STORAGE NAME: h0591z.tr ****FINAL ACTION****
DATE: July 16, 1999 ****SEE FINAL ACTION STATUS SECTION****

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
TRANSPORTATION
FINAL ANALYSIS

BILL #: HB 591 (PCB TR 99-02)

RELATING TO: Transportation

SPONSOR(S): Committee on Transportation and Rep. K. Smith

COMPANION BILL(S): Compare CS/1ST ENG/H 0311, 1ST ENG/H 0579, CS/H 1021, CS/H 1147, 1ST ENG/H 1437, H 1689, H 2085, 2ND ENG/S 0182, CS/CS/S 0940, CS/CS/S 0972, CS/1ST ENG/S 1306, CS/S 1314, CS/S 1354, S 1422, 2ND ENG/S 1446, CS/CS/2ND ENG/S 1566, CS/S 1578, S 1920, CS/S 2306, 2ND ENG/S 2350, S 2490

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) TRANSPORTATION YEAS 8 NAYS 0
(2) COMMUNITY AFFAIRS YEAS 7 NAYS 0
(3) FINANCE & TAXATION (W/D)
(4)
(5)

I. FINAL ACTION STATUS:

06/18/99 Approved by the Governor; Chapter No. 99-385, Laws of Florida.

II. SUMMARY:

This bill is the transportation legislative package for 1999 and includes a wide range of transportation issues. Major components of the bill include:

The Department of Transportation's (DOT) 1999 Legislative Proposals (HB 1147/SB 972). The bill addresses a number of transportation infrastructure financing issues and conforms state law to recent changes in federal transportation law, the Transportation Equity Act for the 21st Century (TEA-21). Many of the provisions in the bill are related to department operations and are intended to allow DOT to operate more efficiently.

Eminent Domain Revisions (SB 940). The bill includes a number of proposals by the Senate Committee on Comprehensive Planning, Local and Military Affairs related to presuit notice, negotiation, and business damages in Eminent Domain proceedings. The bill creates a presuit negotiation process in eminent domain proceedings which requires that all condemning authorities provide notice, a written offer of compensation, and, if requested, a copy of the appraisal report upon which the offer is based, to the property owner before instituting condemnation litigation.

Results of the 1997 State Government Function/Activity Review Interim Project (HB591/SB 1314). As part of this project, obsolete or incorrect statutory language relating to transportation issues was identified. The bill removes obsolete language, corrects cross references, and otherwise, makes a number of technical changes to certain existing transportation laws. These changes are accomplished through revising, reenacting, and amending various provisions of Florida law.

Other Issues. In the course of consideration by the Legislature numerous transportation related provisions (some contained in other bills) were included in this bill. See the Section by Section Analysis for details.

The bill results in administrative cost-savings and increased departmental efficiencies which are expected to have an overall positive fiscal impact on DOT operating costs. The bonding and other financing provisions in the bill have the potential for significant positive fiscal impacts on DOT's 5-year work program of transportation projects. For more details about the bill's impacts, see the Fiscal Analysis and Economic Impact Statement under Part III.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Because of the comprehensive nature of the transportation related changes contained in this bill, the present situation relating to each issue is set out in the Section-by-Section portion of this bill analysis.

B. EFFECT OF PROPOSED CHANGES:

Because of the comprehensive nature of the transportation related changes contained in this bill the effect of each proposed change is set out in the Section-by-Section portion of this bill analysis.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Bond Programs: DOT may be required to disclose certain bond related financial information on an annual basis in accordance with the Securities and Exchange Commission (SEC) reporting guidelines. Similar disclosures are required with existing department bonding programs.

Fixed Guideway Bond Program: DOT would be required to negotiate agreements with local governments or transportation authorities and participate in the development of bond documents required to implement these provisions.

Inspection of Hazardous Materials on Florida Rail Lines The bill authorizes DOT to conduct hazardous materials inspections on Florida rail lines, including the loading, unloading and labeling of hazardous materials at shippers', receivers' and transfer points. This would impact the private sector as manufacturers, shippers and receivers of hazardous materials would periodically and randomly be subject to inspections.

Eminent Domain The bill requires condemning authorities to comply with a presuit negotiation process including providing property owners with written offers of compensation for property to be condemned.

(3) any entitlement to a government service or benefit?

Eminent Domain The bill increases the number of businesses that will be entitled to business damage payments in eminent domain proceedings.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapters 20, 73, 127, 166, 206, 212, 215, 234, 288, 311, 316, 320, 331, 334 - 339, 341, 343, 348, 349, 373, 378, 427, 479, and 951, F.S. (See Section by Section Analysis for detailed list).

E. SECTION-BY-SECTION ANALYSIS:

Section 1. DOT Organizational Changes: The bill contains several minor changes to the department's organizational structure as contained in s. 20.23, F.S.

First, the bill clarifies the Florida Transportation Commission's role in reviewing the status of the state transportation system and recommending improvements to the governor and legislature to include reviewing all components of the system. These components include highway, transit, rail, seaport, intermodal development and aviation modes of transporting people and goods. Also, major transportation policy initiatives or revisions by DOT must be submitted to the commission for review.

Second, the bill allows DOT to change the name of "The Office of Construction" within DOT to "The Office of Highway Operations." The Office of Construction was reorganized in 1998 to include The Office of Construction, The Office of Maintenance, Traffic Engineering, Contracts

Administration and the Materials Testing Laboratory in Gainesville. All of these offices were combined to form "The Office of Highway Operations" within DOT.

DOT Business Assistance Loan Guarantee Program: The bill also directs DOT to establish by rule a program for assisting businesses impacted by transportation projects to receive federal loans under Title 13 C.F.R. Part 120 (this is Small Business Administration's small business loan program). DOT's program could guarantee up to 90 percent of an SBA loan to qualified businesses.

Section 2. Right-of-Way Acquisition and Bridge Construction Bonds: Section 206.46, F.S., currently provides for transfer of up to 6 percent of revenues deposited into the State Transportation Trust Fund (STTF) annually to pay debt service on Right-of-Way Acquisition and Bridge Construction Bonds. The transfer is also limited by a total amount of $115 million. Section 337.276, F.S., limits the use for debt service payments to 90 percent of the transfer amount, or a maximum debt service of $103.5 million. The bill amends section 206.46(2), F.S., to increase program funding to 7 percent of STTF revenues annually transferred into the Right-of-Way Acquisition and Bridge Construction Trust Fund with a maximum dollar amount of $135 million. The bill also provides that the total maximum transfer of $135 million may be used for debt service payments.

These changes would support additional bonding capacity of $475 million in 30-year bonds at a 5% interest rate. After debt service is subtracted, this provision would add $370 million to the 5-year work program. The issuance of additional bonds will provide increased funding for the purchase of right-of-way and bridge repairs and replacements. Providing this funding through bonds allows the transportation improvements today thereby saving future increases in the cost of right-of-way land and bridge construction projects. The funding source for the increased debt service would be state transportation revenues composed primarily of state gas taxes and motor vehicle fees. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding.

Minimum Funding for Public Transportation Projects: Section 206.46(3), F.S., provides that DOT must commit a fixed percentage of state revenues deposited in the STTF for public transportation projects. For FY 1999-00, the percentage is 14.3 percent, and for each fiscal year thereafter the percentage is 15 percent. The bill clarifies that DOT funding for commuter rail projects pursuant to Chapter 343, F.S., is included in the percentage funding allocation required to be committed to public transportation projects.

Section 3. Transportation and Land Use Study Commission: This commission was created in 1998 to evaluate the statutory provisions relating to land use and transportation coordination and planning issues. This evaluation included a review of the roles of local government, regional planning councils, state agencies, regional transportation authorities, and metropolitan planning organizations. The report submitted to the legislature contained 40 recommendations for actions (both legislative and administrative) to be implemented. This bill directs DOT and the Department of Community Affairs to submit legislative proposals to implement the report's recommendations by December 1999. The legislative proposals must be financially feasible within projected revenues.

Section 4. Fixed Guideway Transportation Financing/Bonding: This bill would authorize DOT or commuter rail authorities and regional transportation authorities to issue bonds to fund fixed guideway projects. A "fixed-guideway transportation system" means a public transit system for transporting people by a conveyance, or a series of interconnected conveyances, specifically designed for travel on a stationary rail or other guideway.

The bill creates s. 215.615, F.S., to allow DOT and local governmental entities having jurisdiction of a fixed guideway system, to enter into an interlocal agreement to provide for the financing by either party of total project costs by the issuance of revenue bonds. Each party would be contractually liable for an equal share of debt service. Projects must comply with DOT's major capital investment policy guidelines, and must be included in the work program. DOT's share of debt service would be payable from, and is limited to, a maximum of two percent of all state revenues deposited into the STTF. These debt service payments would be part of the 15 percent of transportation revenues committed to public transportation projects pursuant to s. 206.46, F.S. The local share would be payable from any available revenues other than revenues of the DOT.

