HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1399 Department of Transportation
SPONSOR(S): Economic Expansion and Infrastructure Council and Aubuchon
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1978

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	9 Y, 1 N	Creamer	Miller
2) Economic Expansion & Infrastructure Council	13 Y, 1 N, As CS	Creamer/Madsen	Tinker
3) Policy & Budget Council		Langston	Hansen
4)			
5)			

SUMMARY ANALYSIS

CS/HB 1399 is an omnibus bill that addresses a variety of transportation financing, planning, and administrative issues. Among its key provisions, the proposed legislation:

- Allows Transportation Concurrency Authorities to issue debt to address transportation concurrency backlogs and establishes a 40 year maturity date of debt issued;
- Requires all hybrid and other low emission and energy efficient vehicles using the High Occupancy Vehicle (HOV) lanes to comply with federally mandated minimum fuel economy standards;
- Lowers the blood and breath alcohol level (BAL) for the purposes of triggering driving under the influence enhanced penalties to maintain eligibility for federal safety grant funding; and provides that when a person who is in possession of a commercial drivers license (CDL) is found to be driving under the influence, his or her CDL shall be disqualified regardless of the vehicle driven at the time of the violation;
- Revises the process by which DOT and local government contracts are solicited and awarded to contractors;
- Authorizes DOT to purchase liability insurance for commuter rail corridors and to market the use of these commuter rail systems;
- Requires DOT or a local governmental entity to pay the cost of relocation of a utility interfering with public road or publicly owned rail corridor improvements if the utility facility serves the DOT or governmental entity exclusively; and requires DOT to pay costs associated with certain underground utility relocations;
- Directs DOT to pursue and implement technologies and processes to provide all electronic toll collections and requires that all new and replacement electronic toll collection systems belonging to other toll entities be interoperable with the DOT's system;
- Revises the DOT's authority to amend the adopted work program by increasing the minimum threshold for certain work program amendments from $150,000 to $500,000; and requires DOT to notify governmental entities of planned amendments to the work program;
- Creates a local governments reimbursement program for counties with a population of 150,000 or less; and increases the $100 million cap on the existing program to $500 million;
- Revises DOT’s logo sign program and requires the DOT to set annual permit fees based upon such factors as population, traffic volume, market demand, and costs.
- Transfers DOT’s Office of Motor Carrier Compliance to the Department of Highway Safety and Motor Vehicles;

The bill is effective upon becoming law. The bill will have several fiscal impacts to the state, counties, cities, and the private sector, see fiscal analysis and economic impact statement for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government –

- The bill increases the number of local government construction projects subject to competitive bidding.
- The bill transfers the Office of Motor Carrier Compliance from the Department of Transportation to the Florida Highway Patrol within the Department of Highway Safety and Motor Vehicles. This transfer may reduce certain administrative redundancies.
- The bill removes a potential requirement that, upon original registration of moped, the owner must prove they have obtained the necessary license endorsement.
- The bill abolishes the Tampa Commuter Transit Authority.

Ensure lower taxes –

- The bill subjects more projects to competitive bidding and requires local governments to determine whether performing public construction projects with its own labor is less than the lowest responsible bidder. These changes may lower the costs of public construction projects.
- The bill may increase or decrease, the amount private entities pay for logo sign advertisements to DOT, depending on DOT rule to be established.
- The bill authorizes expressway authorities to increase toll rates to the Consumer Price Index, or similar inflation factor at least every 5 years, but no more than once a year.
- The bill authorizes DOT to recover administrative costs by adding a service charge to toll rates regarding customer toll payment options.
- The bill requires all toll facilities to be interoperable with DOT's toll collection systems. This provision will require local governments and other toll authorities to expend funds to comply.

Promote Personal Responsibility-

- The bill requires child restraint devices to be used in additional vehicles.
- The bill lowers the blood alcohol content level used to determine if a person is subject to enhanced penalties for driving under the influence of alcohol.

Maintain Public Security-

- The bill increases the DHSMV's ability to disqualify commercial drivers for offenses committed in non-commercial vehicles.
- The bill increases the law enforcement guidelines for persons driving under the influence of alcohol by lowering the blood alcohol content level for enhanced DUI penalties.

B. EFFECT OF PROPOSED CHANGES:

Comprehensive Plans and Plan Amendments

Current Situation

Section 163.3177, F.S., provides the requirements for elements of local comprehensive plans. A listing of required elements includes elements for capital improvement, future land use, intergovernmental coordination, housing and transportation. The bill provides for consistency of land uses to public airports by amending the requirements for future land use, intergovernmental coordination, and transportation elements.

Proposed Changes

The bill amends s. 163.3177, F.S., to include airports and land adjacent to airports to be included in elements of the comprehensive plan.

Transportation Concurrency Backlog Authorities

Current Situation

Section 163.3182, F.S., was passed during the 2007 Legislative Session and provides that a county or municipality may create a transportation concurrency backlog authority if it has an identified transportation concurrency backlog. Acting as the transportation concurrency backlog authority within the authority's jurisdictional boundary, the governing body of a county or municipality is authorized to adopt and implement a plan to eliminate all identified transportation concurrency backlogs in the established transportation concurrency backlog area. The authority shall establish a local transportation concurrency backlog trust fund. The trust fund is established in the first fiscal year after the creation of the authority, each local trust fund shall be funded by the proceeds of an ad valorem tax increment collected within each transportation concurrency backlog area annually. The increment collected shall be equal to 25 percent of the difference between:

- The amount of ad valorem tax levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the jurisdiction of the transportation concurrency backlog authority and within the transportation backlog area; and
- The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property within the transportation concurrency backlog area as shown on the most recent assessment roll used in connection with the taxation of such property of each taxing authority prior to the effective date of the ordinance funding the trust fund.

Transportation concurrency backlog authorities have the powers to make and execute contracts; to undertake and carry out transportation concurrency backlog projects for transportation facilities that have a concurrency backlog within the authority's jurisdiction; to invest any transportation concurrency backlog funds not required for immediate disbursement; to borrow money; to apply for and accept advances, loans, grants, contributions, and any other forms of financial assistance from the federal government or the state, county, or any other public or private entity; to enter into and carry out contracts or agreements; and to adopt, approve, modify, or amend transportation concurrency backlog plans.

Each transportation concurrency backlog authority is required to adopt a transportation concurrency backlog plan as a part of the local government comprehensive plan within six months after the creation of the authority. These plans shall:

- Identify all transportation facilities that have been designated as deficient and require the expenditure of moneys to upgrade, modify, or mitigate the deficiency;
- Include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy concurrency requirements and the applicable local government comprehensive plan; and
- Establish a schedule for financing and construction of transportation concurrency backlog projects that will eliminate transportation concurrency backlogs within the jurisdiction of the authority within 10 years after the transportation concurrency backlog plan adoption. The schedule must also be adopted as part of the local government comprehensive plan.

Upon adoption of a transportation concurrency backlog plan as a part of the local government comprehensive plan, and the plan going into effect, the area subject to the plan shall be deemed to have achieved and maintained transportation level-of-service standards, and to have met requirements for financial feasibility for transportation facilities. In addition, proportionate fair-share mitigation shall be limited to ensure that a development inside a transportation concurrency backlog area is not responsible for the additional costs of eliminating backlogs.

Proposed Changes

CS/HB 1399 specifically:

- Provides legislative findings regarding the public purpose of transportation concurrency backlog authorities;
- Authorizes transportation concurrency backlog authorities to issue debt including, but not limited to, bonds, notes, certificates, or similar debt instruments;
- Requires that the debt issued must not exceed a term of 40 years;
- Requires that the local trust funds continue to be funded for the period of time until projects included in the transportation concurrency backlog plan are completed or until all debt incurred to finance or refinance the projects is satisfied;
- Increases the percentage of funding from ad valorem taxes from 25 percent to a minimum of 25 percent of the incremental difference described above;
- Provides that when all of the affected taxing authorities agree pursuant to an interlocal agreement, a particular local trust fund may be funded by the proceeds of an ad valorem tax increment greater than 25 percent; and
- Clarifies that the transportation concurrency backlog authorities are not dissolved until all issued debt is repaid or defeased.

High Occupancy Vehicles Lanes

Current Situation

Current federal law (23 U.S.C. sec. 166) provides that a state agency with jurisdiction over the operation of a High Occupancy Vehicle (HOV) facility shall establish occupancy requirements for HOV lanes, allowing no fewer than two vehicle occupants with the following exceptions:

- Motorcycles and bicycles are allowed to use the HOV facility, unless either or both create a safety hazard. If so, the state must certify, the DOT Secretary must accept certification, and it must be published in the Federal Register with opportunity for public comment;
- Public transportation vehicles are allowed if vehicle identification requirements are established and enforced;
- High occupancy toll (HOT) vehicles are allowed to use the facility if the vehicles pay a toll; if a program is established to address enrollment and participation; if the vehicles are prepared to accommodate automatic toll collections; and if variable pricing and enforcement procedures have been established;

- Inherently low-emission and energy-efficient vehicles (as established by EPA prior to September 30, 2009), may be allowed to use HOV facilities if procedures for enforcing restrictions on use are established; and if vehicles are certified and labeled under federal regulations; and
- Other low emission and energy-efficient vehicles (as established by EPA prior to September 30, 2009), may be allowed to use the facilities if they pay a toll; if the vehicles are certified and labeled by the Environmental Protection Agency (EPA); if a program is established for vehicle selection and enforcement of restrictions on use of facility. State agency may charge "no toll," or a toll that is less than tolls charged for public transportation vehicles.

A state agency that chooses to allow exceptions to HOV requirements for vehicles in the latter two exception categories must certify to the United States Department of Transportation (USDOT) Secretary that it has established a program to monitor, assess, and report on the impacts that the vehicles may have on the operation of the facility and adjacent highways. An adequate enforcement program is also required, as well as provision for limiting or discontinuing exemptions if the facility becomes seriously degraded.

Pursuant to the provisions of the federal transportation reauthorization act, SAFETEA-LU, EPA was to promulgate a rule by February 6, 2006, that was to establish requirements for certification of vehicles as low-mission and energy-efficient vehicles and requirements for their labeling, as well as to establish guidelines and procedures for making vehicle comparisons and performance calculations necessary to determine which vehicles qualify as low emission and energy-efficient vehicles. To date, that final rule has not been promulgated.

Section 316.0741, F.S., authorizes the following vehicles to use an HOV lane without regard to occupancy:

- Inherently low-emission vehicles that are certified and labeled in accordance with federal regulations; and
- Hybrid vehicles upon the state's receipt of written notice authorizing such use.

However, no provision of current state law requires such vehicles to comply with the specified minimum fuel economy standards and no provision addresses compliance with the anticipated EPA final rule. The Department of Highway Safety and Motor Vehicles (DHSMV) is required by statute to issue decals for the use of HOV lanes by such vehicles, but DHSMV has no authority to limit or discontinue decal issuance to drivers of these vehicles for reasons of operation and management of HOV lanes.

Rulemaking authority with regard to s. 316.0741, F.S., relating to HOV lanes currently rests with DHSMV, but DHSMV has promulgated no applicable rule.

Current law does not address toll payment for use of HOV lanes redesignated as HOT lanes.

Proposed Changes

CS/HB 1399 specifically:

- Requires all hybrid and other low-emission and energy-efficient vehicles that do not meet the minimum occupancy requirement and are driven in a HOV lane to comply with federally mandated minimum fuel economy standards; and requires DOT to review and provide its recommendations to the Legislature of any statutory changes necessary to comply with EPA's final rule related to the eligibility of hybrid and other low-emission energy-efficient vehicles that may operate in an HOV lane regardless of occupancy;
- Provides for determination of continued eligibility of hybrid and other low-emission and energy-efficient vehicles for operation in an HOV lane;
- Authorizes limitation or discontinuance of vehicle decals for use of an HOV lane if the facilities are degraded due to congestion;

- Provides that vehicles eligible to be driven in an HOV lane that is redesignated as a high-occupancy toll (HOT) lane may continue to be driven in the HOT lane without payment of a toll; and
- Transfers rulemaking responsibility with regard to HOV lanes from the DHSMV to the DOT.

These changes are expected to enable the DOT to comply with the monitoring and enforcement provisions of federal law relating to the use of HOV lanes by hybrid and other low-emission and energy-efficient vehicles and to submit the required annual certification to the USDOT Secretary. These changes would also ensure that HOV facilities do not become degraded, thereby facilitating mobility.

Blood Alcohol Level (BAL)-Driving Under the Influence (DUI)

Current Situation

Section 316.193, F.S., proscribes driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood alcohol level of 0.08 or more grams of alcohol per 100 millimeters of blood or with a breath alcohol level of 0.08 or more grams of alcohol per 210 liters of breath (DUI). Penalties for DUI vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results. Section 316.656, F.S., provides that no trial judge may accept a plea of guilty to a lesser offense from a person charged with DUI who has a BAL level of 0.20 or more.

