. 120.541(2); a web address where the
24 statement of estimated regulatory cost can be viewed in its
25 entirety on each agency's website; a statement that any person
26 who wishes to provide the agency with information regarding the
27 statement of estimated regulatory costs, or to provide a
28 proposal for a lower cost regulatory alternative as provided by
29 s. 120.541(1), must do so in writing within 21 days after
30 publication of the notice; and a statement as to whether, based
31 on the statement of the estimated regulatory costs or other
32 information expressly relied upon and described by the agency if
33 no statement of regulatory costs is required, the proposed rule
34 is expected to require legislative ratification pursuant to s.
35 120.541(3). The notice must state the procedure for requesting a
36 public hearing on the proposed rule. Except when the intended
37 action is the repeal of a rule, the notice must include a
38 reference both to the date on which and to the place where the
39 notice of rule development that is required by subsection (2)
40 appeared.

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41 2. The notice shall be published in the Florida
42 Administrative Register not less than 28 days prior to the
43 intended action. The proposed rule shall be available for
44 inspection and copying by the public at the time of the
45 publication of notice.

46 3. The notice shall be mailed to all persons named in the
47 proposed rule and to all persons who, at least 14 days prior to
48 such mailing, have made requests of the agency for advance
49 notice of its proceedings. The agency shall also give such
50 notice as is prescribed by rule to those particular classes of
51 persons to whom the intended action is directed.

52 4. The adopting agency shall file with the committee, at
53 least 21 days prior to the proposed adoption date, a copy of
54 each rule it proposes to adopt; a copy of any material
55 incorporated by reference in the rule; a detailed written
56 statement of the facts and circumstances justifying the proposed
57 rule; a copy of any statement of estimated regulatory costs that
58 has been prepared pursuant to s. 120.541; a statement of the
59 extent to which the proposed rule relates to federal standards
60 or rules on the same subject; and the notice required by
61 subparagraph 1.

62 (b) Special matters to be considered in rule adoption.-

63 1. Statement of estimated regulatory costs.-Before the
64 adoption, or amendment, ~~or repeal~~ of any rule other than an
65 emergency rule, an agency must ~~is encouraged to~~ prepare a

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66 statement of estimated regulatory costs of the proposed rule, as
67 provided by s. 120.541. However, an agency need not prepare a
68 statement of estimated regulatory cost for rule repeals unless
69 such repeal would impose any regulatory cost. In any challenge
70 to a rule repeal, such rule repeal must be considered
71 presumptively correct by the Joint Administrative Procedures
72 Committee, in any proceeding before the Division of
73 Administrative Hearings, or in any proceeding before a court of
74 competent jurisdiction. ~~However, an agency must prepare a~~
75 ~~statement of estimated regulatory costs of the proposed rule, as~~
76 ~~provided by s. 120.541, if:~~

77 a. ~~The proposed rule will have an adverse impact on small~~
78 ~~business; or~~

79 b. ~~The proposed rule is likely to directly or indirectly~~
80 ~~increase regulatory costs in excess of \$200,000 in the aggregate~~
81 ~~in this state within 1 year after the implementation of the~~
82 ~~rule.~~

83 2. Small businesses, small counties, and small cities.-

84 a. Each agency, before the adoption, amendment, or repeal
85 of a rule, shall consider the impact of the rule on small
86 businesses as defined by s. 288.703 and the impact of the rule
87 on small counties or small cities as defined by s. 120.52.
88 Whenever practicable, an agency shall tier its rules to reduce
89 disproportionate impacts on small businesses, small counties, or
90 small cities to avoid regulating small businesses, small

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91 counties, or small cities that do not contribute significantly
92 to the problem the rule is designed to address. An agency may
93 define "small business" to include businesses employing more
94 than 200 persons, may define "small county" to include those
95 with populations of more than 75,000, and may define "small
96 city" to include those with populations of more than 10,000, if
97 it finds that such a definition is necessary to adapt a rule to
98 the needs and problems of small businesses, small counties, or
99 small cities. The agency shall consider each of the following
100 methods for reducing the impact of the proposed rule on small
101 businesses, small counties, and small cities, or any combination
102 of these entities:

103 (I) Establishing less stringent compliance or reporting
104 requirements in the rule.