This bill will permit accelerated financing of fixed guideway projects and would permit the Department to assist in the financing of fixed guideway projects where the demand for financing exist today, rather than waiting many years to accumulate adequate financing. The public will receive the benefits of the fixed guideway systems sooner, and local governments will be better able to incorporate these public transportation systems into their growth management and local comprehensive planning initiatives. A project must first be submitted to and approved by an act of the Legislature before it can be funded under this bond program.

State transportation tax revenues are projected to total nearly $1.7 billion in the current fiscal year. Two percent of this amount (about $33 million in FY 1999-00) would be available annually for debt service under this bill. If DOT elected to request the issuance of bonds to finance a local government authority's share of a given project's cost, the local government authority would be required by interlocal agreement (with the DOT) to repay any such disbursements made by the DOT. This could generate up to $600 million from the sale of bonds, with the actual amount determined based on interest rates, bond covenant provisions, bond ratings and coverage requirements at the time of the sale. After debt service is subtracted and the local match is added, this provision would add $550 million to the 5-year work program. Since the annual debt service is based on a percentage of STTF revenues (similar to the Department's right-of-way and bridge bond program), bonding capacity will grow in the future as state transportation tax revenues increase. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding.

Sections 5 - 8. Motorized Bicycles: Florida law requires that a motorized bicycle propelled by a combination of human power and an electric helper motor rated at not more than 200 watts and capable of propelling the vehicle at a speed of not more than 10 miles per hour on level ground, must be registered and pay a one-time $5 registration fee. This bill modifies the definition of motorized bicycles to delete the maximum wattage criteria and increase the maximum speed criteria to 20 mile per hour. This bill provides that such motorized bicycles are not required to be registered. Further, the operator of a motorized bicycle must be at least 16 years old.

Section 9. Public Transit Buses/Right-of-Way: A number of transit systems are trying to use "pull-out bays", which are passenger loading areas along the sides of roadways, to get publicly owned transit buses out of the traffic flow when stopping to load passengers. Under current traffic laws, a bus that has pulled into a pull-out bay must wait for all vehicles to pass before returning to the traffic flow. This makes it difficult for the bus to reenter traffic and continue on its route. This bill creates s. 318.0815, F.S., to provide that the driver of another vehicle must yield the right of way to a publicly owned bus that has signaled and is reentering the traffic flow from a designated bus pull-out bay. A violation of this section would be a noncriminal traffic infraction classified as a moving violation. The bill specifically provides that the bus driver is not relieved from the duty to drive with due regard for the safety of all persons using the road.

Section 10. Traffic Control Devices/Headstart Program: This bill requires DOT to install and maintain traffic and pedestrian control devices on state-maintained roads if requested by a local government for schools that receive federal Headstart funding.

Sections 11 - 12. Motor Carrier Compliance: This bill contains various technical and clarifying changes regarding the following statutory provisions relating to commercial motor vehicles and DOT enforcement of truck weight and safety regulations:

➤Amend s. 316.302(1)(b), F.S., to update the reference to the current safety regulations contained in the Code of Federal Regulations. DOT's Motor Carrier Compliance Office is charged with enforcement of laws relating to the operation of commercial motor vehicles within the state, including those safety regulations applicable to owners or drivers engaged in intrastate commerce. The proposed change to s. 316.302(1)(b), F.S., would authorize DOT to enforce the most current safety regulations applicable to these owners or drivers.

➤Amend s. 316.302(2)(e), F.S., to remove a reference to drug testing provisions contained in the Code of Federal Regulations which no longer exists and to add a reference to a requirement regarding vehicle maintenance. The drug testing provisions contained in 49 C.F.R. part 391, subpart H are now obsolete and have been replaced by provisions contained in 49 C.F.R. part 382. Operators or drivers of commercial motor vehicles engaged in interstate or intrastate commerce are currently, and remain, subject to part 382.

➤Amend s. 316.302(2)(e)&(f), F.S., to add a reference to a requirement regarding vehicle maintenance. The Department participates in a nation-wide program known as SafetyNet, which collects data regarding defects in commercial motor vehicles discovered during roadside inspections. The Department is experiencing difficulty in data entry functions because the SafetyNet program calls for entry of a reference to 49 C.F.R. s. 396.3(a)(1), which is not referenced in the Florida Statutes. These changes to s. 316.302(2)(e)&(f), F.S., impose no new or additional requirements on commercial motor vehicle owners or operators and simply resolves the Department's data entry problem.

➤Amend s. 316.3025(3)(c), F.S., to correct a cite to the Code of Federal Regulations. The reference to 49 C.F.R.. s. 395.5 should have been 49 C.F.R. s. 397.5, which addresses attendance and surveillance regulations regarding commercial motor vehicles transporting hazardous materials.

Section 13. Commercial Motor Vehicles/Registration Penalties: Section 316.545, F.S., provides for unlawful weight and loads for commercial motor vehicles. This law provides that the penalty for driving a truck with an expired registration is based on the weight and configuration of the truck and can exceed $2,000, plus the payment of the appropriate registration fee. The bill amends this section to provide a maximum penalty charge of $1,000 for operating a truck where the registration or license plate has not been expired for more than 90 days. This penalty is in addition to payment of the appropriate registration fee for the truck.

Sections 14 & 15. State Seaport Program: The Florida Seaport Transportation and Economic Development (FSTED) Program is provided by statute with a minimum of $8 million funding per year for the program. The funds are used to fund approved port projects on a 50-50 matching basis with any of Florida's deepwater ports. In 1996 the Legislature provided an additional $15 million of annual funding which may be bonded to fund projects in the FSTED program. In 1997 the Legislature provided that beginning in 2001 an additional $10 million per year will be deposited into the State Transportation Trust Fund for the purpose of funding Florida's seaport program and for funding seaport intermodal access projects of statewide significance. The revenues may be bonded by the seaports and provisions relating to project eligibility for seaport program funding were modified to authorize the use of FSTED program funds for seaport intermodal access projects identified in the 5-year Florida Seaport Mission Plan.

This bill advances the seaport funding that was supposed to begin in fiscal year 2001-02 to the 1999-00 fiscal year. The bill also provides that the local match required for state seaport funding is reduced from 50 percent to 25 percent. The growing importance of trade to Florida's economic prosperity makes the modernization and globalization of Florida's seaports and intermodal access a priority issue. In order to ensure that there is adequate oversight and control of state investments in local seaports and intermodal access roads, the bill directs the Office of the Auditor General, the Office of Program Policy Analysis and Governmental Accountability, and the Department of Banking and Finance to conduct a financial and performance audit of the FSTED program. This report is due to the legislature prior to the 2000 legislative session.

Section 16. Road Jurisdiction/Operation & Maintenance Responsibility: Under s. 335.0415, F.S., jurisdictional responsibilities, and operations and maintenance (O&M) responsibilities of various governmental entities (DOT, counties, and cities) for public roads were frozen as the responsibilities that existed on July 1, 1995. Due to an effective date of June 11, 1995 for the act that created this section, some local governments have requested clarification regarding the 19 day gap and its effect on O&M responsibilities. The bill amends this section to change the date on which the freeze on transfers of these responsibilities became effective from July 1, 1995 to June 10, 1995.

Section 17. Scenic Highway Designation: This bill would authorize DOT, after consultation with other state agencies and local governments, to designate public roads as scenic highways. Current law authorizes DOT, after consultation with other state agencies and local governments, to designate scenic highways on the State Highway System. The bill amends section 335.093(1), F.S., to conform the Florida Scenic Highway Program to the National Scenic Byways Program by authorizing DOT to designate both state and local roads as scenic highways. The criteria for designation remains unchanged. Similarly, designation does not effect or limit customary uses in commercial or industrial areas adjacent to designated highways or on the ability of local

governmental entities to control or limit uses in commercial or industrial areas within their jurisdiction.

Section 18. Fast Response Contracting: Section 337.11, F.S., provides the contracting authority for the DOT. If the DOT Secretary determines an emergency exists in regard to the restoration or repair of any state transportation facility and delays due to competitive bidding would be detrimental to the interests of the state, then the provisions requiring competitive bidding do not apply. Occasionally, circumstances arise which do not warrant declaration of an emergency or reduced safety as defined by Chapter 252, F.S., but which it would be in the public's interest to more timely proceed with a project than contracting using normal advertisement and competitive bidding as provided by s. 337.11, F.S.