Generally, modified misdemeanor penalties apply when there is no property damage or personal injury and when there are fewer than three DUI convictions. For example, a first-time offender is subject to a fine ranging from $250 to $500, as well as being subject to serving up to 6 months in county jail. An offender must also be on probation for up to 1 year and participate in 50 hours of community service.

However, if the first-time offender's BAL is 0.20 or more, or if a passenger under 18 years of age is present in the vehicle while the driver is DUI, the penalty is enhanced to a fine ranging from $500 to $1,000 and imprisonment not exceeding 9 months in jail.

A second DUI conviction carries a fine ranging from $500 to $1,000 and imprisonment for a period of up to 9 months. However, if that offense occurs within 5 years of a previous DUI conviction, there is a mandatory imprisonment period of at least 10 days. At least 48 hours of this confinement must be consecutive.

Enhanced penalties also apply when the second-time offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle while the driver is DUI. These penalties require a fine ranging from $1,000 to $2,000, and imprisonment not exceeding 12 months.

A third or subsequent DUI conviction occurring more than 10 years after a prior conviction carries a fine ranging from $1,000 to $2,500 and possible imprisonment of up to 12 months. However, if that offense occurs within 10 years of a previous DUI conviction, it is a third degree felony, punishable by a minimum fine of $1,000 but not exceeding $5,000, and a term of imprisonment not to exceed 5 years. There is also a 30-day minimum mandatory imprisonment period. At least 48 hours of this confinement must be consecutive.

Enhanced penalties also apply when a third-time (or subsequent) offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle while the driver is DUI. These penalties require a fine ranging from $2,000 to $5,000 and imprisonment not exceeding 12 months.

A fourth or subsequent DUI conviction is a third degree felony penalty, which is punishable by a minimum fine of $1,000 but not exceeding $5,000, and a term of imprisonment not to exceed 5 years.

If a DUI offense involves property damage, it is a first degree misdemeanor, punishable by a fine not exceeding $1,000 and/or imprisonment up to 1 year in jail. A DUI offense involving serious injury is a third degree felony, punishable by a fine not exceeding $5,000 and/or imprisonment up to 5 years. A DUI offense resulting in death is a second degree felony, punishable by a fine not exceeding $10,000 and/or imprisonment up to 15 years.

DOT receives federal safety grant funds, which are used to fund transportation safety projects. In the Safe, Accountable, Flexible, Efficient, Transportation Equity Act (SAFETEA-LU) Congress revised eligibility requirements for states' receipt of grants by setting up a set of eight criteria, five of which must be met by fiscal years 2008 and 2009.

Proposed Changes

CS/HB 1399 lowers the BAL for purposes of triggering DUI enhanced penalties from 0.20 or more to 0.15 or more. The bill also facilitates the application of appropriate sanctions and the receipt of substance abuse assistance for these most serious offenders. The changes included in the bill would ensure DOT's continued eligibility for receipt of federal safety grant funds.

For the purpose of incorporating these changes, numerous sections of law related to DUI violations are reenacted. (See sections 50-89 of the bill.)

Commercial Drivers' Licenses; Vehicle Registration; Disqualification

Current Situation

The Commercial Motor Vehicle Safety Act of 1986 (hereinafter, the "1986 Act"), requires the federal government and the states to limit commercial drivers to a single license and sets minimum standards for testing and licensing. As a result of the 1986 Act, the U.S. Department of Transportation (USDOT) issued standards for commercial drivers' licenses and drivers were required to comply beginning in 1992. The federal government established the Commercial Drivers' License Information System (CDLIS) to serve as a clearinghouse for states to report traffic convictions of commercial drivers licensed in another state.

The USDOT determined in a 2000 audit report that the objective of limiting commercial drivers to a single license had largely been achieved, but that states were not disqualifying drivers posing a safety risk, and were withholding convictions of disqualifying violations from drivers' records, in effect, allowing unsafe drivers to continue to drive. The audit found instances where states ignored violations reported in other states, and also found that when systems properly disqualify drivers, states have programs that allow the use of special licenses or permits to operate commercial motor vehicles. These programs effectively circumvent the requirement that the driver get off the road for committing a pattern of major traffic violations.

Statutes addressing these issues are found in Chapter 322, Florida Statutes. Section 322.60, F.S., currently provides that a person holding a commercial drivers' license may not possess more than one drivers' license. Section 322.61, F.S., provides a list of offenses for which a person can be disqualified from holding a commercial drivers' license. A person can be disqualified for 60 days for committing two of the following offenses in a three year period, in a commercial motor vehicle:

- Violations of law regarding motor vehicle traffic controls other than parking, weight, or vehicle equipment violations, arising in connection with a crash causing death or personal injury;
- Reckless driving;
- Careless driving;
- Fleeing or attempting to elude a law enforcement officer;
- Unlawful speed over 15MPH above the speed limit;
- Improper lane change;
- Following too closely; or
- Driving a commercial motor vehicle without a commercial drivers' license;

For violating three of these offenses in three years, in a commercial motor vehicle, the person can be disqualified for 120 days.

A person operating a commercial motor vehicle can be disqualified for a year for a single violation of the following offenses:

- Driving under the influence of alcohol or a controlled substance;
- Driving with an alcohol concentration (as tested in blood, urine, or breath) of .04% or more;
- Leaving the scene of a crash involving the commercial motor vehicle;
- Using the commercial motor vehicle in the commission of a felony; or
- Refusing to submit to an alcohol concentration test.

A person committing two of these offenses in a commercial vehicle may be permanently disqualified from operating a commercial motor vehicle.

A person using a commercial vehicle in the commission of a felony involving illegal drug transportation or manufacturing may be permanently disqualified for a single violation.

Section 322.64, F.S. allows a law enforcement officer to immediately disqualify a person arrested for driving a commercial motor vehicle while violating section 316.193, F.S., relating to unlawful BAL, or refusal to submit to a breath, urine, or blood test. The disqualification lasts 6 months for a first DUI violation of section 316.193, F.S., or a year for a second or subsequent offense. A first refusal to submit to testing results in disqualification for a year, and a second or subsequent refusal results in permanent disqualification. The law enforcement officer is directed to take the driver's license and replace it with a ten (10) day temporary permit, valid for non-commercial vehicles only. The disqualified driver may request, within that time span, a formal or informal hearing. If the department fails to schedule the hearing within 30 days, it shall issue a temporary permit to the disqualified driver, valid until the hearing is conducted.

Section 322.271, F.S., allows certain disqualified drivers to petition the department for limited reinstatement. Reasons for such reinstatement include driving "to maintain a livelihood," for "educational purposes," or "medical purposes."

Proposed Changes

CS/HB 1399 modifies the provisions of section 322.64, F.S., to allow law enforcement officers to immediately disqualify not only drivers of commercial motor vehicles who violate 316.193, F.S., or refuse to submit to testing, but also commercial drivers' license holders operating *non*-commercial vehicles who violate 316.193, F.S., or refuse to submit to testing. Technical changes are made throughout this section for conformity, and the bill clarifies that a person disqualified under section 322.64, F.S. is not entitled to a hardship reinstatement of a *commercial* vehicle license under section 322.271, F.S., but only a license to operate a *non*-commercial vehicle.

Emergency Vehicle Lights

Current Situation

Section 316.2397, F.S., prohibits any display of blue lights on any vehicle except for police and Department of Corrections vehicles when responding to an emergency.

Proposed Changes

CS/HB 1399 expands the exception for the display of blue lights when responding to an emergency to include county correctional agencies.

Farm and Agriculture Equipment

Current Situation

Section 316.515, F.S., provides that straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load, or any agricultural implements attached to a towing power unit not exceeding 130 inches in width, or a self-propelled agricultural implement or an agricultural tractor not exceeding 130 inches in width, is authorized for the purpose of transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to and from the first point of change of custody or of long-term storage, or for the purpose of moving such equipment to be issued overwidth permits by DOT.

Section 316.515, F.S., provides that equipment not exceeding 136 inches in width and not capable of speeds exceeding 20 miles per hour that are used exclusively for harvesting forestry products is authorized, without a permit, for the purpose of transporting equipment from one point of harvest to another point of harvest, not to exceed 10 miles. Such vehicles must be operated during daylight hours only, in accordance with all safety requirements prescribed by s. 316.2295(5) and (6), F.S.

In addition, current law authorizes DOT to issue overwidth permits for implements of husbandry greater than 130 inches, but not more than 170 inches, in width and overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length for a fee of $25 for a trip permit or $250 for an annual blanket permits. All vehicles included in this section must comply with all safety requirements prescribed by s. 316.2295(5) and (6), F.S., and DOT rules. These requirements include, but are not limited to:

- Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall be equipped with vehicular hazard warning lights visible from a distance of not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.
- Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1972, shall at all times, and every other such motor vehicle shall at all times mentioned in s. 316.217, be equipped with lamps and reflectors as follows:
    - At least two headlamps;
    - At least one red lamp visible when lighted from a distance of not less than 1,000 feet to the rear mounted as far to the left of the center of the vehicle as practicable; and
    - At least two red reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps;

In addition to the requirements above, every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times be equipped with lamps and reflectors as follows:

- If the towed unit or its load extends more than 4 feet to the rear of the tractor or obscures any light thereon, the unit shall be equipped on the rear with at least two red reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful lower beams of headlamps;
- If the towed unit of such combination extends more than 4 feet to the left of the centerline of the tractor, the unit shall be equipped on the front with an amber reflector visible from all distances within 600 feet to 100 feet to the front when directly in front of lawful lower beams of headlamps. This reflector shall be so positioned to indicate, as nearly as practicable, the extreme left projection of the towed unit.
- Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry designed for operation at speeds not in excess of 25 miles per hour shall at all times be equipped with a slow moving vehicle emblem mounted on the rear, except for:
    - When the towed unit or any load thereon obscures the slow moving vehicle emblem on the farm tractor, the towed unit shall be equipped with a slow moving vehicle emblem. In such cases, the towing vehicle need not display the emblem.

- When the slow moving vehicle emblem on the farm tractor unit is not obscured by the towed unit or its load, then either or both may be equipped with the required emblem, but it shall be sufficient if either has it.

Proposed Changes

CS/HB 1399 provides that the width and height limitations of this section do not apply to farming or agricultural equipment if operated in the daylight hours on a public road that is not a limited access facility. No permit is required for these type vehicles if operated within a 50 mile radius of the owner's property, with the exception of equipment being delivered by a dealer to a purchaser. However, the bill does require that equipment greater than174 inches in width to have at least one warning lamp mounted to each side to denote the width and that the vehicle is a "slow moving" vehicle. The operator of the equipment is also required by the bill to verify the route for adequate equipment clearance.

Child Restraint and Safety Belt Requirements

Section 316.613, F.S., exempts certain motor vehicles from the requirements of child restraint seats and safety belts. Current law requires that every operator of a motor vehicle, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a seat belt may be used. Motor vehicles currently exempt from these requirements include:

- School buses;
- Buses used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, or in conjunction with school activities;
- Farm tractors or an implement of husbandry;
- Trucks of a net weight of more than 5,000 pounds; and
- Motorcycles, mopeds, or bicycles.

In 1986, the Legislature enacted the "Florida Safety Belt Law." Section 316.614, F.S., requires a motor vehicle operator, front seat passengers, and all passengers less than 18 years of age to wear safety belts. The law is enforced against any adult driver or adult front seat passenger who is not restrained by a safety belt. If a person under 18 years of age is unrestrained, the law is enforced against the officers cannot stop motorists solely for not using their safety belts unless the operator or passengers are under 18. Instead, the officer must first stop the motorist for a suspected violation of Chapters 316, 320, or 322, F.S., before the officer can issue a uniform traffic citation for failure to wear a safety belt.

In 2005, HB 1697 was passed to amend s. 316.614, F.S., making it a primary offense to operate a motor vehicle in this state unless each passenger and the operator of the vehicle under the age of 18 years is restrained by a safety belt or by a child restraint device. The penalty for failure to wear a safety belt is $30, plus administrative and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from $68.50 to $89.50. Revenues collected from citations issued for safety belt violations are distributed like other traffic citation revenues, pursuant to s. 318.21, F.S., except that $5 of each citation paid is directed to the Epilepsy Services Trust Fund. According to the Uniform Traffic Citation Statistics compiled by the Department of Highway Safety and Motor Vehicles, there were 348,542 safety belt violations during the 2006 calendar year.

Motor vehicles currently exempt from these requirements of s. 316.614, F.S., include:

- School buses;
- Buses used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, or in conjunction with school activities;
- Farm tractors or an implement of husbandry;

- Trucks of a net weight of more than 5,000 pounds; and
- Motorcycles, mopeds, or bicycles.

Proposed Changes

CS/HB 1399 amends ss. 316.613 and 316.614, F.S., to increase the truck weight from 5,000 pounds to 26,000 pounds, for motor vehicles not required to provide for the protection of children by means of properly using crash-tested, federally approved child restraint devices as described under this section.

Motorcycle-Moped Endorsements

Current Situation

Section 320.01, F.S., provides a definition of motorcycle as "any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or a moped."