105 (II) Establishing less stringent schedules or deadlines in
106 the rule for compliance or reporting requirements.

107 (III) Consolidating or simplifying the rule's compliance
108 or reporting requirements.

109 (IV) Establishing performance standards or best management
110 practices to replace design or operational standards in the
111 rule.

112 (V) Exempting small businesses, small counties, or small
113 cities from any or all requirements of the rule.

114 b.(I) If the agency determines that the proposed action
115 will affect small businesses as defined by the agency as

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116 provided in sub-subparagraph a., the agency shall send written
117 notice of the rule to the rules ombudsman in the Executive
118 Office of the Governor at least 28 days before the intended
119 action.

120 (II) Each agency shall adopt those regulatory alternatives
121 offered by the rules ombudsman in the Executive Office of the
122 Governor and provided to the agency no later than 21 days after
123 the rules ombudsman's receipt of the written notice of the rule
124 which it finds are feasible and consistent with the stated
125 objectives of the proposed rule and which would reduce the
126 impact on small businesses. When regulatory alternatives are
127 offered by the rules ombudsman in the Executive Office of the
128 Governor, the 90-day period for filing the rule in subparagraph
129 (e)2. is extended for a period of 21 days.

130 (III) If an agency does not adopt all alternatives offered
131 pursuant to this sub-subparagraph, it shall, before rule
132 adoption or amendment and pursuant to subparagraph (d)1., file a
133 detailed written statement with the committee explaining the
134 reasons for failure to adopt such alternatives. Within 3 working
135 days after the filing of such notice, the agency shall send a
136 copy of such notice to the rules ombudsman in the Executive
137 Office of the Governor.

138 Section 2. Paragraphs (a) and (b) of subsection (1) of
139 section 120.541, Florida Statutes, are amended, and subsection
140 (6) is added to that section, to read:

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141 120.541 Statement of estimated regulatory costs.—
142 (1)(a) Within 21 days after publication of the notice
143 required under s. 120.54(3)(a), a substantially affected person
144 may submit to an agency a good faith written proposal for a
145 lower cost regulatory alternative to a proposed rule which
146 substantially accomplishes the objectives of the law being
147 implemented. The proposal may include the alternative of not
148 adopting any rule if the proposal explains how the lower costs
149 and objectives of the law will be achieved by not adopting any
150 rule. If such a proposal is submitted, the 90-day period for
151 filing the rule is extended 21 days. Upon the submission of the
152 lower cost regulatory alternative, the agency shall prepare a
153 statement of estimated regulatory costs as provided in
154 subsection (2), or shall revise its prior statement of estimated
155 regulatory costs, and either adopt the alternative or provide a
156 statement of the reasons for rejecting the alternative in favor
157 of the proposed rule.

158 (b) If a proposed rule will have an adverse impact on
159 small business or if the proposed rule is likely to directly or
160 indirectly increase regulatory costs, ~~in excess of \$200,000 in~~
161 ~~the aggregate within 1 year after the implementation of the~~
162 ~~rule,~~ the agency shall prepare a statement of estimated
163 regulatory costs as required by s. 120.54(3)(b).

164 (6) The Department of State shall maintain the Florida
165 Administrative Register that includes web addresses where

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166 statements of estimated regulatory costs can be viewed in their
167 entirety on agency websites.

168 (a) An agency that prepares a statement of estimated
169 regulatory costs must provide, as part of the notice required
170 under s. 120.54(3)(a), the web address on the agency website
171 where the statement of estimated regulatory cost can be read in
172 its entirety, to the Department for publication in the Florida
173 Administrative Register.

174 (b) An agency that revises a statement of estimated
175 regulatory costs must provide a notice that a revision has been
176 made and a web address where the revision can be viewed for
177 publication in the Florida Administrative Register.