This bill amends s. 337.11(6)(c), F.S., to allow DOT to enter into contracts up to the threshold amount provided in s. 287.017, F.S., for Category Four ($60,000 or less) for construction or maintenance of roadway and bridge elements without competitive bidding. One of the following reasons would be required for such a contract award:

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

When the work exists within the limits of an existing contract, the department is required to make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract. This change would allow the Department flexibility to resolve low cost repair and maintenance issues without going through the competitive bid process.

Owner Controlled Insurance Plan: Section 337.11(16), F.S., provides authority for an owner controlled insurance program (OCIP) on any DOT construction project. The OCIP provides insurance coverage for the DOT and for worker's compensation and employers liability and general liability and builders risk for contractors and subcontractors in conjunction with all work performed on DOT projects. The transportation contracting industry has raised concerns about the cost and administrative burden of using OCIPs on transportation projects. The bill repeals authority for the owner controlled insurance program.

Section 19. Contractor Intermediate Delinquency: Section 337.16, F.S., provides for the disqualification of delinquent contractors. Currently, intermediate delinquency exists, 1) when a specified time or date for performing a special milestone stage of the work has expired, and the contractor has not completed the work for that milestone stage; or, 2) when the allowed contract time has not expired and the percentage of dollar value of completed work is 15 percent or more below the dollar value of work that should have been completed under the approved working schedule for the project. According to DOT, the current process encourages contractors to file claims against DOT to get time extensions sufficient to resolve the delinquency; and encourages contractors to file for hearings under Chapter 120, F.S., or to file claims in civil court. Attempts by DOT to suspend or revoke contractor certificates of qualification to bid based on intermediate delinquency involve substantial work effort to investigate and prosecute, and have been largely unsuccessful. The bill amends s. 337.16, F.S., to eliminate intermediate delinquency as grounds for suspension or revocation of a contractor's certificate of qualification to bid on DOT construction contracts. Under this bill, delinquency in contractor performance would exist only when the allowed contract time has expired and the contract work is not complete.

Section 20. Appraiser Discipline: Section 337.162, F.S., requires professional and occupational licensees working for DOT to report violations of state professional licensing laws or rules to the Department of Business and Professional Regulation (DBPR). Section 455.227(1)(i), F.S., requires professional and occupational licensees to report violations of state professional licensing laws or rules to DBPR. Failure to submit a complaint about violations may be grounds for disciplinary action. Chapter Law 98-250, Laws of Florida, amended s. 475.624(1), F.S., to exempt appraisers from the reporting requirement of s. 455.227(1)(i), F.S., and possible disciplinary action. However, those same appraisers remain potentially liable for failure to report violations as

a result of s. 337.162, F.S., if they are employed by the DOT. The bill amends s. 337.162, F.S., to conform the section to s. 475.624, F.S., thus relieving DOT appraisers from the obligation of reporting violations of state professional licensing laws or rules to DBPR.

Section 21. Contracts/Surety Bonds: Section 337.18(1), F.S., requires a surety bond from successful bidders on DOT projects to ensure successful completion of a given construction project in the event of a contractor default, and provides all bonds be payable to the Governor. In current practice, surety bonds are made payable to DOT. The bill amends s. 337.18(1), F.S., to require that surety bonds posted by successful bidders on DOT projects be made payable to DOT. Payment to DOT will ensure that the surety bond funds are deposited into the State Transportation Trust Fund and available for the intended purpose of completion of the relevant construction project.

Liquidated Damages Schedule: Section 337.18(2), F.S., requires that DOT include in each contract a reasonable estimate of the damages that would be incurred by DOT as a result of the contractor's failure to timely complete the contract work. DOT must establish and incorporate into every contract a schedule of daily liquidated damage charges. DOT bases the schedule on the average construction, engineering, and inspection costs experienced by the department on contracts over the two preceding fiscal years. Further, the schedule is divided in s. 337.18 (2), F.S., into specified categories based on original contract amounts. However, in the absence of authority to adjust the contract amount categories, DOT's estimates of damages can be skewed due to under-representation or over-representation in a given contract amount category. This subsection is amended to remove the schedule of contract amount categories used to calculate liquidated damages and to allow the DOT to adjust the categories. This would allow the DOT the opportunity to ensure each category contains a valid number of samples and would result in a more realistic estimate of damages.

Section 22. Contracts/State Arbitration Board: Section 337.185, F.S., provides for the State Arbitration Board to facilitate the prompt settlement of claims arising from construction contracts between DOT and its contractors. All claims in an amount up to $100,000 per contract must go before the State Arbitration Board, and at the contractor's option, all claims up to $250,000 per contract that cannot be resolved by negotiation may go before the board. Section 337.185, F.S., is amended to raise the contractual claim amount which must go to arbitration from $100,000 to $250,000 and the contractual claim amount which may go to arbitration at the claimant's option from $250,000 to $500,000. In addition, the bill allows claims of up to $1 million to go to arbitration, if both DOT and the contractor agree. This change will allow the Department to settle more claims through the State Arbitration Board, thereby reducing litigation.

The State Arbitration Board is composed of three members: one selected by DOT; one selected by the construction companies under contract with the department; and one chosen by agreement of those two selected members. Each member serves a 2-year term. Board members which are not employees of DOT may be compensated for their time not to exceed $750 per day. Compensation to board members is paid for by fees paid to the board by the party requesting arbitration. The bill amends these provisions to provide that the DOT secretary may select an alternate or substitute to serve as the DOT's member of the arbitration board, and to clarify that DOT's board member may not be compensated if the person is a current employee of DOT. The bill provides a maximum hourly compensation for board members of $125 per hour and raises the daily maximum pay from $750 to $1,000. The bill also raises the maximum arbitration fee that may be charged to cover administrative costs and compensation of the board from $2,500 to $5,000 per claim.

Section 23. Right-of-Way Options Purchase: Section 337.25, F.S., authorizes DOT to purchase, lease, exchange or otherwise acquire any land or buildings or other improvements necessary to secure transportation rights-of-way for existing, proposed or anticipated state transportation facilities. The section does not authorize DOT to purchase options to purchase land for such purposes. Section 337.25(1), F.S., is amended by the bill to authorize DOT to purchase options to purchase land for transportation facilities. This authorizes DOT to make a commitment to purchase right-of-way property at some point in the future. DOT would have this option in situations where a property is now available, but funding for the entire purchase price does not currently exist. In addition, this authority would enable DOT to preclude development of a piece of property needed for an anticipated transportation project, thereby preventing increased damages.

Replacement Housing: Currently, DOT may acquire property as replacement housing for persons displaced by federally assisted transportation projects and may negotiate for the sale of such property as replacement housing. In such sales, the state must receive no less than its investment in the property or fair market value, whichever is lower. Section 337.25(4)(i), F.S., is amended by the bill to authorize DOT to acquire property as replacement housing for persons displaced by both state and federally funded transportation projects.

Section 24. Joint Use of Right-of-Way/Rail Speed Limitation: Section 337.251, F.S., authorizes DOT to lease property for joint public-private development. A private firm, Bee Line Monorail System, Inc., have been developing a privately funded magnetic levitation train system to be operated on rights-of-way of the Bee Line Expressway leased by DOT to the private firm. The Florida High-Speed Rail Transportation Act as set forth in ss. 341.3201-341.386, F.S., is the process that DOT followed in awarding a franchise to build a high speed rail project. Section 341.327, F.S., provides that a high-speed rail transportation system may not be authorized, financed, constructed, or operated other than pursuant to the High-Speed Rail Transportation Act's franchise and certification requirements. Because "high speed rail" is statutorily defined to mean rail travel at speeds in excess of 120 miles per hour, DOT has limited the Bee Line project to less than 120 miles per hour. The bill provides specific statutory authority for the Bee Line project to travel at any safe speed.

Section 25. Utility Relocation - Contracts: Most transportation construction contracts involve utilities located on or along road rights-of-way, with utilities being relocated in many instances. Relocation of these utilities occur in areas where clearing of vegetation and other site preparation is necessary for the road project. Currently, this clearing work is part of the construction contract with the contractor doing the clearing and grubbing and then the utility company relocates the utilities. This sometimes results in delays in construction projects due to scheduling conflicts and lack of coordination between the utility and the road contractor. This bill amends s. 337.403, F.S., to allow DOT to contract directly with the utility company for clearing and grubbing work necessary for utility relocation. This work would occur in advance of road construction, thus avoiding project delays.

Section 26. Mitigation Study: The bill provides a legislative finding that successful mitigation performed by the public and private sectors for impacts resulting from activities regulated under Part IV of Chapter 373, F.S., has helped to preserve the state's natural resources. Appropriate mitigation can consist of one or a combination of: a) restoration of wetlands or other surface waters; b) enhancement of wetlands or other surface waters; c) creation of wetlands or other surface waters; d) preservation of wetlands and other surface waters, or; e) net improvement of water quality or aquatic habitat. The bill requires a study by the Office of Program Policy Analysis and Government Accountability of the mitigation options implemented from 1994 to the present, and the issuance of a report by January 31, 2000. The study must consider the effectiveness and costs of the current mitigation options, and identify appropriate recommendations for statutory or rule changes to increase the effectiveness of mitigation strategies.