Currently, under s. 320.02, F.S., every owner or person in charge of a motor vehicle (including motorcycles) operated or driven on the roads of this state is required to register the vehicle in this state. The owner or person in charge must apply to DHSMV or to its authorized agent for registration on a form prescribed by DHSMV.

Effective July 1, 2008, section 320.02, F.S., will require that, before a natural person applies for the original registration of a motorcycle or moped, the person must present proof that he or she has a valid motorcycle endorsement as required by the driver licensing laws of Chapter 322, F.S. This requirement was added by Section 28, 2006-290, Laws of Florida, with a delayed implementation.

Proposed Changes

CS/HB 1399 revises this section to exempt moped registrations from the endorsement requirements.

Toll Collection

1. Inoperability of Toll Collections

Current Situation

There is currently no requirement that all toll collection systems be compatible and interoperable. The DOT maintains one toll collection system statewide, SunPass, which is compatible with the systems of most independent toll agencies within Florida. Interoperability enhances the usefulness to the users of toll facilities statewide, and incompatible tolling technologies create confusion for users and are detrimental for efficient operation of all toll facilities.

Proposed Changes

CS/HB 1399 provides that all operators of limited access toll facilities in the state shall implement a toll collection system that may be used by their customers on limited access toll facilities statewide. This bill applies to all agencies and operators that build and operate limited access facilities and electronic toll collection systems for those transportation facilities, including public-private partnerships.

2. All Electronic Toll Collection

Current Situation

DOT currently maintains two methods of toll collection on the turnpike system: cash collection and electronic toll collection via its SunPass program. Electronic toll collection is more cost effective and

provides improved mobility as compared to cash toll collection. Since the deployment of the SunPass program in 2001, over $450 million of costs have been avoided by not having to expand toll facilities for increased cash transactions. Currently, 65 percent of turnpike customers pay through electronic toll collection. The DOT established a goal to increase the number of customers that pay electronically to 75 percent by December 2008.

Proposed Changes

CS/HB 1399 directs DOT 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, including without limitation video billing and variable pricing.

As electronic toll collection continues to increase, the DOT intends to modify its toll collection to provide more payment options to customers and improve mobility by eliminating cash toll collection at the roadside. All electronic tolling provides for non-stop toll collection. The DOT plans to phase-out cash toll collection at the roadside, so that all toll collection is done electronically.

DOT will enhance its existing SunPass program by providing a low-cost sticker tag in addition to the traditional transponder. The sticker tag gives customers the option of replenishing their account as it is done today, but it also allows the option of cash replenishment so that customers who wish to pay with cash and not provide customer information may do so. This cash payment method will be maintained off the roadway, so these cash customers will enjoy the same non-stop travel as traditional SunPass customers.

The DOT will also deploy a video billing system. This method of payment will allow customers to use the roadway and use their license plate for billing. Video billing provides for pre-payment and post-payment opportunities. Customers who pre-pay with video billing will call a customer service center and establish an account with license plate and credit card information to allow for payment. Customers who post-pay may establish the account after the fact; however, this payment option is more expensive to administer and would result in a higher cost. Finally, customers who do not register for video billing will be identified based on their license plate information and will be billed through the mail for their toll activity. This method of toll collection has significant processing costs, and therefore, will require additional administrative fees.

3. Uniform Toll Rate - Administrative Costs

Current Situation

Currently DOT has no specific authorization to impose and recover certain administrative amounts in connection with the collection of tolls. Other states, such as those administering the EZ-Pass program, allocate various administrative costs to their customers in connection with services provided and collection efforts involved.

DOT has implemented innovative toll collection methods, which includes the use of Unpaid Toll Notices, Video Accounts and Image-based Tolling. Unpaid Toll Notices are issued to customers that inadvertently use a toll facility without paying a toll. At present, this notification method requests payment of the original toll amount due with no enforcement action taken as long as the payment is received within 21 days from the date of the Unpaid Toll Notice. This notification process has proven to be very effective, but the DOT is incurring much higher operating costs due to the image processing, verification, and mail costs associated with such program.

DOT has also implemented a new Video Account pilot program called Toll-by-Plate whereby infrequent customers or rental car users can create an account that uses the vehicle's license plate number as a form of identification. A prepaid account or credit card guarantee is used to fund transactions whenever a license plate matching process determines the user has a valid Video Account. The Toll-by-Plate program will be an integral part of the DOT's strategy to eliminate the need for all vehicles to stop at toll

plazas to pay their tolls. Due to the higher operating costs associated with image processing and license plate verification and matching, the DOT is seeking clear authority to fix and collect amounts to cover the expenses of this new service. The new Video Account will be an optional service that customers may select if it best serves their individual needs.

SunPass also uses a similar license plate number matching process called Image-based Tolling to safeguard against issuing violation notices to valid customers when temporary transponder failures occur due to dead batteries or localized malfunctions. These customer actions lead to higher operating costs associated with image processing and license plate verification and matching.

Proposed Changes

CS/HB 1399 authorizes DOT to recover administrative costs for additional customer toll payment options. The proposed deletion of the reference to a "uniform system rate," is necessary to remove any obstacles to future innovative methods of toll collection, such as variable pricing.

4. Toll Revenues and Bonding

Current Situation

Section 338.165, F.S., provides that toll revenues remaining after the costs of operating and maintaining the facility and the debt service on all bonds issues is paid, must be used within the county, or counties, in which the toll is generated. The use of these funds is limited to construction, maintenance, or improvements for roads on the State Highway System. Current law also authorizes the DOT to request issuance of bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the adopted work program. Legislative approval of projects to be funded by bonds is required by s.11, Article VII, of the State Constitution.

Proposed Changes

CS/HB 1399 specifically:

- Clarifies that the DOT may use remaining toll revenues for public transit as an additional tool to enhance mobility on the State Highway System; and
- Deletes specific references to revenue producing facilities to alleviate the need for repeated statutory changes to include new facilities within the DOT's existing authority to request bond issuance.

5. Variable Rate Tolling

Current Situation

Section 334.044, F.S., authorizes DOT to plan, acquire, lease, construct, maintain, and operate toll facilities. This section also authorizes DOT to issue and refund bonds, and to fix and collect tolls or other charges for travel on any toll facilities.

Proposed Changes

CS/HB 1399 amends current law to authorize DOT to establish variable toll rates for facilities. This provides general authority to implement variable rate tolling, which is planned for the I-95 Express Lane Project.

Variable rate tolling is a method and system which average vehicle speeds of tolled and non-tolled road segments between two locations are monitored and saved for reference in providing dynamic

adjustment of the toll amount to be charged for use of the tolled segment in order to ensure an efficient use of the tolled segment and a determination of an appropriate toll amount to be charged drivers in the tolled segment in view of real time traffic conditions of the tolled and the non-tolled segment. The toll adjustments are determined based upon the difference between actual average speeds of the tolled segment and actual average speeds of the non-tolled segment such that the toll adjustments are dynamic and depend upon real time traffic conditions in both the tolled and non-tolled segments of the travel route.

DOT Contracting Issues

1. Competitive Bid Process

Current Situation

DOT Commodities and Contractual Services

Section 287.057, F.S., and Rule 60A, Florida Administrative Code, requires state agencies to acquire commodities and contractual services, in excess of $25,000, by competitive sealed bids, request for proposals or by competitive negotiations, unless specifically exempted. These processes require a competitive selection based on either the lowest responsive bid (Invitation to Bid - ITB) or the most advantageous responsive proposal/price, or (Request for Proposals - RFP or Invitation to Negotiate - ITN). Criteria for evaluation of bids or proposals will be set forth in the ITB, RFP or ITN package.

Types of commodities acquired may include; aggregates, barricades, computer hardware and software, electrical supplies, fencing, forms, gas, grass, hardware, heavy equipment, herbicides, janitorial supplies, kennels, laboratory equipment, law enforcement equipment, maintenance supplies, nuclear gauges, office supplies and furniture, paint, reflective sheeting, roadway materials, safety products, survey instruments and supplies, tools, tolls equipment, uniforms, and vertical lift platform trucks.

Types of contractual services acquired may include; accounting, asbestos surveys & abatement, auditing, banking, building maintenance, communications, courier, environmental, equipment maintenance, hardware/software development & maintenance, janitorial, landscaping, legal, management, medical, moving, pest control, public outreach, research, right of way appraisal, security, temporary help, training, video, and wildlife research. There is no pre-qualification required for proposing/bidding on these services, however, minimum qualifications may be specified in the bid or proposal package and will need to be demonstrated in the vendor response.

DOT utilizes the Department of Management Services (DMS) vendor list to notify vendors of advertised projects. Formal procurement of commodities and contractual services are advertised in the Vendor Bid System located on the MyFlorida.com Web site.

DOT Construction and Maintenance Services

Construction and maintenance services such as roadway and bridge construction, right of way mowing, etc. are acquired in accordance within s. 337.11, F.S. Current law authorizes DOT to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System or the State Park Road System or of any roads placed under its supervision by law. DOT also has the authority to 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. Specifically under this section DOT is required to:

- Ensure that all project descriptions, including design plans, are complete, accurate, and up to date prior to the advertisement for bids on such projects.
- On all construction contracts of $250,000 or less, and any construction contract of less than $500,000 for which the department has waived prequalification, DOT must advertise for bids in a newspaper having general circulation in the county where the proposed work is located.

These publications are to be at least once a week for no less than 2 consecutive weeks, and the first publication is to be no less than 14 days prior to the date on which bids are to be received.

- On all construction contracts greater than $250,000, DOT must provide a bid solicitation notice to all prequalified contractors at least 2 weeks before the date bids are scheduled to be received.

No advertisement for bids are to be published and no bid solicitation notices provided until title to all necessary rights-of-way and easements, and all railroad crossing and utility agreements have been executed. The turnpike enterprise is exempt from this paragraph for all turnpike enterprise projects. Title to all necessary rights-of-way shall be deemed to have been vested in the State of Florida when such title has been dedicated to the public or acquired by prescription.

DOT may award the proposed construction and maintenance work to the lowest responsible bidder, or in the instance of a time-plus-money contract, the lowest evaluated responsible bidder, or it may reject all bids and proceed to rebid the work.

Current law also provides that any person who files an action protesting a bid solicitation, a bid rejection, or an award, must post with DOT, at the time of filing a notice of protest, a bond payable to DOT in the following amounts:

1. For an action protesting a bid solicitation that requires qualification of bidders, the bond shall be $5,000.
2. For an action protesting a bid rejection or contract award that requires qualification of bidders, the bond shall be equal to 1 percent of the lowest bid submitted or $5,000, whichever is greater.
3. For an action protesting a bid solicitation, bid rejection, or contract award that does not require qualification of bidders, the bond shall be $2,500.

The bond required is to be for the payment of all costs that may be adjudged against the person filing the protest in the administrative hearing in which the action is brought and any subsequent appellate court proceeding. If, after completion of the administrative hearing process and any appellate court proceedings, DOT prevails, this bond is to cover all costs and charges included in the final order or judgment, excluding attorney's fees. After payment of such costs and charges by the person filing the protest, the bond shall be returned to him or her. If the person filing the protest prevails, he or she shall recover from DOT all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. The entire amount of the bond shall be forfeited if the administrative law judge determines that a protest was filed for a frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for DOT or parties.

If the secretary determines that an emergency regarding restoration or repair of any state transportation facility exists that the competitive bid process would delay DOT may enter into these contracts without giving opportunity for competitive bid. Within 30 days after such determination and contract execution, the secretary of DOT must file, with the Executive Office of the Governor, a written statement of the conditions and circumstances constituting the emergency.

If the secretary determines that delays on a contract for maintenance exist due to administrative challenges, bid protests, defaults or terminations and the further delay would reduce safety on the transportation facility or seriously hinder DOT’s ability to preserve the state's investment in that facility, competitive bidding provisions may be waived and DOT may enter into a contract for maintenance on the facility. However, contracts for maintenance executed under these provisions must be interim in nature and must be limited in duration to a period of time not to exceed the length of the delay necessary to complete the competitive bidding process and have the contract in place.

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, up to the amount of $120,000, enter into contracts for construction and maintenance without advertising and receiving competitive bids.

Proposed Changes

CS/HB 1399 provides that the Florida Turnpike Enterprise shall not under any circumstances contract with any vendor for the retail sale of fuel along the Florida Turnpike if such contract is negotiated or bid together with any other contract, including, but not limited to, the retail sale of food, maintenance services, or construction, with the exception that any contract for the retail sale of fuel along the Florida Turnpike shall be bid and contracted together with the retail sale of food at any convenience store attached to the fuel station.

All contracts including, but not limited to, the sale of fuel, the retail sale of food, maintenance services, or construction awarded by the Florida Turnpike Enterprise shall be procured through individual competitive solicitation and awarded to the lowest responder. This language does not prohibit the award of more than one individual contract to a single vendor if he or she submits the most cost effective response.

Counties' Competitive Bid Processes

Current Situation

Section 336.41, F.S., authorizes the county commissioners to employ labor that provides equipment as necessary for constructing and opening of new roads or bridges and repair and maintenance of any existing roads and bridges. All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

- Construction and maintenance in emergency situations;
- Construction and reconstruction, including resurfacing, mineral seal coating, and bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or $400,000, whichever is greater; and
- Construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than $400,000 or as adjusted by the percentage change in the Construction Cost Index from January 1, 2008, for which the county may utilize its own forces. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing in this section shall prevent the county from performing routine maintenance as authorized by law.