178
179 Section 3. This act shall take effect on July 1, 2017.
180

181 -----
182 **T I T L E A M E N D M E N T**

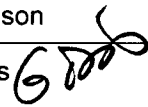
183 Remove everything before the enacting clause and insert:
184 An act relating to agency rulemaking; amending s. 120.54,
185 F.S.; requiring an agency to prepare a statement of
186 estimated regulatory costs before adopting or amending any
187 rule other than an emergency rule; providing exceptions for
188 rule repeals; amending s. 120.541, F.S.; requiring the
189 Department of State to include on the Florida
190 Administrative Register website web addresses where

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191 statements of estimated regulatory costs can be viewed in
192 their entirety; requiring an agency to include in its
193 notice of intended action the web address on the agency
194 website where the statement of estimated regulatory cost
195 can be read in its entirety; requiring that when an agency
196 revises a statement of estimated regulatory cost that the
197 agency must provide a notice of revision; providing an
198 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1387 Express Lanes
SPONSOR(S): Nuñez
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee		Davis 	Davis
3) Government Accountability Committee			

SUMMARY ANALYSIS

Current law authorizes the Department of Transportation (DOT) and the Florida Turnpike Enterprise (FTE) to implement high-occupancy toll (HOT) or express lanes on their facilities.

The bill requires DOT and the FTE to ensure reasonable and practicably feasible entry and exit points on their respective express lanes and to undertake efforts to expand such entry and exit points to increase accessibility and ease of entry and exit to and from those express lanes.

The bill also provides that if the maintained average speed of vehicles traveling in a DOT express lane is equivalent to or less than that of vehicles traveling in adjacent general use lanes, DOT may not charge a toll. Likewise, if the maintained average speed of vehicles traveling in an FTE express lane is equivalent or less than that of vehicles traveling in adjacent general toll lanes, the toll charged must be the same for all such lanes.

The bill has an indeterminate, but likely significant, negative fiscal impact to DOT and FTE associated with a possible reduction in toll revenues and the creation of new entry and exit points for express lanes. See Fiscal Analysis for details.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Express Lanes

In 2012, the Legislature created s. 338.151, F.S.,¹ authorizing DOT to establish tolls on “new” limited access facilities on the State Highway System (SHS), lanes added to existing limited access facilities on the SHS, new major bridges on the SHS over waterways, and replacements for existing major bridges on the SHS over waterways. The tolls are to be used to fully or partially pay for the cost of such projects.² The Legislature also amended s. 338.166, F.S., to expand DOT’s authority to request issuance of bonds secured by toll revenues collected on express lanes from only those lanes located on I-95 in Miami-Dade and Broward counties, to express lanes established on DOT owned facilities.

Section 338.166, F.S., authorizes DOT, after discharge of any bond indebtedness relating to a given project, to continue to collect tolls on express lanes. The statutes also authorize variable rate tolls on express lanes.³ All collected tolls are first to be used to pay the annual cost of operations, maintenance and improvement of the express lanes project or the associated transportation system. DOT may use any remaining tolls from express lanes for construction, maintenance or improvement of any road on the State Highway System within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Section 338.166⁴, F.S., expressly does not apply to the Turnpike system.⁵ However, s. 338.2216(1)(d), F.S., directs the FTE to pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage. Such technologies and processes must include, without limitation, video billing and variable pricing.

The term, “express lane,” is not statutorily defined. However, the DOT’s Topic No. 525-030-020-a⁶ provides the following definitions:

Managed Lanes - Highway facilities or sets of lanes within a highway facility where operational strategies are proactively implemented and managed in response to changing conditions with a combination of tools. These tools may include accessibility, vehicle eligibility, pricing, or a combination thereof. Types of managed lanes include high occupancy vehicle (HOV) lanes, high occupancy toll (HOT) lanes, truck only lanes, truck only toll lanes, bus rapid transit lanes, reversible lanes, and express lanes.

Express Lanes - A type of managed lane where dynamic pricing through electronic tolling is applied to lanes with through traffic, having fewer access points. Express lanes can co-locate within an existing non-tolled facility to manage congestion and provide a more reliable trip time.

¹ Chapter 2012-128, L.O.F.

² Chapter 2012-174, L.O.F.

³ Section 338.166(4), F.S.

⁴ Section 338.166(6), F.S.

⁵ Section 338.2216(1)(a), F.S., grants to the FTE, in addition to the powers granted to the FDOT, full authority to exercise all powers granted to the FTE under Ch. 338, F.S. Section 338.2216(4), F.S., provides the powers conferred upon the FTE under the Florida Turnpike Enterprise Law (ss. 338.22 through 338.241, F.S.) is in addition and supplemental to the existing powers of the FDOT and the FTE.