Section 27. Environmental Feasibility of Turnpike Projects: Currently, s. 338.223, F.S., authorizes DOT to acquire lands and property for proposed turnpike projects before making a final determination of the economic feasibility of a project. The bill amends this section to require DOT to have a determination of environmental feasibility before making advanced acquisition of lands and property for turnpike projects. The requirement for a determination of environmental feasibility does not apply to hardship and protective purchases of advance right-of-way by DOT. Hardship purchases are defined by the bill to include purchases from a property owner of a residential dwelling of not more than four units who is at a disadvantage due to health impairment, job loss, or significant loss of rental income. A protective purchase under the bill means a purchase to limit development, building, or other intensification of land uses within the right-of-way needed for transportation facilities. The section is further amended to require DOT to notify the Department of Environmental Protection (DEP) to allow DEP to comment on the purchase.

Section 28. Pledge to Turnpike Bondholders: Section 338.229, F.S., contains the state's pledge to Turnpike bondholders not to limit DOT's authority to build, maintain, and operate the Turnpike. This section contains other pledges regarding impairing the rights and remedies protecting bondholders. The bill authorizes the DOT to include restrictions on the sale or other transfer of portions of the Turnpike in bond covenants. This will further protect bondholders interests, and

should help to maintain the high ratings that Turnpike revenue bonds have been given by bond rating agencies.

Section 29. Toll Facilities Revolving Trust Fund (TFRTF): The TFRTF, as provided in s. 338.251, F.S., was created to encourage the development and to increase the financial feasibility of local revenue-producing road projects. The Tampa-Hillsborough County Expressway Authority (THCEA) has received loans totaling $8.9 million from the TFRTF over the last nine years. The bill requires that any funds repaid by THCEA will be re-advanced to THCEA for Brandon area feeder roads, capital improvements to increase system capacity and widening of the Lee Roy Selmon Crosstown Expressway.

Sections 30 & 31. Small County Road Assistance Program: Section 335.01, F.S., provides that all roads which are open and available for use by the public and dedicated to the public use are established as public roads. Public roads are divided into four systems: a) the State Highway System; b) the State Park Road System; c) the county road system, and; d) the city street system. Currently, s. 335.0415, F.S. provides that the jurisdiction of public roads and the responsibility for operation and maintenance of any road within the state, county, and city systems is that which existed on July 1, 1995. Prior to July 1, 1995, roads were assigned and transferred between the state, county and city systems based on the road's functional classification. Some smaller counties have indicated that they currently have jurisdiction over county roads that were previously state roads, but lack an adequate tax base to properly maintain these roads.

The bill creates the Small County Road Assistance Program within DOT. The program will assist small counties in resurfacing or reconstructing county roads. For the purposes of the bill, "small county" means any county which had a population of 75,000 or less in the 1990 federal census. There are 33 counties which meet this population requirement. Small counties would compete for Small County Road Assistance Program funds to resurface or reconstruct county roads. Any road classified as a county road as of June 10, 1995, would be eligible for the program. Projects which add capacity to a county road, such as adding lanes, would not be eligible for program funding.

To determine a county's eligibility to participate in this program, DOT will consider the local level of effort in maintaining county road, including the amount of local option gas tax and the ad valorem millage rate imposed by the county. DOT may also consider a county's offer to match program funds with local funds. At a minimum, a county must have either a local option gas tax rate of 6 cents per gallon and an ad valorem rate of 8 mills, or an ad valorem rate of 10 mills to be eligible for the program. There are 25 counties which currently meet at least one of these minimum levels of effort: Baker, Bradford, Calhoun, Columbia, DeSoto, Dixie, Gadsden, Gilchrist, Glades, Hardee, Henry, Highlands, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Sumter, Suwannee, Union, Wakulla, and Washington. Eight other small counties (Flagler, Franklin, Gulf, Hamilton, Holmes, Nassau, Taylor, and Walton) would have to increase either local option fuel tax rates or ad valorem millage rates to become eligible for the program.

The bill sets up a two tier process for prioritizing road projects for funding under the program. The primary criteria used to rank projects would be the physical condition of the road. This will ensure that the county roads in the worst condition will be addressed first. As secondary criteria to rank roads for funding DOT would consider whether a road:

- Is used as an evacuation route;
- Has a high level of agricultural travel;
- Is considered a major arterial route;
- Is considered feeder road, or;
- Has an impact on the public road system, or on the state or local economy.

To fund the program the bill provides that from fiscal year 1999-2000 until fiscal year 2009-2010, up to $25 million from the STTF may be used annually to fund the Small County Road Assistance Program. If a county road project is selected for program funding, DOT would include the project in its 5-year work program and is authorized to administer the resurfacing or reconstruction contract on behalf of the county. In addition, the bill amends s. 339.08, F.S., related to use of STTF moneys, to specifically authorize DOT to pay of county road projects selected under the Small County Road Assistance Program.

Sections 32 & 33. Transportation Planning & Metropolitan Planning Organizations/ TEA-21
Section 339.155, F.S., provides the transportation planning duties of DOT. The section provides 24 planning factors required by the federal Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA). Section 339.175, F.S. provides the planning requirements for Metropolitan Planning Organizations (MPO's). In accordance with ISTEA, both the MPO long and short-range plans, and the State Transportation Plan must be based on the 24 planning factors.

The Transportation Equity Act for the 21st Century (TEA-21) was passed by Congress in June of 1998. This bill conforms Florida's transportation planning requirements to the planning requirements of the new federal law by adding the TEA-21 planning factors to the current ISTEA planning factors. The bill also clarifies that the Florida Transportation Plan sets forth statewide long range transportation goals and objectives, clarifies the role of the short-range component as providing the policy framework for other Department plans and programs, and modifies the procedures for public participation in transportation planning.

Sections 339.155, and 339.175, F.S., are amended to provide that DOT and MPO plans consider 7 broad TEA-21 factors as follows:

(1) Supporting the economic vitality of the state and of metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency.

(2) Increasing the safety and security of the transportation system for motorized and non-motorized users.

(3) Increasing the accessibility and mobility options available to people and for freight.

(4) Protecting and enhancing the environment, promoting energy conservation, and improving quality of life through land use planning.

(5) Enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight.

(6) Promoting efficient system management and operation.

(7) Emphasizing the preservation of the existing transportation system.

Section 339.155, F.S., is amended to require DOT to consider, in addition to the seven planning factors: a) the concerns of local elected officials in nonmetropolitan areas; b) the concerns of Indian tribal governments and federal land management agencies; and, c) coordination of transportation plans with related planning activities outside of metropolitan planning areas.

Section 339.155, F.S., is further amended to clarify the role of the short-range component as providing the policy framework for other DOT plans and programs. The procedures of public participation in transportation planning are modified to allow public comment on the long-range component of the Florida Transportation Plan only during development and prior to substantive revisions, not prior to adoption of all subsequent amendments as in current law. The requirement that notices be published twice prior to the day of the hearing, with the first notice appearing at least 14 days prior to the hearing, is deleted. Notice is still required in a newspaper of general circulation within the area of each DOT district office.

In addition to the change in planning factors, s. 339.175, F.S., is amended to add intermodal and freight emphasis to the development of plans and programs; and to require cooperation on projects located within the boundaries of more than one MPO. The section is amended to authorize the designation of more than one MPO in a metropolitan planning area if the affected MPOs and the Governor agree such designation is appropriate; and, by clarifying MPO boundaries must include at least the metropolitan planning area, which is the existing urbanized area and the contiguous area expected to become urbanized with a 20-year forecast period. For an urbanized area designated as a nonattainment area, the boundaries of the metropolitan planning area in existence may be adjusted by agreement of the Governor and the affected MPOs.

The bill provides that transportation authorities not under the jurisdiction of a general purpose local government (such as an expressway, bridge, commuter rail, or other transportation authorities) will

have a voting representative on an MPO. If the transportation authority is represented on the MPO by a general purpose local government, a process must be established for expressing the interests of the authority to the MPO. The bill also authorizes a charter county with a population of more than 1 million to submit an alternative MPO membership reapportionment plan to the Governor for approval if the MPO demonstrates that such a plan fulfills specific goals and policies of that metropolitan planning area. The membership reapportionment plans must comply with all federal requirements relating to MPO membership, and must be approved by a three-fourths vote of the current MPO.