In addition, for contracts in excess of $250,000, any county may require that persons interested in performing work under the contract first be certified or qualified to do the work. Any contractor prequalified and considered eligible to bid by DOT to perform the type of work described under the contract shall be presumed to be qualified to perform the work included in the contract. Any contractor may be considered ineligible to bid by the county if the contractor is behind an approved progress schedule by 10 percent or more on another project for that county at the time of the advertisement of the work. The county may provide an appeal process to overcome such consideration with de novo review based on the record below to the circuit court.

The county shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. These publications must include notice of a public hearing for comment and procedures prior to adoption. The procedures shall provide for an appeal process within the county for objections to the prequalification process with de novo review based on the record below to the circuit court.

Finally, the county shall also publish for comment, prior to adoption, the selection criteria and procedures to be used by the county if such procedures would allow selection of other than the lowest

responsible bidder. The selection criteria shall include an appeal process within the county with de novo review based on the record below to the circuit court.

Proposed Changes

CS/HB 1399 amends s. 336.41, F.S., to require all construction and reconstruction and repair of county roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be let to private-sector contractors. These revisions extend the requirements for contracts to be let by competitive bid from only projects performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax to all contracts.

Additionally, the bill adds specific exceptions to the contracts, in addition to emergency work that is not required to be let by competitive bid by the counties and municipalities. These exceptions are revised to include:

- Single projects that do not exceed $250,000 in value or as adjusted by the Consumer Price Index dated January 2009. This exception does not include materials purchased. The provisions also prohibit contracts being divided into more than one contract to avoid exceeding the $250,000 threshold.
- Only materials purchased from local governmental owned material pits existing before January1, 2008. Any other material must be purchased or furnished from a commercial source.

Finally, CS/HB 1399 prohibits any county, municipality, or special district from owning or operating an asphalt plant or a portable or stationary concrete batch plant having an independent mixer.

2. Alternative Bid Contracts

Current Situation

Design Build Contracts

Section 337.11, F.S., provides that if the secretary of DOT determines that it is in the best interests of the public, DOT may combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract. Such contract is referred to as a design-build contract.

Design-build contracts may be advertised and awarded based on DOT rule procedures for administering design-build contracts. Such procedures include, but are not limited to:

- Prequalification requirements;
- Public announcement procedures;
- Scope of service requirements;
- Letters of interest requirements;
- Short-listing criteria and procedures;
- Bid proposal requirements;
- Technical review committee; and
- Selection and award processes.

DOT must receive at least three letters of interest in order to proceed with a request for design-build proposals. DOT must request proposals from no fewer than three of the design-build firms submitting letters of interest. If a design-build firm withdraws from consideration after the DOT requests proposals, the evaluation process may continue if at least two proposals are received.

Proposed Changes

CS/HB 1399 requires DOT to award a minimum of 25 percent of the construction contracts that add capacity as design-build contracts, over the 5 year work program period.

The bill also authorizes DOT to pay stipends to firms who have submitted responsive proposals for construction and maintenance contracts and were not the successful bidder. The amount of the stipend shall be determined based on DOT's analysis of the estimated developmental costs and the anticipated degree of competition during the procurement process. The provision is intended to encourage competition and compensate unsuccessful firms for a portion of their proposal costs. Further, DOT will retain the right to utilize elements of these proposals in future designs as a stipulation of the contractor's stipend payment.

3. Contractor Surety Bonds

Current Situation

Section 337.18, F.S., requires surety bond of the successful bidder in an amount equal to the awarded contract price. However, DOT may choose, in its discretion and applicable only to multiyear maintenance contracts, to allow for incremental annual contract bonds that cumulatively total the full, awarded, multiyear contract price. For a project for which the contract price is $250,000 or less, DOT may waive the requirement for all or a portion of a surety bond if it determines the project is of a noncritical nature and nonperformance will not endanger public health, safety, or property.

If the secretary of DOT, or the secretary's designee, determines that it is in the best interests of the department to reduce the bonding requirement for a project and that to do so will not endanger public health, safety, or property, DOT may waive the requirement of a surety bond in an amount equal to the awarded contract price for a project having a contract price of $250 million or more and, in its place, may set a surety bond amount that is a portion of the total contract price and provide an alternate means of security for the balance of the contract amount that is not covered by the surety bond or provide for incremental surety bonding and provide an alternate means of security for the balance of the contract amount that is not covered by the surety bond.

Current law provides that upon execution of the contract, and prior to beginning any work under the contract, the contractor shall record in the public records of the county where the improvement is located the payment and performance bond required under this section. Any claimant shall have a right of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract.

Proposed Changes

CS/HB 1399 revises s. 337.18, F.S., to require the contractor, upon execution of the contract and prior to beginning any work under the contract, to maintain a copy of the payment and performance bond required at its jobsite office, and its principle place of business, and with DOT. This is in lieu of the requirement that payment and surety bonds be recorded within county in which the improvement is located. In addition, the changes made by the bill also require the contractor to provide a copy of these documents, within 5 days of a written request, to the person or entity requesting a copy.

Office of Motor Carrier Compliance

Current Situation

The primary purposes of the Office of Motor Carrier Compliance, currently housed within DOT, are to protect the highway system's pavement and structures from excessive damage due to overweight and oversize vehicles, and to reduce the number and severity of crashes involving commercial vehicles.

The Office enforces state and federal laws and agency rules that regulate the weight and size of vehicles operating on the state's highways, and the safety of commercial motor vehicles and their

drivers. The program uses both non-sworn weight inspectors and sworn law enforcement officers to enforce vehicle weight, size, fuel tax, and registration requirements. These inspectors weigh trucks and check registration and fuel tax compliance at fixed scale locations along major highways. The program's law enforcement officers patrol the state's highways and use portable scales to weigh trucks that do not pass fixed scale stations.

As part of their patrol duties on state highways, the program's law enforcement officers also enforce commercial motor vehicle safety regulations by performing safety inspections and enforcing traffic laws. The program's safety enforcement responsibilities also include compliance reviews at carrier places of business, which are performed by specially trained law enforcement staff.

Proposed Changes

CS/HB 1399 directs the Office of Motor Carrier Compliance to be transferred via type two transfer to the Florida Highway Patrol, within the Florida Department of Highway Safety and Motor Vehicles. The bill also directs the Division of Statutory Revision to prepare draft legislation in the interim between this provision becoming a law and the 2009 Regular Session of the Legislature, or an earlier special session, to conform the Florida Statutes and any legislation enacted during 2008 to the provisions of this section.

The bill also makes technical changes to authorize DOT to enforce the most current federal regulations applicable to owners and operators of commercial motor vehicles.

Professional Engineer and Right-of-Way Training

Current Situation

DOT administers three separate trainee programs:

- Engineer Training Program;
- Senior Engineer Training Program; and
- Right of Way Training Program

The combined Engineer and Senior Engineer Training Programs constitute the Professional Engineer Training Program. These programs have been in effect within the DOT for over 20 years and operating under adopted internal guidelines. These programs are intended to enhance the recruitment and retention of highly specialized professional staff.

Section 216.251(3), F.S., became effective July 1, 2006, and provides that "an agency may not provide general salary increases or pay additives for a cohort of positions sharing the same job classification or job occupations which the Legislature has not authorized in the General Appropriations Act or other laws". This has prevented DOT from providing the incremental pay increases associated with these training programs. In order to continue these programs, DOT was granted the authority to continue its training programs and to provide the pay incentive package for trainees in these programs in Section 8 of the General Appropriations Act (GAA) for fiscal year 2007-08.

Proposed Changes

CS/HB 1399 codifies in statute DOT's authority granted in fiscal year 2007-08, by the GAA, which authorizes pay incentive package for trainees in these programs.

Strategic Aggregate Task Force

Current Situation

Section 337.0261, F.S., created the Strategic Aggregate Task Force in 2007. The Strategic Aggregates Review Task Force was created to evaluate the availability and disposition of construction aggregate materials and related mining and land use practices in this state.

The task force was appointed by August 1, 2007, and is composed of the following 19 members. The President of the Senate, the Speaker of the House of Representatives, and the Governor each appointed one member from each of the following groups:

- The mining industry;
- The construction industry;
- The transportation industries, including seaports, trucking, railroads, or road builders;
- Elected officials representing counties identified by the DOT as limestone or sand resource areas. Rural, midsize, and urban counties each have one elected official on the task force;
- Environmental advocacy groups.

The task force also includes:

- The Secretary of Environmental Protection or designee;
- The Secretary of Community Affairs or designee;
- The Secretary of Transportation or designee;
- One member appointed by the Florida League of Cities, Inc.;

Members of the task force serve without compensation. Travel and per diem expenses for members who are not state employees are paid by DOT.

Current law requires DOT to organize and provide administrative support for the task force and coordinate with other state agencies and local governments in obtaining and providing such data and information as may be needed by the task force to complete its evaluation.

DOT is directed to collect and provide information to the task force relating to construction aggregate materials and the amount of such materials used by DOT on state road infrastructure projects and provide any technical and supporting information relating to the use of such materials as is available.

The task force reported its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives in February 2008. The report identified locations with significant concentrations of construction aggregate materials and recommend actions intended to ensure the continued extraction and availability of construction aggregate materials.

The task force is to be dissolved on July 1, 2008.

Proposed Changes

CS/HB 1399 directs DOT, in coordination with the Department of Community Affairs, the Department of Environmental Protection, and the regional planning councils to work with local governments to prepare the Strategic Aggregate Resource Assessment (SARA). The following details are to be included in the report:

- Maps of areas where construction aggregate materials deposits are located in the state;
- Maps of areas that include a high to low quality grading classification which identify the areas that contain the materials needed for road building and repair, areas of natural resources subject to federal or state permitting requirements in order to identify any potential conflicts between the location of geologically valuable resources and natural land and water resources; and
- Maps of existing future land use elements of local comprehensive plans and local zoning regulations in order to identify natural resources and existing communities and any potential

conflicts between the areas where growth and development is planned or placed adjacent to or over deposits of construction aggregate materials.

The SARA will also provide a projection of 5 year, 25 year, and 50 year demand for aggregate, an estimate of volume of aggregate available from already permitted mines to meet demand projections, and the availability and estimate of the volume of alternative material, including recycled and reused construction aggregate, which may substitute for construction aggregate. The SARA will also identify international and out-of-state construction aggregate materials available to meet demand projections.

In addition to the information described above, for each of the six "Materials Resource Planning Areas" identified in DOT's report titled, "Strategic Aggregates Study: Sources, Constraints, and Economic Value of Limestone and Sand in Florida," dated February 2007, the SARA will provide a summary of all regional and local regulatory jurisdictions impacting the approval of mining, including but not limited to:

- County, municipal, and special district regulations;
- A description of federal, state and local environmental regulatory issues impacting access to construction aggregate reserves;
- Identification and map of rare, threatened or endangered habitats, water resources and other natural resources subject to federal, state and local protection or regulation;
- Identification of local transportation infrastructure issues impacting the distribution of aggregate materials, including level of service / quality of roads, rail access, and port capacity and access; and
- Identification of alternatives for when the local construction mining aggregate supply is exhausted.

The bill directs the last report from the Strategic Aggregate Task Force to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives on February 1, 2010. Therefore, the bill also extends the dissolution of the task force from July 1, 2008, to March 1, 2010.

CS/HB 1399 directs that in addition to the initial report due February 1, 2010, subsequent reports be submitted by DOT to the Governor, the President of the Senate, and the Speaker of the House of Representatives on February 1 following each 5 year SARA update.

The bill includes a non-recurring General Revenue appropriation of $700,000, to be matched at 50 percent with local funds, to provide funding for requirements included in the bill related to the SARA.

State Arbitration Board

Current Situation

Section 337.185, F.S., establishes a State Arbitration Board to facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between the DOT and the various contractors with whom it transacts. This section requires that the board arbitrate every unresolved contractual claim in an amount:

- up to $250,000 per contract;
- up to $500,000 per contract at the claimant's option; or
- up to $1 million per contract, upon agreement of the parties.

As an exception, either party may request that the claim be submitted to binding private arbitration.

DOT and the contractors with whom it transacts have very successfully utilized this negotiation and board process to resolve many claims arising out of construction contracts. Most frequently, matters are presented without active legal representation by either party, little or no formal discovery is taken, and the costs of the proceeding are substantially less than those involved in a civil law suit. The overall

result benefits both the DOT and the contractors by facilitating prompt claim settlement and reducing or eliminating litigation costs.

Proposed Changes

CS/HB 1399 revises current law to include claims for additional compensation arising out of maintenance contracts in the existing State Arbitration Board process for claims arising out of construction contracts. Maintenance contracts have not previously been included in this process, but the same benefits would be realized by including maintenance contracts in the negotiation and board process.