⁶ On file in the Transportation & Infrastructure Subcommittee. The directive, however, expressly does not apply to Florida Turnpike facilities.

According to DOT, there are currently 119 lane miles of express lanes currently open, 349 lane miles of express lanes under construction and 575 lane miles of express lanes in the planning phase.⁷ These facilities are located (or planned) in major urbanized areas throughout the state.

Express Lane Management

As previously noted, a number of express lane projects in Florida are either in operation, under construction, or proposed.⁸ These projects have or are planned to have express lanes with adjacent general use lanes (with no tolls) and, on the turnpike system, express lanes adjacent to general toll lanes (lanes that generally have fixed tolls). DOT describes its management of express lanes as follows:

The express lanes are managed using a combination of eligibility, access, and pricing. Only two axle vehicles are eligible with buses eligible regardless of number of axles. This reduces the number of vehicles that can choose to use the express lanes. The access (entry and exit points on the express lanes) is limited to certain locations, providing a choice for users making longer distance trips to the major origin and destination patterns in the area. Trips that are shorter and more local must use the general use lanes. As the volume in the express lanes increases, the price to use the express lanes increases. The toll amount posted on the sign is dynamically priced based on the congestion in the express lanes with a goal of providing a free flow condition [in the express lanes].

The traffic density, which is a combination of speed and volume, is used to determine the toll amount needed to optimize traffic flow in the express lanes. Volume and speed data is collected from roadside detectors and used to calculate the traffic density by dividing the volume in the express lanes by the speed in the express lanes. The toll amount is not related to the amount of congestion, speed, or performance of the general use lanes. Where there is no congestion in the express lanes, regardless of the performance or amount of congestion in the general use lanes, the minimum toll amount in the express lanes is \$0.50.⁹

These directives indicate that in implementing and managing express lanes, DOT considers entry and exit point locations, and currently does not establish express lane toll amounts based on congestion, speed, or performance in adjacent general use lanes.

Proposed Changes

The bill requires DOT to ensure reasonable and practicably feasible entry and exit points on its express lanes and to undertake efforts to expand those points to increase accessibility and ease of entry and exit to and from its express lanes. If the maintained average speed of vehicles traveling in an express lane is equal to or less than that of vehicles traveling in adjacent general use lanes (those with no tolls), no toll may be charged.

The bill requires the FTE to also ensure reasonable and practicably feasible entry and exit points and to undertake the same expansion of access points efforts on its express lanes. If the maintained average speed of vehicles traveling in an express lane is equal to or less than that of vehicles traveling in adjacent general toll lanes, the toll charged must be the same for both lanes.

According to DOT, the bill may result in a number of potentially negative impacts including the following:

⁷ DOT HB 1387 (2017) Agency Bill Analysis. (On file in the Transportation & Infrastructure Subcommittee)

⁸ See the project map with links to express lane project information available on the FDOT's website at: <http://www.floridaexpresslanes.com/projects/project-map/>. (Last visited March 19, 2017.) The FTE is not currently operating any express lanes. See the DOT HB 1387 (2017) Agency Bill Analysis, at 8. (On file in the Transportation & Infrastructure Subcommittee)

⁹ *Supra* note 6 at 2.

- A re-write of established standard operating procedures, incident management protocols, and pricing software.
- Installation of roadside detectors and Intelligent Transportation System devices for monitoring the volume and speed of traffic on general use lanes.
- A drop in overall corridor performance and safety, and increased roadway congestion.
- A potential disruption of projects planned in DOT's work program.¹⁰
- Adverse long-term revenue impacts.¹¹

B. SECTION DIRECTORY:

Section 1 amends s. 338.166, F.S., relating to high-occupancy toll lanes or express lanes.

Section 2 amends s. 338.2216, F.S., relating to the powers and the authority of the Florida Turnpike Enterprise.

Section 3 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent that the bill results in lower tolls on express lanes when vehicle speeds are not higher than on the general use lanes or general toll lanes, less toll revenue will be collected by DOT and the FTE.

2. Expenditures:

DOT and the FTE will incur expenditures for implementing and administering provisions of the bill related to:

- Revisions of standard operating procedures, incident management protocols, and pricing software; and
- Installation of roadside detectors and devices for monitoring the volume and speed of traffic on general purpose lanes.