The section is further amended to provide the MPO financial plan may include, for illustrative purposes, additional projects that would be included in the long-range plan and Transportation Improvement Plan if additional resources were available. Estimates of available funds are to be cooperatively developed by DOT and the MPOs. The section requires MPOs to annually publish for public review the annual listing of projects for which federal funds have been obligated in the preceding year.

Section 339.155, F.S., was last amended to reflect requirements of ISTEA. This bill will conform Florida's transportation planning to the requirements of TEA-21. In addition, recent experience in developing the Florida Transportation Plan has raised the need to clarify the role of the plan and its relationship to the short-range component.

Section 34. Self-Retention Insurance Fund for Public Transit Projects The 1987-88 General Appropriations Act contained proviso language creating a $5 million self-retention fund in DOT to satisfy the requirements of the insurance provisions in the contract between DOT and CSX Transportation (CSX) to support Tri-Rail commuter service. That fund was created specifically to pay the deductible for an insurance policy covering Tri-Rail service and cannot be used to support other public transit projects. The bill creates subsection (14) of section 341.041, F.S., to authorize the creation and maintenance of a common self-retention insurance fund to support public transit projects throughout the state where there is a contractual or legal obligation to have such a fund in existence in order to provide public transit services. DOT is currently participating in the development of a light-rail system for the Orlando area, and DOT anticipates a similar requirement regarding a self-retention fund for that project. Based on DOT's experience with the Tri-Rail self-retention fund, it is projected that the current $5 million fund will be sufficient to cover the Orlando light rail project.

Section 35. Railroad Financing/TEA-2: The bill amends s. 341.302(6), F.S., to authorize DOT to secure and administer federal loans for rail projects. TEA-21 included a new federal credit program entitled "Railroad Rehabilitation and Improvement Financing." This bill will allow DOT to pursue federal loans for existing railroad capital improvements, to finance these improvements in Florida. According to DOT, it is sometimes more feasible to pursue a federal loan to finance a project rather than a grant or public debt financing. This will allow DOT to evaluate and, if appropriate, to assist local governments in securing federal loans for rail capital improvements. Any specific funding to be used in repayment of loans or to pay related costs would be specifically identified in the annual tentative work program submitted to the Legislature.

Hazardous Materials Inspection on Florida Rail Lines: The duties and responsibilities of DOT with regard to its rail program are defined in s. 341.302(8), F.S., which requires the department to implement a rail program and ensure the proper maintenance, safety, revitalization and expansion of the rail system. "Rail system" is defined by s. 341.301(5), F.S., as any common carrier fixed-guideway transportation system such as the conventional steel rail-supported, steel-wheeled system. With respect to inspection responsibilities, s. 341.302(8), F.S., authorizes DOT to conduct "inspections of track and rolling stock, train signals and related equipment, hazardous materials transportation, and train operating practices to determine adherence to state and federal standards." DOT has interpreted these provisions to mean that the department does not have the authority to conduct inspections of hazardous materials at manufacturers and shippers facilities. According to DOT, many potential defects can originate at these locations, and early detection of these safety-related problems is critical in order to prevent incidents prior to a shipment reaching the general railroad network for movement. The bill amends this subsection to expressly authorize DOT to conduct hazardous materials inspections on Florida rail lines, including the loading, unloading and labeling of hazardous materials at shipping, receiving and transfer facilities.

Section 36. Environmental Mitigation The bill makes technical and clarifying revisions to the existing program that allows DOT, the Department of Environmental Protection (DEP), and the water management districts (WMDs) to mitigate the impacts to wetlands and other sensitive habitats from DOT projects. Currently, DOT submits annually to DEP and WMDs a copy of the adopted work program and an inventory of wetlands and habitats which may be impacted by transportation projects in the first three years of the adopted work program. DOT transfers into the Ecosystem Management and Restoration Trust Fund within DEP $75,000 for each acre within the WMDs where an impact upon wetlands has been projected. This $75,000 statutory figure was originally based on estimates of the historical average cost per acre that DOT was spending on mitigation on a project-by-project basis in the early 1990's (usually this mitigation was conducted strictly on-site to restore or enhance wetlands directly linked to the impacted area). The funds are used by the WMDs for use in mitigation development and implementation activities. WMDs are not currently authorized to use these funds for support and development of mitigation plans, including staff support, design, engineering, and production.

In 1996, DOT transferred $12 million from the State Transportation Trust Fund to DEP for the surface water improvement management program and to address statewide aquatic and exotic plant problems within wetlands and other surface waters. This was considered an advance upon funds which DOT would have to pay for statewide wetland mitigation until the year 2000. DEP expended a portion of the funds on projects which were not credited toward mitigation of DOT's work program projects. As a result, DEP is indebted to DOT for a portion of those funds, or mitigation credits, and is not able to replace those funds by the year 2000 as required by current law.

Currently, mitigation plans prepared by the WMDs are updated annually to show changes in the DOT's work program. The plans are preliminarily approved by the WMD governing board and are then submitted to the Secretary of DEP for final approval.

The bill amends s. 373.4137, F.S., to authorize DOT to include additional projects identified in the tentative work program in the inventory of affected wetland habitats submitted to DEP and the WMDs beyond the first 3 years of the 5-year work program. The bill authorizes WMDs to use a portion of the $75,000 per acre mitigation funds paid by DOT for support and development of mitigation plans, including staff support, design, engineering, and production. The bill also requires that mitigation banks operators be consulted during development of annual mitigation plans. Each mitigation plan must also include an explanation of why mitigation banks were or were not used as a mitigation option in the plan.

The bill provides that preliminary approval of a mitigation plan by the WMD governing board does not constitute a decision that affects substantial interests as provided by Chapter 120, F.S., the Administrative Procedures Act. This clarifies that affected parties objecting to a mitigation plan may only file for an administrative hearing after the plan receives final approval from the Secretary of DEP.

The bill extends the time period that DEP has to use DOT's $12 million in wetlands mitigation funds to the year 2005 to allow DEP enough time to supplant the funds that were not credited toward mitigation of DOT projects. The bill also authorizes amendment of mitigation plans throughout the year, instead of once a year, to allow schedule changes or minor adjustments to the plans.

Section 37. Outdoor Advertising/Commercial and Industrial Zones Chapter 479, F.S., and the agreement between the State of Florida and the U.S. Department of Transportation requires outdoor advertising signs to be located in commercial or industrial areas. Section 479.01(3), F.S., requires DOT to use the Future Land Use Map (FLUM) of an adopted comprehensive plan as the controlling document in determining commercial and industrial land use areas for purposes of outdoor advertising sign permitting. In implementing this provision problems have resulted with the interpretation of comprehensive plans when the land development regulations are not considered along with the FLUM. The result has been confusion and excessive litigation in determining whether a specific property has been designated for commercial or industrial development. This has caused the Federal Highway Administration to question DOT's control of outdoor advertising signs.

The bill amends s. 479.01, F.S., to define "commercial or industrial zone" as a parcel of land designated for commercial or industrial use under both the Future Land Use Map (FLUM) of the comprehensive plan and the land development regulations adopted pursuant to Chapter 163, F.S. This would allow DOT to consider both land development regulations and future land use maps in determining commercial and industrial land use areas. In addition, if a parcel is located in an area designed for multiple uses on the FLUM of the comprehensive plan, and the land development regulations do not clearly designate the parcel for a specific use, the area will be considered an unzoned commercial or industrial area if it meets specified criteria. The bill also provides that land used for a communication tower is not recognized as a commercial or industrial activity for determining if an area designated for multiple uses is an unzoned commercial or industrial area.

Section 38. Outdoor Advertising/Permit Reinstatement Current law provides that DOT may reinstate an outdoor advertising sign permit that was not renewed because of a good faith error by the permit holder. This reinstatement may only be allowed within 90 days of DOT's notice of sign removal and the permittee must pay a $300 reinstatement fee. The bill modifies s. 479.07(8)(b), F.S., to provide that permits may be reinstated at any time prior to actual removal of the sign. The bill also changes the fixed fee of $300, to allow DOT to set reinstatement fees based on the size of the sign, but not to exceed $300. In those cases where there is no reinstatement, the bill provides that conflicting applications filed by other persons for the same or competing sites shall not be approved until after the sign subject to the expired permit has been removed.

Section 39. Outdoor Advertising/Small Business Sign Size Florida's permitting system to control the erection of signs lists 15 categories of signs that do not require a permit. Signs not exceeding 8 square feet located at a road junction with a state highway denoting the distance and direction to a small business do not require a permit if located in a rural area and a hardship is created for a small business because it is not visible from the road junction with the state highway system. The bill amends s. 479.16(15), F.S., to increase the size allowed for such signs to 16 square feet.