Utilities

1. Relocations

Current Situation

Section 337.403, F.S., requires that any utility placed upon, under, over, or along any public road or publicly owned rail corridor that is found to be unreasonably interfering in with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of a public road or publicly owned rail corridor shall, within 30 days' of written notice by DOT, or a governmental entity, to the utility or its agent, be removed or relocated by the utility at its own expense with the exception of the following:

- If the relocation of utility facilities is necessitated by the construction of a project on the federal-aid interstate system, including extensions within urban areas, and the cost of such project is eligible and approved for reimbursement by the federal government to the extent of 90 percent or more under the Federal Aid Highway Act, then the utility owning or operating the facilities shall relocate such facilities upon order of DOT, or a governmental entity, and the state shall pay the entire expense for the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility;

- When a joint agreement between DOT, or a governmental entity and the utility is executed for utility improvement, relocation, or removal work as part of a contract for construction of a transportation facility, the DOT may participate in those utility improvements, relocations, or removal costs that exceed the DOT's official estimate for cost more than 10 percent. The amount of participation shall be limited to the difference between the official estimate of all the work in the joint agreement plus 10 percent and the amount awarded for this work in the construction contract. DOT, or the governmental entity, may not participate in any utility improvement, relocation, or removal costs that occur as a result of changes or additions during the course of the contract; or

- When an agreement between DOT, or the governmental entity, and the utility is executed for utility improvements, relocations, or removal work to be accomplished in advance of a contract for construction of a transportation facility, the DOT may participate in the cost of clearing and grubbing necessary to perform the work.

Proposed Changes

CS/HB 1399 adds an additional exception to s. 337.403, F.S., providing that DOT, or a governmental entity, will bear all costs of the removal or relocation of a utility, when the utility facility only serves the purpose of the DOT or the governmental entity. In addition, the bill provides that when an electric facility is being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and the utility has been transferred from a private entity to a public utility within the last five years, DOT will incur all costs of the relocation.

2. Right of Way Regulations

Current Situation

Section 337.408, F.S., provides for the regulation of benches, transit shelters, street light poles, waste disposal receptacles, and modular news racks within rights-of-way. Specifically:

- Benches or transit shelters, including advertising displayed on benches or transit shelters, may be installed within the right-of-way limits of any municipal, county, or state road, except a limited access highway. However, these benches or transit shelters must be for the comfort or convenience of the general public or are at designated stops on official bus routes, provided that written authorization has been given by the municipal government where the benches or transit shelters are installed, or by the county government within whose unincorporated limits in which the benches or transit shelters are installed.
- A municipality or county may authorize the installation, without public bid, of benches and transit shelters together with advertising displayed thereon within the right-of-way limits of these roads. Further, any existing contract for the installation of benches or transit shelters, including advertisements, which was entered into before April 8, 1992, without public bidding is ratified and affirmed.
    - These benches or transit shelters may not interfere with right-of-way preservation and maintenance.
    - Any bench or transit shelter located on a sidewalk within the right-of-way limits of any road on the State Highway System or the county road system must be located so as to leave at least 36 inches of clearance for pedestrians and persons in wheelchairs.
- Waste disposal receptacles of less than 110 gallons in capacity, including advertising displayed on such waste disposal receptacles, may be installed within the right-of-way limits of any municipal, county, or state road, except a limited access highway, provided that written authorization has been given to a qualified private supplier of such service by the appropriate municipal or county government. A municipality or county may authorize the installation, without public bid, of waste disposal receptacles together with advertising displayed thereon within the right-of-way limits of such roads. Such waste disposal receptacles may not interfere with right-of-way preservation and maintenance.
- Modular news racks, including advertising thereon, may be located within the right-of-way limits of any municipal, county, or state road, except a limited access highway, provided the municipal government within whose incorporated limits such racks are installed or the county government within whose unincorporated limits such racks are installed has passed an ordinance regulating the placement of modular news racks within the right-of-way and has authorized a qualified private supplier of modular news racks to provide such service. The modular news rack or advertising thereon shall not exceed a height of 56 inches or a total advertising space of 56 square feet. No later than 45 days prior to installation of modular news racks, the private supplier shall provide a map of proposed locations and typical installation plans to DOT for approval. If DOT does not respond within 45 days after receipt of the submitted plans, installation may proceed.

DOT is authorized to direct the immediate relocation or removal of any bench, transit shelter, waste disposal receptacle, or modular news rack which endangers life or property. Transit bus benches which have been placed in service prior to April 1, 1992, are not required to comply with bench size and advertising display size requirements which have been established by DOT prior to March 1, 1992. Any transit bus bench that was in service prior to April 1, 1992, may be replaced with a bus bench of the same size or smaller, if the bench is damaged or destroyed or otherwise becomes unusable.

DOT is also authorized to adopt rules relating to the regulation of bench size and advertising display size requirements. If a municipality or county within which a bench is to be located has adopted an ordinance or other applicable regulation that establishes bench size or advertising display sign requirements different from requirements specified in department rule, the local government requirement shall be applicable within the respective municipality or county. Placement of any bench or

advertising display on the National Highway System under a local ordinance or regulation adopted pursuant to this subsection shall be subject to approval of the Federal Highway Administration.

No bench, transit shelter, waste disposal receptacle, or modular news rack, or advertising thereon, shall be erected or so placed on the right-of-way of any road which conflicts with the requirements of federal law, regulations, or safety standards, thereby causing the state or any political subdivision the loss of federal funds. Competition among persons seeking to provide bench, transit shelter, waste disposal receptacle, or modular news rack services or advertising on such benches, shelters, receptacles, or news racks may be regulated, restricted, or denied by the appropriate local government entity consistent with the provisions of this section.

Street light poles, including attached public service messages and advertisements, may be located within the right-of-way limits of municipal and county roads in the same manner as benches, transit shelters, waste disposal receptacles, and modular news racks as provided in this section and in accordance with municipal and county ordinances. Public service messages and advertisements may be installed on street light poles on roads on the State Highway System in accordance with height, size, setback, spacing distance, duration of display, safety, traffic control, and permitting requirements established by DOT administrative rule. Public service messages and advertisements shall be subject to bilateral agreements, where applicable, to be negotiated with the owner of the street light poles, which shall consider, among other things, power source rates, design, safety, operational and maintenance concerns, and other matters of public importance. For the purposes of this section, the term "street light poles" does not include electric transmission or distribution poles.

Proposed Changes

CS/HB 1399 amends s. 337.408, F.S., to include pay telephones and their advertisements under the regulations of this section. Further, the bill specifies that the installation of pay telephones must be in accordance with all state and federal requirements and that the advertisements on pay telephones may not exceed a size of greater than 8 square feet and that no public pay telephone shall display more than 3 advertisements at any given time.

Local Government Reimbursement Program

Current Situation

Section 339.12, F.S., provides that any governmental entity may aid in any project or project phase included in DOT's five-year adopted work program by contributions of cash, bond proceeds, time warrants, or other goods or services of value.

Prior to accepting a contribution, DOT must enter into agreements with the governmental entity for the project or project phases. DOT may not under any circumstance receive contributions in excess of the actual cost of the project or project phase. By specific provisions in the written agreement between the DOT and the governmental entity, DOT is authorized to reimburse the governmental entity for the actual amount of the contribution on a highway project or project phases that are not revenue producing and are contained in DOT's adopted work program, or any public transportation project contained in the adopted work program.

Subject to appropriation of funds by the Legislature, DOT may commit state funds for reimbursement of projects or project phases. Reimbursement to the governmental entity for these projects or project phase must be made from funds appropriated by the Legislature, and reimbursement for the cost of the projects or project phase is to begin in the year the project or project phase is scheduled in the work program.

Funds advanced pursuant to this section, which were originally designated for transportation purposes and reimbursed to a county or municipality, must be used by the county or municipality for any transportation expenditures needed to meet the requirements of the capital improvements element of

an adopted comprehensive plan or for expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. Expenditures related to routine maintenance of roads are excluded from the eligible projects in which these reimbursements can be used to fund.

In addition, DOT may enter into agreements for projects or project phases not included in the five-year adopted work program. These advancements include only projects or project phases for acquisition of rights-of-way, construction, construction inspection, and related support phases. Agreements for advancement of projects or project phases from outside the five-year work program shall only include high priorities of the governmental entity.

The total amount of project agreements for projects or project phases not included in the adopted work program may not at any time exceed the existing DOT cap of $100 million statewide.

Proposed Changes

CS/HB 1399 increases the maximum amount of project agreements for projects or project phases not included in the adopted work program from $100 million to $500 million. The bill also provides that of the $500 million, a maximum of $200 million may be for the advancement of right of way purchases.

The bill also creates a new reimbursement program for counties with a population of 150,000 or less. This program authorizes DOT to enter into agreements with governmental entities to advance a maximum of $200 million in projects or project phases from outside the five-year adopted work program. Projects included in these agreements must also be included in the governmental entity's comprehensive plan. This new program authorizes DOT to enter into long-term repayment agreements with these counties for up to 30 years.

Work Program Amendments

Current Situation

Section 339.165, F.S., provides that DOT may amend the adopted work program at any time during the fiscal year. Major changes to the current year of the work program will be accommodated through the official amendment process. The following amendments to the DOT's adopted work program transferring fixed capital outlay appropriations for projects within the same appropriations category or between categories must be submitted to the Governor's Office for approval and the Legislature for review:

- Any amendment that deletes any project or project phase;
- Any amendment that adds a project estimated to cost over $150,000;
- Any amendment that advances or defers to another fiscal year a right of way phase, a construction phase, or a public transportation project phase estimated to cost over $500,000, except an amendment advancing or deferring a phase for a period of 90 days or less; and
- Any amendment that advances or defers to another fiscal year any preliminary engineering phase or design phase estimated to cost over $150,000, except an amendment advancing or deferring a phase for a period of 90 days or less.

Proposed Changes

CS/HB 1399 revises the thresholds so that only the following amendments would be required to be submitted to the Governor's Office and Legislature for approval:

- Any amendment that deletes a project or project phase;
- Any amendment that adds a project estimated to cost over $500,000;

- Any amendment that advances or defers to another fiscal year a right of way phase, a construction phase, or a public transportation project phase estimated to cost over $500,000, except an amendment advancing a phase to the current fiscal year by one fiscal year or less or deferring a phase for a period of 90 days or less; and
- Any amendment that advances or defers to another fiscal year any preliminary engineering phase or design phase estimated to cost over $500,000, except an amendment advancing a phase to the current fiscal year by one fiscal year or less or deferring a phase for a period of 90 days or less.

Increasing the two threshold amounts is intended to provide increased efficiency by alleviating time delay local governments incur to add, advance, or defer a project and would provide increased flexibility in the DOT's ability to cooperate with local governments on needed projects. The proposed changes also would allow greater flexibility to respond to changing market conditions in a timely manner.

CS/HB 1399 also creates a new paragraph under s. 339.165, F.S., requiring that when DOT proposes to amend the first year of the five-year adopted work program, DOT must notify each affected county and municipality in writing of the proposed changes. This notification must be submitted to the chief elected official within the county and municipality, and to the chair of the affected Metropolitan Planning Organization (MPO). These affected local governments and MPOs will have 14 days to provide written comments to DOT regarding how the amendment impacts their respective concurrency management systems.

Transportation Planning

Current Situation

Federal law requires states to adhere to certain requirements in the transportation planning process. These federal requirements have been amended on various occasions, and the State of Florida has revised its statutes from time to time in accordance with federal revisions as they have occurred. As to more recent changes, the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) contained 23 planning factors to be considered in the statewide planning process and 16 planning factors to be included in the metropolitan planning process. Subsequently, Congress passed the Transportation Equity Act for the 21st Century (TEA-21) in June of 1998, which consolidated the statewide and metropolitan planning factors into seven broad areas to be considered. Florida law was amended by the 1999 Legislature to accommodate the TEA-21 revisions, and s. 339.155, F.S., currently reflects the seven broad factors to be considered in the planning process. However, the 2005 federal legislation, SAFETEA-LU, separated the "safety and security" factor into two separate factors and modified the wording of other factors. Florida's statutes do not accurately reflect the most recent federal requirements that must be adhered to in statewide transportation planning.

Further, the federal requirement that each state have a "Long-Range Transportation Plan" was amended in the SAFETEA-LU legislation to be a "Long-Range Statewide Transportation Plan." Federal legislation has not required a short-range component of the long-range plan or an annual performance report. DOT has, in the past, issued a separate Short Range Component of the Florida Transportation Plan and an Annual Performance Report, but most recently combined those reports into a single report. The Short Range Component is not an annual update of the Florida Transportation Plan but rather documents the DOT's efforts to implement the Florida Transportation Plan.

DOT and the Florida Transportation Commission conduct extensive performance measurement of Florida's transportation system and the DOT. An annual Long Range Program Plan is also submitted by the DOT to the Governor and Legislature that reflects state goals, agency program objectives and service outcomes.

Proposed Changes

CS/HB 1399 would simply reference that portion of the United States Code in which the planning factors are contained. This proposal would also delete the short-range component of the long-range plan and the annual performance report requirements from state law, as they are not required by federal law and contain duplicative information provided in other reports described above.