The amount of these expenditures is indeterminate but likely will be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill results in lower tolls on express lanes when vehicle speeds are not higher than on the general use lanes or general toll lanes, the users of these lanes would benefit through reduced tolls.

¹⁰ DOT's work program is established pursuant to s. 339.135, F.S.

¹¹ *Supra* note 6 at 2-6.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Without further criteria or objective standards being specified in the bill, the use of the terms "reasonable and practically feasible" as it relates to locations for points of express lane access and exit may lead to difficulties in agency interpretation of these provisions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to express lanes; amending s. 338.166,
 3 F.S.; requiring the Department of Transportation to
 4 ensure reasonable and practicably feasible entry and
 5 exit points on its express lanes and to undertake
 6 efforts to expand reasonable and practicably feasible
 7 entry and exit points for certain purposes;
 8 prohibiting a toll from being charged on express lanes
 9 under certain circumstances; amending s. 338.2216,
 10 F.S.; requiring the Florida Turnpike Enterprise to
 11 ensure reasonable and practicably feasible entry and
 12 exit points on its express lanes and to undertake
 13 efforts to expand reasonable and practicably feasible
 14 entry and exit points for certain purposes; requiring
 15 a toll charged to be the same for the use of express
 16 and general toll lanes under certain circumstances;
 17 providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Present subsections (5) and (6) of section
 22 338.166, Florida Statutes, are renumbered as subsections (6) and
 23 (7), respectively, and a new subsection (5) is added to that
 24 section, to read:

25 338.166 High-occupancy toll lanes or express lanes.—

26 (5) The department shall ensure reasonable and practicably
 27 feasible entry and exit points on its express lanes and shall
 28 undertake efforts to expand reasonable and practicably feasible
 29 entry and exit points to increase accessibility and ease of
 30 entry and exit to and from its express lanes. If the maintained
 31 average speed of vehicles traveling in an express lane is
 32 equivalent to or less than that of vehicles traveling in
 33 adjacent general use lanes, no toll shall be charged.

34 Section 2. Paragraph (e) is added to subsection (1) of
 35 section 338.2216, Florida Statutes, to read:

36 338.2216 Florida Turnpike Enterprise; powers and
 37 authority.—

38 (1)

39 (e) The Florida Turnpike Enterprise shall ensure
 40 reasonable and practicably feasible entry and exit points on its
 41 express lanes and shall undertake efforts to expand reasonable
 42 and practicably feasible entry and exit points to increase
 43 accessibility and ease of entry and exit to and from its express
 44 lanes. If the maintained average speed of vehicles traveling in
 45 an express lane is equivalent to or less than that of vehicles
 46 traveling in adjacent general toll lanes, the toll charged must
 47 be the same for all such lanes.

48 Section 3. This act shall take effect July 1, 2017.

49

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER _____

1 Committee/Subcommittee hearing bill: Transportation & Tourism
 2 Appropriations Subcommittee
 3 Representative Nuñez offered the following:
 4

Amendment (with title amendment)

Remove lines 30-47 and insert:

7 entry and exit to and from its express lanes while meeting
 8 operational performance goals. Effective July 1, 2018, if a
 9 customer's average travel speed for a trip in an express lane
 10 falls below 40 miles per hour, the customer shall be charged the
 11 minimum express lane toll. A customer's express lane average
 12 travel speed is their average travel speed from the customer's
 13 entry point to the customer's exit point.

14 Section 2. Paragraph (e) is added to subsection (1) of
 15 section 338.2216, Florida Statutes, to read:

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16 338.2216 Florida Turnpike Enterprise; powers and
17 authority.—

18 (1)

19 (e) The Florida Turnpike Enterprise shall ensure
20 reasonable and practicably feasible entry and exit points on its
21 express lanes and shall undertake efforts to expand reasonable
22 and practicably feasible entry and exit points to increase
23 accessibility and ease of entry and exit to and from its express
24 lanes while meeting operational performance goals. Effective
25 July 1, 2018, if a customer's average travel speed for a trip in
26 an express lane falls below 40 miles per hour, the customer
27 shall be charged the general toll lane toll amount plus 25
28 cents. A customer's express lane average travel speed is their
29 average travel speed from the customer's entry point to the
30 customer's exit point.