Section 40. International Registration Plan/New Purchase & Repair Exemption: The Department of Highway Safety & Motor Vehicles registers Florida-based commercial motor vehicles under the International Registration Plan (IRP). The IRP is an interstate cooperative agreement for the payment of vehicle registration fees. This enables carriers to register in a single state and put one license plate on each vehicle for the right to travel in all participating jurisdictions. The carrier's base jurisdiction collects annual fees for all other jurisdictions for which the carrier registers. Each IRP jurisdiction collects the necessary fees for all other IRP jurisdictions through which each carrier will travel and then distributes each state's share accordingly. Section 320.0715, F.S., sets out the IRP program. The bill amends this section to exempt vehicles from IRP requirements if it is a newly purchased vehicle being picked-up, or if the vehicle is brought into the state for repairs. The exemption only applies to an unloaded vehicle operated by its owner.

Section 41. Purpose of the Transportation Code: Section 334.035, F.S., provides that the purpose of the Transportation Code is to establish the responsibilities of the state, counties, and municipalities in the planning and development of the state's transportation systems, and to assure the development of an integrated, balanced statewide transportation system. The bill would add to this purpose by providing that the system should also enhance economic development through promotion of international trade and interstate and intrastate commerce.

Section 42. Model Classification and Pay Project: The bill amends s. 334.0445(1), F.S., to extend the current authorization for DOT's Model Classification and Pay Project through June 30, 2002. The project was authorized as a three-year pilot by the 1994 Legislature and was extended by the 1997 Legislature through June 30, 1999. The Department of Management Services (DMS) was directed by the Legislature to facilitate the statewide revision of the career service system. According to DOT, a suitable replacement for DOT's system has not yet been developed, and it does not appear that DMS will be able to develop and implement a new system by June 30, 1999. Without this extension, the Department would have to return to the State's Career Service and Classification Plan. This plan is more restrictive and complex to administer and would diminish DOT's current flexibility in work force utilization.

Section 43. Department of Transportation Program Objectives: Section 334.046, F.S., sets out statutory program objectives for DOT. Many of these program objectives are either obsolete or do

not provide clear direction to DOT for implementing state transportation programs. The bill rewrites these provisions to incorporate DOT's agency mission statement:

> .....To provide a safe, interconnected statewide transportation system for Florida's citizens and visitors that ensures the mobility of people and freight, while enhancing economic prosperity and sustaining the quality of our environment.

In addition, the bill directs that goals to be included in the Florida Transportation Plan must at a minimum address safety, system preservation, providing an interconnected system to support the state's economy, and providing travel choices to support communities.

Section 44. Effect of Legislative Designation of Transportation Facilities: The bill creates s. 334.071, F.S., to clarify the effect of road and bridge designations by the legislature. The bill provides that designation of a transportation facility is for honorary or memorial purposes or to distinguish a facility, and unless specifically provided for, does not require any local government or private party to change street signs, mailing address, or emergency telephone number "911" system listing. The bill further provides that such designations only require the placement of markers by the department at the termini or intersections specified in the act, and as authority for the department to place other markers as appropriate for the transportation facility being designated.

Section 45. Innovative Highway Projects Pursuant to s. 337.025, F.S., DOT is authorized to establish a program for highway projects demonstrating innovative techniques of highway construction and finance which have the intended effect of controlling time and cost increases on construction projects. This may include innovative bidding and financing techniques; accelerated construction procedures; and techniques that can reduce project life cycle costs. Prior to using an innovative technique, DOT documents the need for using the technique and identifies anticipated public benefits. Current law provides that DOT may enter into no more than $60 million in contracts annually for the purposes authorized by this section. The bill would increase this amount to $120 million annually.

Section 46. Allocation of Discretionary Highway Funds In developing the tentative work program, DOT is required by s. 339.135(4)(a), F.S., to allocate funds for new construction to the districts based on equal parts of population and motor fuel tax collections. This statutory formula does not apply to allocations to the turnpike district, because turnpike projects are funded from revenue bonds. Funds for resurfacing, bridge repair and rehabilitation, bridge fender system construction or repair, public transit projects, and other programs with quantitative needs assessments are allocated based on these assessments. Public transit block grants are distributed based on s. 341.052, F.S., which uses a weighted formula based on population, revenue miles, and number of passengers carried, to distribute the block grants. The bill codifies DOT's current policy of allocating at least 50 percent of discretionary highway funds to projects which are part of the Florida Intrastate Highway System (FIHS). The FIHS is a statewide system of limited access and controlled access facilities. The system is intended to provide a statewide transportation network that allows for high-speed and high-volume traffic movements within the state. The FIHS consists of Interstate highways, the Florida Turnpike, and interregional and intercity limited access and controlled access facilities.

Section 47. Intermodal Development Program: The Intermodal Development Program provided for under s. 341.053, F.S.,supports projects which provide improved access to intermodal or multimodal transportation facilities and terminals. Projects funded under this program include rail access to airports and seaports, interchanges and highways which provide access to airports, seaports and other multimodal facilities. The bill directs DOT to develop an intermodal development plan to define and assess the state's intermodal network and prioritize projects to integrate and interconnect the various modes of transportation. The bill also modifies the intermodal development program to direct priority to the Florida Intrastate Highway System and to projects recommended by the Freight Stakeholders Task Group.

Sections 48 - 53. St. Lucie County Expressway Authority: The St. Lucie County Expressway Authority (SLCEA) was created in 1983 under Part VII of Chapter 348, F.S., to finance, construct and operate an expressway system in St. Lucie County. SLCEA does not currently have any operational toll facilities, but is exploring the feasibility of constructing a toll bridge. The bill

modifies the SLCEA authorizing statutes to: a) Include reference to bridges, i.e, the authority becomes an "expressway and bridge authority" and to make the Indian River Lagoon Bridge a part of the authority's system; b) Allow the authority to issue its own revenue bonds, rather than using the Division of Bond Finance to issue bonds on behalf of the authority; and c) Exempt the property and bonds of the authority from taxation.

Section 54. Charter County Transit System Surtax: The Charter County Transit System Surtax (ss. 212.054 & 212.055, F.S.) is an optional sales surtax of up to 1cent on most transactions taxed under the state' sales tax. The Department of Revenue collects the tax and returns the revenue to the county of collection. The revenues must either be deposited in trust fund to be used for bus and fixed guideway systems, or may be remitted to an authority for roads and bridges, bus systems, or to finance or refinance road and bridge bonds. For Dade County, the revenues may be used for roads and bridges; an existing bus system; or for bonds issued to finance or refinance the construction of fixed guideway systems, roads, or bridges. The tax must be approved by referendum. Counties eligible to impose the tax include Broward, Dade, Duval, Sarasota, and Volusia. Duval County levied one-half cent of this surtax in 1989 to replace tolls collected by the Jacksonville Transportation Authority. Dade County had unsuccessful referendums to impose this surtax in 1978, 1990 and 1991.

The bill modifies the uses to which Charter County Transit System Surtax revenues may be used. First, the bill specifies that a county commission can use the revenues in any combination of approved uses. Second, the bill allows the revenues to be used by Dade County for the expansion, operation and maintenance of fixed guideway systems, and for the bond financing of bus systems. Further, if Dade County issues bonds to finance or refinance transportation infrastructure, no more than 25 percent of the funds may be used for non-transit (road and bridge) projects. A referendum on imposing the Charter County Transit System Surtax in Dade County has been scheduled for July 29, 1999. If approved, revenue from the surtax would be used to replace expressway toll revenue (see Section 55 below regarding expressway tolls), and to meet other transportation needs of the county.

Section 55. Dade County Expressway System Tolls: Part I of Chapter 348, F.S., is the "Florida Expressway Authority Act." The act allows any county, or two or more contiguous counties to form an expressway authority by resolution adopted by the board of county commissioners. An expressway authority may acquire, hold, construct, improve, maintain, operate, own, and lease an expressway system. An authority may only add additional expressways to an expressway system with the prior express written consent of the board of county commissioners of each county located within the geographic boundaries of the authority.

In 1994 Dade County formed an expressway authority pursuant to the Florida Expressway Authority Act. The authority operates 31 miles of toll expressways and has revenues of approximately $20 million per year. The bill provides that the Dade County Board of County Commissioners may alter or abolish tolls on expressways operated by the Dade County Expressway Authority if a local source of funds is provided to meet bond obligations. Dade County has until September 30, 1999, to adopt an ordinance altering of abolishing tolls and replacing revenues. A referendum on imposing the Charter County Transit System Surtax in Dade County has been scheduled for July 29, 1999 (see Section 54 above regarding this source of revenue). If approved, revenue from the surtax would be used to replace expressway toll revenue, and to meet other transportation needs of the county.