Small County Road Assistance Program

Current Situation

Section 339.2816, F.S., created the Small County Road Assistance Program (SCRAP), within DOT. The purpose of this program is to assist small county governments with a population of 75,000 or less, in resurfacing or reconstructing county roads. Capacity improvements on county roads are not eligible for funding under the program.

Beginning with fiscal year 1999-2000 until fiscal year 2009-2010, DOT is authorized to fund the SCRAP in an amount up to $25 million annually from the State Transportation Trust Fund.

Small counties that were part of the county road system on June 10, 1995, are eligible to compete for funds that have been designated for this program. In addition, for a county to be eligible for these funds, at a minimum:

- The county must have enacted the maximum rate of the local option fuel tax and must have an ad valorem millage rate of at least 8 mills; or
- The county has imposed an ad valorem millage rate of 10 mills.

The following criteria shall be used to prioritize road projects for funding under the program:

- The primary criterion is the physical condition of the road as measured by DOT.
- As secondary criteria DOT may consider:
    - Whether a road is used as an evacuation route;
    - Whether a road has high levels of agricultural travel;
    - Whether a road is considered a major arterial route; and
    - Whether a road is considered a feeder road.

Other criteria related to the impact of a project on the public road system or on the state or local economy may also be considered in the prioritization process by DOT.

Proposed Changes

CS/HB 1399 reenacts the SCRAP program in fiscal year 2012-2013 and does not provide for a sunset of the program. The interruption of the program from the current sunset date of fiscal year 2009-2010 to fiscal year 2012-2013 is to ensure there are no negative impacts to DOT's five-year work program.

Rail Systems

Current Situation

Section 341.302, F.S., requires DOT, in conjunction with other governmental units and the private sector, to develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Specifically DOT must:

- Provide the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to current and anticipated mobility needs;

- Promote and facilitate the implementation of advanced rail systems, including high-speed rail and magnetic levitation systems;
- Develop and periodically update the rail system plan, on the basis of an analysis of statewide transportation needs. The plan is to be consistent with the Florida Transportation Plan. The rail system plan must include an identification of priorities, programs, and funding levels required to meet statewide needs. The rail system plan is to be developed in a manner that will assure the maximum use of existing facilities and the optimum integration and coordination of the various modes of transportation, public and private, in the most cost-effective manner possible. The rail system plan must be updated at least every 2 years and include plans for both passenger rail service and freight rail service;
- Formulate a specific program of projects and financing to respond to identified railroad needs as part of DOT's work program;
- Provide technical and financial assistance to units of local government to address identified rail transportation needs;
- Secure and administer federal grants, loans, and apportionments for rail projects within this state when necessary to further the statewide program;
- Develop and administer state standards concerning the safety and performance of rail systems, hazardous material handling, and operations. These standards are to developed jointly with representatives of affected rail systems, with full consideration given to nationwide industry norms, and must define the minimum acceptable standards for safety and performance;
- Conduct, at a minimum, inspections of track and rolling stock; train signals and related equipment; hazardous materials transportation, including the loading, unloading, and labeling of hazardous materials at shippers', receivers', and transfer points; and train operating practices to determine adherence to state and federal standards. DOT personnel may enforce any safety regulation issued under the Federal Government's preemptive authority over interstate commerce;
- Assess penalties, in accordance with the applicable federal regulations, for the failure to adhere to the state standards;
- Administer rail operating and construction programs, which programs shall include the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings, the administering of the programs by DOT including participation in the cost of the programs;
- Coordinate and facilitate the relocation of railroads from congested urban areas to non-urban areas when relocation has been determined feasible and desirable from the standpoint of safety, operational efficiency, and economics;
- Implement a program of branch line continuance projects when an analysis of the industrial and economic potential of the line indicates that public involvement is required to preserve essential rail service and facilities;
- Provide new rail service and equipment when:
    - Pursuant to the transportation planning process, a public need has been determined to exist;
    - The cost of providing such service does not exceed the sum of revenues from fares charged to users, services purchased by other public agencies, local fund participation, and specific legislative appropriations; and
    - Service cannot be reasonably provided by other governmental or privately owned rail systems. DOT may own, lease, and otherwise encumber facilities, equipment, and appurtenances to these, as necessary to provide new rail services; or DOT may provide such service by contracts with privately owned service providers;
    - Furnish required emergency rail transportation service if no other private or public rail transportation operation is available to supply the required service and such service is clearly in the best interest of the people in the communities being served. Such emergency service may be furnished through contractual arrangement, actual operation of state-owned equipment and facilities, or any other means determined appropriate by the DOT secretary;

- Assist in the development and implementation of marketing programs for rail services and of information systems directed toward assisting rail systems users;
- Conduct research into innovative or potentially effective rail technologies and methods and maintain expertise in state-of-the-art rail developments; and
- Exercise other functions, powers, and duties in connection with the rail system plan, as are necessary to develop a safe, efficient, and effective statewide transportation system.

Proposed Changes

Commuter Rail-Intercity Rail Impact Study

CS/HB 1399 directs DOT to undertake a comprehensive review and study of commuter railroad programs and intercity railroad system plans and their impacts to the state. Specifically, the review and study will encompass:

- A review of funding specifically for commuter rail and intercity rail systems including facilities, equipment, right of way, operating costs for the past 20 years.
- An assessment of commuter rail impacts on state, local, or regional transportation systems or Florida's economic development.
- Proposed commuter rail programs and intercity rail transportation system improvements, projects and facilities throughout the state to be undertaken in the next 20 years.
- A 10 and 20-year finance plan for improvements determined by the study.
- A prioritization process for commuter rail and intercity rail projects.
- Detailed information regarding negative impacts caused by current or projected commuter rail programs and intercity rail transportation system projects, or freight railroad traffic in urban areas of the state.
- Negative impacts of commuter rail programs, and intercity rail transportation system projects funded by the state, including those associated with the Orlando commuter railroad project, and a finance plan to eliminate negative impacts not later than eight years after commuter rail programs and intercity rail transportation system projects begin operation.

The bill requires the report containing the detailed evaluations and recommendations be submitted to the Governor, The President of the Senate, and the Speaker of the House of Representatives on or before January 15, 2009.

Liability Insurance and Marketing for Commuter Rail Corridors

CS/HB 1399 provides DOT with authority necessary for concluding the acquisition, ownership, construction, operation, maintenance and management of the Central Florida Rail Corridor, and for updating of the existing agreement as to the South Florida Rail Corridor, by authorizing the purchase of insurance and establishment of a self-retention fund to insure against liability risks for DOT or other users of the rail corridors. The liability provisions specifically:

- Define the boundaries of the rail corridor and the classes of people DOT intends to allow in the rail corridor. Those people being the passengers, people with the passengers, and people visiting or working in other developments within the corridor (i.e. food stands or kiosks at the station;
- Provide DOT with the authority to enter contracts with a freight operator that owns a rail corridor DOT acquires property rights in and provides the parameters DOT must stay within while negotiating terms;
- Provide that DOT may be solely responsible for any loss, injury or damage to commuter rail passengers, rail corridor invitees or trespassers, regardless of circumstances or cause. DOT may agree to pay for 100 percent of injuries to its passengers, its invitees, and trespassers if an accident occurs;

- Provide that if only one train is involved in an incident, DOT may be solely responsible for any loss, injury or damage, if the train is a DOT train, or a train other than a DOT or freight rail operator's train. However, if in an instance when only a freight rail operator train is involved the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers, rail corridor invitees and trespassers; and, the freight rail operator is solely responsible for its property and all of its people in any instance when its train is involved in an incident;
- Provide that if any train involved in an accident that is not a DOT train or freight operator train (other train) may be treated as if it is a DOT train when determining the allocation of liability between DOT and the freight operator;
- Provide that when more than one train is involved in an incident:

    - If a DOT train (or other train treated as a DOT train), and a freight operator train collide, freight operator pays 100 percent of its property and people on its train and DOT pays 100 percent of its property, passengers and people in the corridor. DOT and freight operator split 50/50 damages to people and property outside the corridor.
    - If DOT train, freight operator train and non-DOT train all involved in an accident, the freight operator pays 100 percent of its property and people on its train and DOT pays 100 percent of its property, passengers and people in the corridor. DOT and freight operator split 50/50 damages to people and property outside the corridor. Any payment by the non-DOT/non-freight operator to those injured or damaged outside of the rail corridor will not reduce the equal sharing responsibility of the freight operator to below one-third of the total third party loss.

- Authorizes DOT to purchase $200 million in liability insurance and establish the self-insurance retention fund for payment of the deductible limits of insurance, for several types of users of the rail corridor, and includes a provision that any of the parties covered under the insurance shall pay a reasonable monetary contribution to cover the cost.
- Provide that DOT entering into any indemnity contract, purchasing the liability insurance, or establishing self-insurance retention fund does not waive sovereign immunity for torts or increase the existing $100/200k waiver of sovereign immunity limits. The proposal also applies to other governmental entities operating commuter rail on a public owned rail corridor that are designated by DOT or are under contract with the DOT.
- Provide that operators, dispatchers, and providers of security for rail services and rail facility maintenance providers in the South Florida Rail Corridor or any DOT owned rail corridor, or any of their employees or agents, performing services under contract with and on behalf of the South Florida Rail Corridor, DOT, or a governmental entity that is under contract with DOT to perform services or a governmental entity designated by DOT, shall be considered agents of the state while acting within the scope of and pursuant to guidelines established in contract or by rule. In addition, the existing sovereign immunity section currently applicable only to the South Florida Rail Corridor is amended to reflect the coverage of any new or future rail corridor.

Expressway Authorities

Current Situation

The Florida Legislature has created nine expressway authorities in chapter 348, F.S. A tenth, the Miami-Dade County Expressway Authority, was created by the Miami-Dade County Commission pursuant to the process in Part I of Chapter 348, F.S. Their purpose is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include a combination of local-government officials or residents and Governor appointees who decide on projects and expenditure of funds.

Section 348.0003, F.S., specifically provides:

- An authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, and such engineers and employees, permanent or temporary, as it may require and shall determine the qualifications and fix the compensation of such persons, firms, or corporations.
- An authority may employ a fiscal agent or agents; however, the authority must solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents.
- An authority may delegate to one or more of its agents or employees such of its power as it deems necessary to carry out the purposes of the Florida Expressway Authority Act, subject always to the supervision and control of the authority.
- The Governor for misconduct, malfeasance, misfeasance, or nonfeasance in office may remove members of an authority from office.
- Members of an authority are entitled to receive from the authority their travel and other necessary expenses incurred in connection with the business of the authority. They may not draw salaries or other compensation.
- Members of an authority shall be required to comply with the applicable financial disclosure requirements of s. 8, Art. II of the State Constitution. These requirements include:
    - Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value together with one of the following:
        - A copy of the person's most recent federal income tax return; or
        - A sworn statement, which identifies each separate source and amount of income that exceeds $1,000. The forms for the independent commission shall prescribe such source disclosure and the rules under which they are to be filed established in subsection (f), and such rules shall include disclosure of secondary sources of income.

Proposed Changes

CS/HB 1399, amends s. 348.0003, to require all expressway, transportation, toll, and bridge authorities be subject to the financial disclosure requirements of s. 8, Art. II of the State Constitution.

The bill also authorizes expressway authorities to increase tolls to the Consumer Price Index, or similar inflation factor, at least every 5 years, but no more frequent than once a year, if the expressway's executive board approves the increase by a majority vote during a public meeting.

Regional Transportation Authorities

Current Situation

Currently, there are five regional transportation authorities created in chapter 343, F.S.; the South Florida Regional Transportation Authority (SFRTA); the Central Florida Regional Transportation Authority; the Tampa Bay Commuter Transit Authority; the Northwest Florida Regional Transportation Corridor Authority; and the Tampa Bay Area Regional Transportation Authority. These authorities have various membership structures, and powers and duties. All have some form of bond financing authority to carry out their individual transportation missions.

Proposed Changes

CS/HB 1399 proposes to abolish the Tampa Bay Commuter Transit Authority. In 1990, the Legislature created the Tampa Bay Commuter Transit Authority for Hillsborough, Pinellas, Pasco, Hernando and

Polk. It was supposed to build and manage a commuter rail system. This authority has been inactive for several years and its funding will be assumed by TBARTA.

Outdoor Advertising

Current Situation

Florida has an estimated 20,900 permitted outdoor advertising signs on 13,700 billboard structures. Chapter 479, F.S., governs billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by DOT and obtain permits, regulating height, size and other characteristics of the billboards. The majority of the provisions specify DOT's duties and authority as they relate to permitting, removing, and otherwise regulating billboards along the interstate highway system and the federal–aid primary highway system, which includes state roads.