31 Section 3. Paragraph (a) of subsection (3) of section
32 338.231, Florida Statutes, is amended to read:

33 338.231 Turnpike tolls, fixing; pledge of tolls and other
34 revenues.—The department shall at all times fix, adjust, charge,
35 and collect such tolls and amounts for the use of the turnpike
36 system as are required in order to provide a fund sufficient
37 with other revenues of the turnpike system to pay the cost of
38 maintaining, improving, repairing, and operating such turnpike
39 system; to pay the principal of and interest on all bonds issued
40 to finance or refinance any portion of the turnpike system as

Amendment No. 1

41 | the same become due and payable; and to create reserves for all
42 | such purposes.

43 | (3)(a) For the period July 1, 1998, through June 30, 2037
44 | ~~2017~~, the department shall, to the maximum extent feasible,
45 | program sufficient funds in the tentative work program such that
46 | the percentage of turnpike toll and bond financed commitments in
47 | Miami-Dade County, Broward County, and Palm Beach County as
48 | compared to total turnpike toll and bond financed commitments
49 | shall be at least 90 percent of the share of net toll
50 | collections attributable to users of the turnpike system in
51 | Miami-Dade County, Broward County, and Palm Beach County as
52 | compared to total net toll collections attributable to users of
53 | the turnpike system. This subsection does not apply when the
54 | application of such requirements would violate any covenant
55 | established in a resolution or trust indenture relating to the
56 | issuance of turnpike bonds. The department may at any time for
57 | economic considerations establish lower temporary toll rates for
58 | a new or existing toll facility for a period not to exceed 1
59 | year, after which the toll rates adopted pursuant to s. 120.54
60 | shall become effective.

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T I T L E A M E N D M E N T

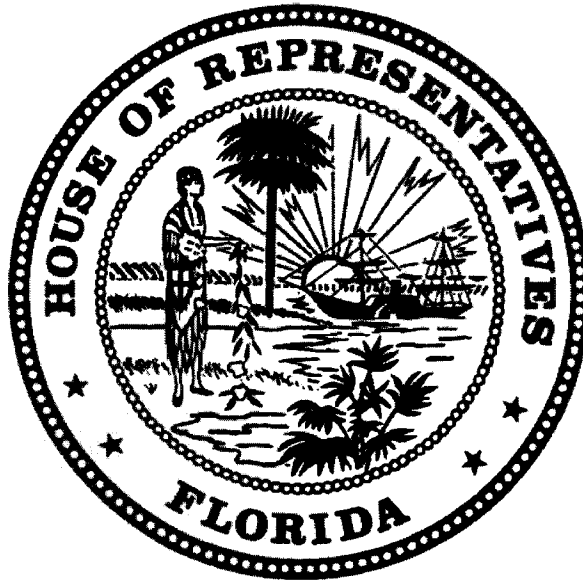
Remove lines 2-16 and insert:

573283 - h1387 line30 Nunez2.docx

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Amendment No. 1

66 An act relating to transportation; amending s. 338.166,
67 F.S.; requiring the Department of Transportation to ensure
68 reasonable and practicably feasible entry and exit points
69 on its express lanes and to undertake efforts to expand
70 reasonable and practicably feasible entry and exit points
71 for certain purposes; adjusting the toll to be charged on
72 express lanes under certain circumstances; amending s.
73 338.2216, F.S.; requiring the Florida Turnpike Enterprise
74 to ensure reasonable and practicably feasible entry and
75 exit points on its express lanes and to undertake efforts
76 to expand reasonable and practicably feasible entry and
77 exit points for certain purposes; adjusting the toll to be
78 charged on express lanes under certain circumstances;
79 amending s. 338.231, F.S.; extending the period in which
80 the department shall program certain funds in the tentative
81 work program in relation to turnpike toll and bond financed
82 commitments within certain counties;



Transportation & Tourism Appropriations Subcommittee

**Monday, April 17, 2017
2:00 PM – 3:30 PM
Reed Hall (102 HOB)**

Addendum A

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Transportation & Tourism
 2 Appropriations Subcommittee
 3 Representative Santiago offered the following:

Amendment (with title amendment)

Remove lines 380-388

T I T L E A M E N D M E N T

Remove lines 36-39 and insert:
contracts; providing an effective date.