Private Expressway Proposals: The bill also provides that the Dade County Expressway Authority may consider proposals from private entities for the planning, design, engineering, construction, operation, ownership or financing of additional expressways in Dade County. The authority must adopt rules or policies for evaluating and considering private expressway proposals. Such additional expressways require the prior written consent of the Board of County Commissioners of Dade County.

Section 56. Dade County Metropolitan Planning Organization Membership: Section 339.175(2), F.S. provides the planning requirements for Metropolitan Planning Organizations (MPO's). Pursuant to this statute, Dade County is specifically authorized to have its county commission serve as the MPO. The Governor designates the county commission as the MPO, and appoints four additional voting members to the MPO. One of the additional members must be an elected official representing a municipality within the county, one must be an expressway authority

member, one must be a private citizen who resides in the unincorporated portion of the county, and one must be a school board member. The bill provides that in addition to these members, each city in Dade County with a population of 50,000 or more residents would have one voting representative on the MPO. Currently four municipalities in Dade County have populations of 50,000 or more.

Sections 57 - 64. Eminent Domain:

a. SUMMARY

The bill creates a presuit negotiation process in eminent domain proceedings which requires that all condemning authorities provide notice, a written offer of compensation, and, if requested, a copy of the appraisal report upon which the offer is based, to the property owner before instituting condemnation litigation. It requires notification of the proposed condemnation action to business owners located on the land to be taken, and requires business owners seeking business damages to provide the condemning authority with a written offer to settle business damages along with copies of business records which substantiate the business damage claim. A business owner must follow this procedure of submitting a written offer of business damages or the court must strike a business damage defense during a subsequent condemnation trial, unless the business owner demonstrates a good faith justification for failing to provide a written offer. The bill provides a time period, from January 1, 2000 to July 1, 2000 for condemning authorities to phase in the presuit negotiation provisions and for phasing in the presuit negotiation business damages provisions.

The bill provides that the condemning authorities shall pay all reasonable costs and attorney's fees incurred on behalf of a fee or business owner during the presuit negotiation process, including fees and costs incurred during mediation. Attorney's fees for presuit negotiation for business damage claims are based on statutory factors such as the rate customarily charged for comparable services; the time spent on the case and the expertise of the attorney; rather than being based on a calculation of the benefit the attorney achieves for the client. The bill also provides that no pre-judgment interest will be paid on the costs and attorney fees of a property or business owner.

The bill changes the minimum number of years that a business must be established to be eligible for business damages from five years to four years. The bill also provides that this change stands repealed effective January 1, 2003.

The bill deletes provisions relating to the calculation of attorney's fees for business damage claims. The bill clarifies the methodology for determining attorney's fees under the presuit negotiation process and when costs should be paid.

The bill repeals various provisions which authorize the Department of Transportation (DOT), municipalities, counties and several other condemning authorities to take an entire parcel of land, even if the entire parcel is not needed for the government project, where the acquisition costs would be less or equal to acquiring a portion of the property. In addition, the bill repeals a separate acquisition negotiation process for DOT.

The following is a detailed discussion of the present situation with respect to eminent domain laws and processes, including a description of the effect of the bill's provisions on the eminent domain authority of the state and its political subdivisions.

b. CONSTITUTIONAL PROVISIONS

Eminent domain is the power of the state to take private property for public use. Under both the federal and state constitutions that power is restricted. The Fifth Amendment to the U.S. Constitution provides that private property may not be taken for public use without just compensation. Article X, s. (6)(a), of the Florida Constitution, prohibits the government from taking property through the exercise of eminent domain without the payment of full compensation, as follows:

No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

The payment of compensation for intangible losses and incidental or consequential damages, however, is not required by the constitution, but may be granted or withheld as determined by the legislature. *Tampa-Hillsborough County Expressway Authority v. K.E. Morris Alignment Service, Inc.*, 444 So.2d 926, 928 (Fla. 1983). As such, the statutes authorizing these damages must be strictly construed and any ambiguity in these statutes must be construed against the claim of damages, with such damages to be awarded only when such an award appears clearly consistent with legislative intent.

c. STATUTORY PROVISIONS

1. Eminent Domain Process

Chapters 73 & 74, F.S., provide for eminent domain and proceedings supplemental to eminent domain, respectively. Pursuant to s. 73.021, F.S., the eminent domain process begins by the governmental entity seeking to take the property filing a petition with the circuit court of the county where the property lies. Section 73.031, F.S., provides that upon the filing of the petition, the clerk of the court is to issue a summons to all affected property owners to show cause as to why the property described in the petition should not be taken. The summons requires all affected property owners (defendants), named in the petition and all others who claim an interest in the property to serve written defenses on a day specified in the summons. The designated date must be not less than 28 nor more than 60 days from the date of the summons. A copy of the petition and summons must be served on all named resident defendants not less than 20 days before the return date. Nonresident and unknown or unlocated defendants are to be served by publication.

Offer of Judgment Section 73.032, F.S., provides that the petitioner (the governmental entity seeking to take the property) may make an offer of judgment no sooner than 120 days after the defendant has filed their written defenses and no later than 20 days prior to trial. A defendant may only make an offer for judgment for payment of compensation by the petitioner for an amount that is under $100,000, and such offer may be served on petitioner no sooner than 120 days after the defendant has filed an answer and no later than 20 days prior to trial.

The offer of judgment must: be in writing; settle all pending claims with that party or parties exclusive of attorney's fees and costs; state that the offer is made pursuant to this section; name the parties to whom the offer is made; briefly summarize any relevant conditions; state the total amount of the offer; and include a certificate of service. The offer of judgment is deemed rejected unless accepted by filing both a written acceptance and the written offer with the court within 30 days after service of the offer, or before the trial begins if less than 30 days. At the time an offer of judgment is made by the petitioner, the petitioner must identify and make available to the defendant the construction plans, if any, for the project on which the offer is based.

Notice Section 73.0511, F.S., provides that prior to instituting litigation, the condemning authority must notify the affected property owners of their statutory rights concerning attorney’s fees and costs.

Determination of Compensation Section 73.071, F.S., provides that at the trial on the petition for eminent domain, the court must impanel a jury of 12 persons as soon as practical to determine the amount of compensation for the property to be acquired. The amount of compensation is to be determined as of the date of trial, or the date upon which title passes, whichever occurs first. The jury is to determine solely the amount of compensation to be paid, with compensation to include, in part, the following:

1. The value of the property sought to be appropriated; and

2. When the condemning authority seeks to appropriate only a portion of the owner's property, any damages to the remainder of the property caused by the taking; these are known as severance damages. Severance damages may include the probable damages to a business.

Business Damages Subsection 73.071(3)(b), F.S., specifically provides that business damages are part of the compensation to be determined by a jury when less than an entire parcel of property is being taken for right-of-way by the DOT, county, municipality, board, district or other public body, and the effect of the taking is to damage or destroy an established business of more than five years standing. Any person claiming business damages must set forth in their written defenses to the condemnation complaint the nature and extent of the business damages.

Attorney's Fees & Costs Section 73.091, F.S., provides that the petitioner must pay all attorney's fees and reasonable costs incurred in the defense of the property owner, including appraisal fees, and accountant fees when business damages are applicable. Where the condemning authority and the property owner are unable to agree on fees the court decides what fees will be paid by the petitioner for the property owner's defense. The court must be guided by the amount the defendant would ordinarily have been expected to pay for the services if the petitioner were not responsible for the cost.

Generally, attorney's fees awarded to a defendant in an eminent domain action are based "solely on the benefits achieved for the client" pursuant to s. 73.092, F.S. The term "benefits" means the difference, exclusive of interest, between the final judgment or settlement and the last written offer made by the condemning authority before the defendant hires an attorney. If an attorney is hired before a written offer is made, benefits must be measured from the first written offer after the attorney is hired. The section further provides that attorney's fees based on benefits achieved are to be awarded according to the following schedule:

1. Thirty-three percent of any benefit up to $250,000; plus
2. Twenty-five percent of any portion of the benefit between $250,000 and $1 million; plus
3. Twenty percent of any portion of the benefit exceeding $1 million.

There are several exceptions to the calculation of attorney's fees based on the benefits achieved for the client. First, in the case where the condemning authority rejects an offer of judgment made by the property owner defendant and the final judgment is equal to or more than the offer of judgment, the court must calculate a reasonable attorney's fee based on factors listed in s. 73.092(2) and (3), F.S. Under these sections, attorney's fees are calculated based upon the attorney's time, expertise, the difficulty of the case, the amount of money involved, among other factors. Second, attorney's fees incurred in defeating an order of taking, for apportionment, or other supplemental proceedings are also calculated based on the factors listed in s. 73.09(2), and (3), F.S.