Because federal dollars are used to build and maintain federal and state roads in Florida, DOT must adhere to federal laws and regulations concerning billboards. The Highway Beautification Act of 1965 (chapter 23 U.S. Code section 131), chapter 23 Code of Federal Regulations section 750, and Federal Highway Administration (FHWA) Policy Guidance relate to the regulation of billboards. Under federal law, regulation, and policy guidance:

- Nonconforming signs must remain substantially the same as they were on the effective date of the state law or regulations that made them nonconforming;
- Reasonable repair and maintenance of the sign, including a change of advertising message, is allowable;
- Nonconforming signs may continue as long as they are not destroyed, abandoned, or discontinued. States may pass laws for exceptions to be made for nonconforming signs destroyed due to vandalism and other criminal or tortuous acts;
- Each state must develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights; and
- When nonconforming rights are terminated under state law, the sign must be removed as an illegal sign without compensation. However, lawfully erected signs, even if they are now nonconforming, cannot be removed by a state without payment of just compensation.

Proposed Changes

This proposal would impact several areas of Chapter 479, F.S., and is primarily technical in nature. Specifically the bill would:

- Recognize that an "automatic changeable facing" may be changed by other than mechanical means;
- Provide a more stable regulatory structure by requiring permits for signs on the State Highway System outside an urban area, rather than an outside incorporated area (the urban area boundaries change much less frequently than those of incorporated areas);
- Require that all outdoor advertising permit tags be displayed on the upper 50 percent of the sign facing to ensure visibility. This provision authorizes DOT to establish a fee, by department rule, for the replacement tags in an amount equal to the actual cost or providing the tag (the current service fee is $3). Under this provision, the permittee may provide his or her own tag for no fee, if all specifications in DOT rule in complied with;

- Allow a time period for correction of violations of the chapter, but would not allow a correction period for a permit application containing knowingly false or misleading information; and

- Revise language to be consistent with the description of the controlled area in s. 479.01, F.S.

According to DOT, these technical revisions are expected to resolve known problems and make the regulatory process more manageable for both the agency and the regulated industry.

Logo Signs

Current Situation

Current law requires that signs on the interstate highway system are regulated and approved by the Federal Highway Administration (FHWA). Section 479.261(1), F.S., requires DOT to establish a logo sign program for the rights of way of the interstate highway system to provide information to motorists about available gas, food, lodging, camping, and attraction services. The FHWA approves new categories of signs from time to time. However, the statute as currently written does not allow the addition of other categories of services as they are federally approved.

Permits for participation in the gas, food, lodging, and camping categories are based on a set annual fee. However, participation in the attractions category is unique in that an admission fee for entry to the attraction is required, and permits must be awarded annually by the DOT to the highest bidder.

DOT is required to establish permit fees in an amount sufficient to offset the total cost of administering the logo sign program, and the current fee is capped at $1,250. The annual fee is currently set at $1,000 by DOT rule. The program is implemented and operated through a privatized consultant contract that will expire on December 31, 2008.

The existing logo program is essentially based on a first-come, first-served priority with the option for qualifying businesses to renew participation on an annual basis. This has resulted in the generation of extensive waiting lists of other businesses desiring to participate in the Logo program for several interchanges on the interstate system where the structure displaying the particular business category is full.

Proposed Changes

CS/HB 1399 authorizes signs for “other” services “which are approved by the FHWA.

The bill also removes the admission fee and the competitive bid requirements for the attractions category of services. This change is intended to encourage more business participation and improve administration of the program and make the attractions category consistent with the annual permit fees of the other Logo categories.

In addition, the bill deletes the $1,250 cap on the annual permit fee for business participants. The fees for logo signs are to be established by DOT rule in a reasonable amount determined by factors such as, population, traffic volume, market demand, and costs. Proceeds are to be deposited in the State Transportation Trust Fund to be used for transportation purposes after all costs have been accounted for.

The bill provides for establishing a periodic rotation for program participants by agency rule. According to DOT, this will provide for the eventual replacement of participating businesses at interchanges where waiting lists exist in that respective category.

I-95 Corridor Study

CS/HB 1399 directs DOT to complete a study of transportation alternatives for the travel corridor parallel to Interstate 95 which takes into account the transportation, emergency management, homeland security, and economic development needs of the state.

C. SECTION DIRECTORY:

Section 1. Amends s. 163.3177, F.S., revising requirements for comprehensive plans; providing for airports, land adjacent to airports, and certain interlocal agreements relating thereto in certain elements of the plan.

Section 2. Amends s. 163.3182, F.S., relating to transportation concurrency backlog authorities; providing legislative findings and declarations; expanding the power of authorities to borrow money to include issuing certain debt obligations; providing a maximum maturity date for certain debt incurred to finance or refinance certain transportation concurrency backlog projects; authorizing authorities to continue operations and administer certain trust funds for the period of the remaining outstanding debt; requiring local transportation concurrency backlog trust funds to continue to be funded for certain purposes; and providing for increased ad valorem tax increment funding for such trust funds under certain circumstances.

Section 3. Amends s. 287.055, F.S., conforming a cross reference.

Section 4. Amends s. 316.0741, F.S., requiring vehicles to comply with certain federal standards to be driven in an HOV lane at any time, regardless of occupancy; and providing for the DHSMV to limit or discontinue issuance of decals for the use of HOV facilities by hybrid and low-emission and energy-efficient vehicles under certain circumstances.

Section 5. Amends s. 316.193, F.S., revising the prohibition against driving under the influence of alcohol; and revising the blood-alcohol or breath-alcohol level at which certain penalties apply.

Section 6. Amends s. 316.2397, F.S., authorizing county correctional agencies to use blue lights on vehicles when responding to emergencies.

Section 7. Amends s. 316.302, F.S., revising references to rules, regulations, and criteria governing commercial motor vehicles engaged in intrastate commerce; providing that the DOT performs duties assigned to the Field Administrator of the Federal Motor Carrier Safety Administration under the federal rules and may enforce those rules.

Section 8. Amends s. 316.515, F.S., revising restrictions on use of certain agriculture-related vehicles; providing for exemptions from width limitations for certain farming or agricultural equipment; providing conditions for use of such equipment; authorizing certain movements without a Department of Transportation overwidth permit; providing lighting requirements for certain overwidth equipment.

Sections 9 and 10. Amends ss. 316.613 and 316.614, F.S., revising vehicle weight restrictions on vehicles that require child restraints and safety belts.

Section 11. Amends s. 316.656, F.S., revising the prohibition against a judge accepting a plea to a lesser offense from a person charged under certain DUI provisions; and revising the blood-alcohol or breath-alcohol level at which the prohibition applies.

Section 12. Amends s. 320.02, F.S., as amended by section 28, chapter 2006-290, Laws of Florida, exempting mopeds from the motorcycle endorsement requirements.

Section 13. Amends s. 322.64, F.S., providing that refusal to submit to a breath, urine, or blood test disqualifies a person from operating a commercial motor vehicle; providing a period of disqualification if a person has an unlawful blood-alcohol or breath-alcohol level; providing for issuance of a notice of

disqualification; revising the requirements for a formal review hearing following a person's disqualification from operating a commercial motor vehicle.

Section 14. Amends s. 334.044, F.S., requiring the DOT to maintain certain training programs; and authorizing such programs to provide for incremental increases to base salary for employees successfully completing training phases.

Section 15. Amends s. 336.41, F.S., requiring counties and municipalities to award construction contracts by competitive bid.

Section 16. Amends s. 336.44, F.S., conforming a cross reference;

Section 17. Amends s. 337.0261, F.S., providing legislative intent; Revising the sunset date for the Strategic Aggregate Review Task Force; providing for an assessment of aggregate construction materials in the state; providing duties of the Department of Transportation, the Department of Environmental Protection, the Department of Community Affairs, and the Florida Geological Survey; providing for measures of the assessment; directing the Strategic Aggregate Review Task Force to prepare findings and make reports to the Governor, the Legislature, and the Department of Transportation; authorizing the Department of Transportation to adopt rules; providing for funds to be used for the purposes of this section.

Section 18. Amends s. 337.11, F.S., providing for the Department of Transportation to pay a portion of certain proposal development costs; requiring DOT to advertise for bid a minimum of 25 percent of its construction contracts which add capacity as design-build contracts;

Sections 19 and 20. Amends ss. 337.14 and 337.16, F.S., conforming cross references.

Section 21. Amends s. 337.18, F.S., providing contractor performance bonds required may be obtained directly from the Department of Transportation.

Section 22. Amends s. 337.185, F.S., providing for the State Arbitration Board to arbitrate certain claims relating to maintenance contracts; and providing for a member of the board to be elected by maintenance companies as well as construction companies.

Section 23. Amends s. 337.403, F.S., requiring the department or local governmental entity to pay the cost of relocation of a utility that is found to be interfering with the use, maintenance, improvement, extension, or expansion of a public road or publicly owned rail corridor if the facility serves the department or governmental entity exclusively; providing for the department to incur the costs of relocation underground of certain electric facilities.

Section 24. Amends 337.408, F.S., providing for public pay telephones and advertising thereon to be installed within the right-of-way limits of any municipal, county, or state road.

Section 25. Amends s. 338.01, F.S., requiring new and replacement electronic toll collection systems to be interoperable with the DOT's system.

Section 26. Amends s. 338.165, F.S., revising provisions for use of certain toll revenue.

Section 27. Amends s. 338.2216, F.S., directing the Florida Turnpike Enterprise to implement new technologies and processes in its operations and collection of tolls and other amounts; authorizing the Department of Transportation to establish variable toll rates; providing contract bid requirements for fuel and food on the turnpike system.

Section 28. Amends s. 338.223, F.S., conforming a cross-reference.

Section 29. Amends s. 338.231, F.S., revising provisions for establishing and collecting tolls.

Section 30. Amends s. 339.12, F.S., revising requirements for aid and contributions by governmental entities for transportation projects.

Section 31. Amends s. 339.135, F.S., revising the DOT's authority to amend the adopted work program.

Section 32. Amends s. 339.155, F.S., revising provisions for development of the Florida Transportation Plan.

Section 33. Amends s. 339.2816, F.S., relating to the small county road assistance program.

Sections 34 and 35. Amends ss. 339.2819 and 339.285, F.S., conforming cross-references.

Sections 36 and 37. Amends ss. 341.301 and 341.302, F.S., providing definitions relating to commuter rail service, rail corridors, and railroad operation for purposes of the rail program within the Department of Transportation; authorizing the department to assume certain liability on a rail corridor; authorizing the department to indemnify and hold harmless a railroad company when the department acquires a rail corridor from the company; providing allocation of risk; providing a specific cap on the amount of the contractual duty for such indemnification; authorizing the department to purchase and provide insurance in relation to rail corridors; authorizing marketing and promotional expenses; extending provisions to other governmental entities providing commuter rail service on public right-of-way.

Section 38. Creates s. 341.3023, F.S., requiring the Department of Transportation to review and study commuter rail programs and intercity rail transportation systems; requiring a report to the Governor and the Legislature.

Section 39. Repeals Part III of Chapter 343, F.S., abolishing the Tampa Bay Commuter Transit Authority.

Section 40. Amends s. 348.0003, F.S., providing for financial disclosure for expressway, transportation, bridge, and toll authorities.

Section 41. Amends s. 348.0004, F.S., authorizing expressway authorities to increase toll rates to the Consumer Price Index, or similar inflation factor under certain circumstances.

Section 42. Amends s. 479.01, F.S., revising provisions for outdoor advertising; and revising the definition of the term "automatic changeable facing".

Section 43. Amends s. 479.07, F.S., revising a prohibition against signs on the State Highway System; revising requirements for display of the sign permit tag; and directing the DOT to establish by rule a fee for furnishing a replacement permit tag.

Section 44. Amends s. 479.08, F.S., revising provisions for denial or revocation of a sign permit.

Section 45. Amends s. 479.11, F.S., revising a prohibition against certain signs located outside an urban area.

Section 46. Amends s. 479.261, F.S., revising provisions for the logo sign program; revising requirements for businesses to participate in the program; authorizing the DOT to adopt rules for removing and adding businesses on a rotating basis; removing a provision for an application fee; revising the provisions for an annual permit fee; and providing for rules to phase in the fee.

Section 47. Amends s. 768.28, F.S., expanding the list of entities considered agents of the state; providing for construction in relation to certain federal laws.

Section 48. Directing the Department of Transportation to conduct a study of transportation alternatives for the Interstate 95 corridor.

Section 49. Transfers the Office of Motor Carrier Compliance within the Department of Transportation to the Department of Highway Safety and Motor Vehicles by type two transfer; directs the Division of Statutory Revision of the Office of Legislative services to prepare a reviser's bill to conform the Florida Statutes to organizational changes made by this act.

Sections 50-89. Reenacts ss. 316.066(3)(a), 316.072(4)(b), 316.1932(3), 316.1933(4), 316.1937(1) and (2)(d), 316.1939(1)(b), 316.656(1), 318.143(4) and (5), 318.17(3), 320.055(1)(c), 322.03(2), 322.0602(2)(a), 322.21(8), 322.25(5), 322.26(1)(a), 322.2615(14)(a) and (16), 322.2616(15) and (19), 322.264(1)(b), 322.271(2)(a), (c) and (4), 322.2715(2), (3)(a), (c), and (4), 322.28(2), 322.282(2)(a), 322.291(1)(a), 322.34(9)(a), 322.62(3), 322.63(2)(d) and (6), 322.64(1), (2), (7)(a), (8)(b), (14), and (15), 323.001(4)(f), 324.023, 324.131, 327.35(6), 337.195(1), 440.02(17)(c), 440.09(7)(b), 493.6106(1)(d), 627.7275(2)(a), 627.758(4), 790.06(2)(f) and (10)(f), 903.36(2), and 907.041(4)(c), F.S., to incorporate references in changes made by the act.

Section 90. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 4, requiring HOV's to comply with federal standards has an indeterminate fiscal impact. According to DOT, federal law reveals no specific penalty to be assessed against a state for non-compliance, and the DOT assumes the EPA final rule will set forth that penalty. It is expected that the penalty will involve the diversion of use of federal funds for construction purposes to some other program. The number of $5 decals issued could go down if a facility is identified as degraded. DHSMV administrative expenses for decal issuance could decline if an HOV facility is identified as degraded and issuance is limited or discontinued. County tax offices that issue decals could experience a reduction in decal issuance and administrative expenses as described for DHSMV above. Nonpayment of tolls for use of HOT lanes that were formerly HOV lanes is not expected to present a fiscal impact, as vehicles currently eligible to be driven in HOV lanes do not pay tolls.

Section 7, revising references to federal rules, regulations, and criteria governing commercial motor vehicles engaged in intrastate commerce may prevent the loss of about $7 million annually in federal Motor Carrier Safety Assistance grant funds.

Sections 11 and 13, revising DUI provisions and enforcement, may prevent the loss of about $5 million annually in federal safety grant funds.

Section 29, authorizing DOT to recover administrative costs for toll collection would positively impact the State Transportation Trust Fund, the Turnpike Trust Fund and other toll facility revenues.

Section 43, authorizing DOT to set by rule a service fee, in an amount that recovers actual cost, for replacement of lost, stolen, or destroyed permit tags placed on outdoor advertising signs would have a positive fiscal impact on the State Transportation Trust Fund. The amount is indeterminate due to the fact it is unknown how many tags will be replaced. The current $3 fee is well below actual cost for the tags.

Section 46, eliminating the cap on Logo signs on the interstate would have positive fiscal impact on the State Transportation Trust Fund. This amount is indeterminate due to the fact the fees have not been established by DOT rule at this time.

2. Expenditures:

Section 17, requires a $700,000 non-recurring General Revenue appropriation to be deposited into the State Transportation Trust Fund to cover the costs associated with the SARA.

Section 18, authorizing DOT to pay stipends to unsuccessful contractors for bid proposal costs will have a negative fiscal impact on the State Transportation Trust Fund. Due to the nature of the work program, DOT is not capable of making a long term estimate for costs associated with these payments. Under current DOT practice, such stipends are paid as determined by the agency.

Section 23, requiring DOT to pay all costs associated with the removal or relocation of utilities when the utility being relocated exclusively serves DOT could have a negative impact on the State Transportation Trust Fund should a project require removal or relocation of utilities that exclusively serve DOT; and requiring DOT to pay all costs associated with the relocation of certain underground electrical utilities could have a negative fiscal impact on the State Transportation Trust Fund.

Section 25, requires all tolling technology to be compatible. This results in standardization throughout the state and may result in indeterminate implementation costs. Currently, the only incompatible system in the state is in Miami-Dade County on the Rickenbacker and the Venetian Bridges. According to DOT, Miami-Dade County is currently working towards making its system compatible.

Sections 36 and 37, authorize DOT to purchase $200 million in liability insurance related to the CSX-Commuter rail project. The annual premium is expected to be approximately $2 million, which could be partially offset with user fees paid by CSX for freight operations in the corridor.

Section 38, requiring DOT to conduct a study of commuter rail and intercity rail programs' impacts on the state could have an insignificant negative fiscal impact on the State Transportation Trust Fund. DOT has not determined the costs associated with the study at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Section 15, requiring the counties and municipalities to competitively bid more construction and reconstruction projects could have a fiscal impact to local governments, However, it is difficult for the counties and cities to quantify the fiscal impact in any meaningful way.

Section 23, requiring a governmental entity to pay all costs associated with the removal or relocation of utilities when the utility being relocated exclusively serves the governmental entity could have a negative impact on local government revenues should a project require removal or relocation of utilities that exclusively serve the governmental entity.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Sections 11 and 13, revising DUI provisions and enforcement, would impact person's who drive under the influence alcohol.

Section 15, requires local governments to competitively bid more construction and reconstruction projects out to the private companies. These private entities could see increased revenues.

Section 29, authorizes toll rates to include an amount necessary to cover the costs of administration for convenience toll collection methods, this would increase toll rates paid by citizens using a convenience method.

Section 41, authorizes the expressway authorities to increase toll rates to the CPI, or similar inflation factor at least every 5 years, but no more than once a year.

Section 43, revising the outdoor advertising permit tag fee would have initial cost to the industry to relocate or place tags in accordance with the statute. However, this is spread over 2 years to allow this to occur as part of routine maintenance activities and the number of replacement tags requested is expected to decrease.

Section 46, eliminating the cap on Logo signs on the interstate could have a negative or positive impact on businesses requesting these signs. This amount is indeterminate due to the fact the fees have not been established by DOT rule at this time.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties or municipalities have to raise revenue.

The mandates provision appears to apply to this bill because the bill may require counties and municipalities to spend funds or take an action requiring the expenditure of funds. Section 23 requires a governmental entity to pay all costs of the removal or relocation of utilities under certain circumstances. The amount of these expenditures is not known; therefore, it is not clear whether the insignificant fiscal impact exemption to the mandates provision applies. Article VII, section 18(a), of the state constitution provides an exception for laws that apply to all persons similarly situated. Since, the provisions of Section 23 apply to all governments, not just cities and municipalities, the exception appears to apply and cities and counties will be bound by the law if the legislature determines that the law fulfills an important state interest.

Section 15 of the bill requires counties and municipalities to competitively bid certain construction projects. The amount of any additional expenditure required by cities and counties because of this provision is unknown at this time; therefore, it is not clear whether the insignificant fiscal impact exemption applies. In the absence of an applicable exemption or exception, Article VII, section 18(a) of the state constitution provides that counties and municipalities shall not be bound by laws requiring them to spend funds or take actions requiring them to spend funds unless the legislature determines that the law fulfills an important state interest and the law is passed by 2/3ds of the membership of each house of the legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill specifically grants rulemaking authority to DOT for provisions included in the bill. Specifically:

- Directing the department to establish by rule a fee for furnishing a replacement permit tags for outdoor advertising signs.
- Directing the department to adopt rules for removing and adding businesses to the Logo sign program on a rotating basis.
- Directing the department to adopt rules to administer the provisions in preparation of the strategic aggregate resource assessment (SARA).
- Directing the department to adopt rule related to eligible hybrid and all eligible other low-emission and energy-efficient vehicles driven in an HOV lane.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HB 1399 was considered by the Infrastructure Committee on March 20, 2008, and the bill was reported favorably with ten amendments:

- Amendment 1 clarifies the process for DOT's legislative recommendations with reference to a future EPA's final rule relating to the eligibility of hybrid and other low-emission and energy efficient vehicles.
- Amendment 2 deletes section 3 of the bill which prohibited the DHSMV from issuing a license plate or revalidation sticker to a person who is on a list of persons with outstanding toll violations; specified that the list may be supplied by the clerk of court; and prohibited issuance of the plate or sticker until the person's name is no longer on the list or until the person presents a receipt from the clerk showing all amounts owed have been paid.
- Amendment 3 changes a date to reference existing federal law related to commercial motor vehicle rules and regulations.
- Amendment 4 deletes a federal law reference related to transportation planning processes; this provision referenced future changes to the law creating an unlawful delegation.
- Amendment 5 allows county correctional agencies to use blue lights on vehicles when responding to emergencies.
- Amendment 6 revises comprehensive plan requirements related to airports, land adjacent to airports, and certain related interlocal agreements.
- Amendment 7 specifies financial disclosure requirements for all statutorily created expressway and transportation authorities.
- Amendment 8 abolishes the Tampa Bay Commuter Transit Authority which has been inactive for a number of years.

- Amendment 9 provides a process for DOT notification to local governments of certain work program amendments and to create a process for local review and comment on the amendments.

- Amendment 10 provides DOT with authority necessary for concluding the acquisition, ownership, construction, operation, maintenance and management of the Central Florida Rail Corridor, and for updating of the existing agreement as to the South Florida Rail Corridor, by authorizing the purchase of insurance and establishment of a self-retention fund to insure against liability risks for the Florida Department of Transportation or other users of the rail corridors. The amendment also authorizes the Department to advertise and market commuter rail operations; provides that entering any indemnity contract, purchasing liability insurance, or establishing self-insurance retention fund does not waive sovereign immunity for torts or increase the existing waiver of sovereign immunity limits. Finally, the amendment revises the existing sovereign immunity section currently applicable only to the existing South Florida Rail Corridor to reflect the coverage of state owned rail corridors.

HB 1399 was considered by the Economic Expansion and Infrastructure Council on April 11, 2008, and the bill was reported favorably with 9 amendments adopted as a council substitute:

- Amendment 11-Strike all to incorporate the traveling amendments and add new provisions that specifically:
    - Creates a new reimbursement program for small counties with a cap of $200 million. Allows local governments in small counties with a population of less than 150,000 to advance a maximum of $200 million high priority projects not included in the adopted work program, however, only authorizes state reimbursements as appropriated by the legislature.
    - Revises the existing reimbursement program to advance a maximum of $500 million high priority projects not included in the adopted work program. This provision increases the cap on these advancements from $100 million to $500 million.
    - Reinstates the Small County Road Assistance Program beginning in FY 2012-13.
    - Requires DOT to bear all costs associated with underground utility relocation if a private entity has transferred the utility to a public entity within the last 5 years.
    - Provides that effective July 1, 2011, all outdoor advertising permit tags be attached to the upper 50 percent of the sign facing as to be visible to the travel way.
    - Eliminates the cap on logo signs costs, but requires DOT to establish by rule the factors that will be included in these cost determinations.
    - Authorizes DOT to establish variable toll rates. (Needed for the I-95 managed lanes project.)
    - Requires DOT to study commuter rail corridors and intercity rail systems and provide a report related to funding, financing, maps, projected revenues, and negative impacts by current or projected rail system projects in urban areas of the state.
    - Requires DOT, in coordination with DCA, DEP, the regional planning councils , and the local governments, to prepare a Strategic Aggregate Resource Assessment (SARA) that will include, but is not limited to, area maps of construction aggregate materials; 5, 25, and 50 year aggregate demand projections, and the volume of aggregate available from existing mines.
    - Extends the term of the Strategic Aggregate Task Force to remain until March 1, 2010.
    - Includes a non-recurring appropriation of $700,000 in GR, to be matched 50-50 with local funds, to fund the requirements of the assessment.
    - Requires DOT's Turnpike Enterprise to individually solicit competitive responses to contracts that include, but are not limited to, fuel, and food, maintenance, and construction contracts on the Turnpike System.
    - Provides guidelines for pay telephones, and their advertisements, on the right-of-ways of highways. Does not allow pay telephone booths or any advertisements they may include to be located in the right-of-way of a limited access facility.
    - Authorizes DOT to pay contractor stipends to unsuccessful bidders for costs associated with the proposals. While FDOT believes they currently have this authority and stipends are currently paid by the agency; DOT is requesting language to more clearly define their authority to pay stipends.

- Revises weight restrictions for vehicles exempt from vehicle restraints from 5,000 pounds to 26,000 pounds.
- Makes clarifying changes to the language adopted by the Infrastructure Committee in amendment number 6, related to comprehensive plan requirements related to airports, land adjacent to airports, and certain related interlocal agreements.
- Exempts mopeds from the motorcycle endorsement requirements.
- Requires local governments to award construction contracts to private contractors through a competitive bid process.

- Amendment 12 requires DOT to advertise for bid at least 25 percent of its construction contracts, which add capacity, as design-build contracts.

- Amendment 13 authorizes the expressway authorities to increase toll rates at least every 5 years, but no more frequent than once a year, to the CPI, or similar inflation factor, if approved by the authority's board in a public meeting.

- Amendment 14 consolidates the Office of Motor Carrier Compliance into the Florida Highway Patrol by a type two transfer.

- Amendment 15 revises provisions related to commercial driver's license holders driving under the influence.

- Amendment 16 provides that farming or agricultural equipment if operated in the daylight hours on a public road that is not a limited access facility are exempt from height and width limitations and that no permit is required for these type vehicles if operated within a 50 mile radius of the owner's property, with the exception of equipment being delivered by a dealer to a purchaser.

- Amendment 18 directs DOT to study alternative corridors to I-95 to relieve congestion on I-95.

- Amendment 20-Technical-this amendment should have been included in the strike all as it was adopted in Infrastructure Committee.

- Amendment 21-Technical-this amendment should have been included in the strike all as it was adopted in Infrastructure Committee.