Taking Possession of Property Prior to Final Judgment Chapter 74, F.S., permits specified condemning authorities to take possession and title in advance of final judgment in eminent domain actions. The specified authorities include: the state, the DOT, any county, school board, municipality, expressway authority, regional water supply authority, transportation authority, flood control district, or drainage or subdrainage district, the ship canal authority, any lawfully constituted housing, port, or aviation authority; the Spaceport Florida Authority, or any rural electric cooperative, telephone cooperative corporation, or public utility corporation.

Presuit Negotiations Currently, chapters 73 & 74, F.S., contain no provision addressing presuit negotiations or mediation, although s. 337.271, F.S., does require the DOT to enter into negotiations with the property owner. Section 74.031, F.S., provides that at the time of filing a declaration of taking pursuant to this chapter, the petitioner must make a good faith estimate of value, based upon a valid appraisal of each parcel in the proceeding, which must be included in the declaration of taking.

2. Cost of Partial Taking versus Whole Taking

Subsection 337.27(2), F.S., enacted in 1984, provides:

> *In the acquisition of lands and property, the department may acquire an entire lot, block, or tract of land if, by doing so, the acquisition costs to the department will be equal to or less than the cost of acquiring a portion of the property. This subsection shall be construed as a specific recognition by the Legislature that this means of limiting the rising costs to the state of property acquisition is a public purpose and that, without this limitation, the viability of many public projects will be threatened.*

In 1988, the Florida Supreme Court heard a case in which a property owner challenged the constitutionality of this subsection, claiming that a whole taking under these circumstances violated the public purpose requirement for takings of private property. *Department of Transportation v. Fortune Federal Savings and Loan Association*, 532 So.2d 1267 (Fla. 1988). The Court upheld the minimization of acquisition costs as a valid public purpose for taking the whole property where doing so was less expensive than a partial taking. *Id*, at 1270.

3. Department of Transportation Acquisition Negotiation Statute

There is an additional statute regulating real property acquisition negotiations conducted by the DOT. Section 337.271, F.S. requires DOT to negotiate with the property owner in good faith and to attempt to arrive at an agreed amount of compensation for the property sought. At the inception of the negotiation, DOT must notify the owner of the acquisition sought, provide specified information about the project and inform the property owner of their statutory rights in the process. This notice must be sent by certified mail to the property owner at the last known address listed on the ad valorem tax roll. A return of the notice as undeliverable constitutes notice. DOT is not required to give notice to anyone who acquires the property after the original notice.

The section further provides that within 120 days after receipt of the notice, the property owner may submit a complete appraisal report related to the parcel to be acquired and, if business damages are to be claimed, submit a complete estimate of those damages. If the property owner submits the appraisal report, and business damages report, if relevant, within 30 days of the date on which DOT receives the report(s), the department must provide to the property owner all appraisal reports and business expense estimates prepared for DOT related to the property. DOT is also to make a written offer of purchase to the property owner and the business owner, if any, which includes the value of the land and improvements taken and any business or severance damages.

After exchanging appraisal and business damages reports, the parties may jointly agree to nonbinding mediation. Upon submission of an invoice, DOT must pay all reasonable costs, including reasonable attorney's fees, incurred on behalf of a property owner who proceeds to prelitigation negotiation settlement pursuant to the provisions of this section. The attorney's fees are based upon the criteria of s. 73.092, F.S. The invoice must include complete time records and a detailed statement of services performed and time spent performing such services. Reasonable appraisal or accountant fees cannot exceed the general or customary hourly rate for appraisal or accounting fees in the community. If the parties cannot agree on the amount of costs and attorney's fees to be paid by DOT, the property owner may file a complaint in the circuit court in the county where the property is located to recover reasonable attorney's fees and costs.

According to representatives of the DOT, the negotiation procedures set forth in s. 337.271, F.S., are not closely followed because DOT usually follows federal eminent domain procedures which mandate presuit negotiation whether or not the property owner provides DOT with a copy of their appraisal.

d. REVISIONS MADE BY THE BILL

1. Presuit Negotiation Process

The bill creates a new section which provides a presuit negotiation process prior to the filing of a condemnation action by a condemning authority. The components of this process include:

Notice and Offer to Property Owner The bill requires that before an eminent domain action is brought under chapters 73 or 74, F.S., a condemning authority must negotiate in good faith with the fee owner of the property, provide the owner with a written offer of compensation and, if requested, a copy of the appraisal upon which the offer is based, and attempt to achieve settlement of the amount of compensation to be paid.

First, the condemning authority must notify the fee owner by certified mail:

--that all or a portion of property is necessary for an authorized project or use;

--the nature of the project and designation of the parcel to be acquired;

--how the owner may obtain right-of-way or project maps; and

--the owner's statutory rights and responsibilities.

Second, a written offer of purchase or compensation must be provided to the property owner. In addition, within 15 days of the request of the property or business owner, the condemning authority must provide the owner with copies of right-of-way maps or construction plans that depict the proposed taking, and a copy of the appraisal report on which the offer is based. The owner must be given at least 30 days to respond to the written offer before a condemnation lawsuit for the parcel identified in the offer may be filed. The condemning authority is not required to provide a copy of the appraisal prior to the execution of an option contract for property acquired pursuant to s. 259.041, F.S., for preservation, conservation and recreation purposes.

The bill provides a time period, from January 1, 2000 to July 1, 2000, for condemning authorities to phase in the presuit negotiation provisions without being prohibited from filing an eminent domain action.

Notice to Business Owners, Business Records, Business Damages Offer The bill provides that when a governmental condemning authority is seeking to acquire property for a proposed road right-of-way project, before instituting litigation, the condemning authority must notify property owners and lessees who operate a business on the property to be acquired of their statutory rights under s. 73.091, F.S., and of the same items for which the fee owner receives notice.

Notice to one owner of a multiple owner business constitutes notice to all owners of the business and the condemning authority is not required to give notice to an owner who acquires an interest in the business subsequent to the notice required by this section. After notice is accomplished, the condemning authority may file the condemnation action under chapters 73 or 74 for the property identified in the notice.

If the business owner intends to claim business damages under s. 73.071(3)(b), F.S., he or she must, within 180 days of receipt of the required notice, submit to the condemning authority a good-faith written offer to settle any claims of business damage to the property. The business owner must also provide the condemning authority with copies of business records which substantiate the business damage claim or a schedule for providing such information to the condemning authority. If the business owner fails to provide a written business damage offer to the condemning authority, the court must strike the owner's business damage claim in the condemnation lawsuit absent the business owner providing a good faith justification for his failure to provide a first offer to the condemning authority.

Business records are defined to include: copies of federal income tax returns, federal income tax withholding statements, federal miscellaneous income tax statements, state sales tax returns, balance sheets, profit and loss statements, state corporate income tax returns for the preceding five years and other records which are relied upon by the

business owner to substantiate the business damage claim. The condemning authority has 120 days from receipt of the owner's business damage offer to accept, reject or make a counteroffer.

The bill provides a time period, from January 1, 2000 to July 1, 2000, for condemning authorities to phase in the presuit negotiation business damages provisions without being prohibited from filing an eminent domain action.

Mediation The bill provides that at any time in the presuit negotiation process, the condemning authority and property or business owner may agree to submit the compensation and business-damage claims to nonbinding mediation.

Attorney's Fees & Costs The bill requires the condemning authority to pay all reasonable costs and attorney's fees incurred on behalf of a fee or business owner in the presuit negotiation process, including reasonable costs and attorney's fees associated with mediation. Attorney's fees must be calculated based on the schedule set forth in s. 73.092, F.S., (fees based on the benefits achieved for the client) except for attorney's fees associated with the presuit negotiated settlement of business damage claims which must be calculated based on the attorney's time, skill and complexity of the case. If the parties cannot agree on costs and attorney's fees, the property owner may file a complaint in circuit court to recover attorney's fees and costs.

The bill further provides that for business damage claims not settled during presuit negotiation, attorney's fees must be calculated as provided in s. 73.092(1), based on the difference between the final payment of business damages and the counteroffer to the business owner's offer by the condemning authority.

The bill also amends s. 73.092, F.S., to delete subparagraphs (1)(a)1. and (1)(a)2. which address the calculation of attorney's fees for business damage claims in prelitigation negotiations and subsequent to the filing of litigation. The calculation of attorney's fees for business damage claims is modified by the bill to provide that if business records are not provided to the condemning authority, the benefit to the business owner is calculated, based on the difference between the final payment of business damages and the first written counteroffer by the condemning authority after the business records are received. This should create an incentive to provide business records during the presuit negotiation process.

DOT Presuit Negotiation Process. Effective January 1, 2000, the bill repeals s. 337.271, F.S., regarding the DOT's current acquisition negotiation process which would be replaced by the presuit negotiation process set forth in this section.

2. Business Damages

Currently businesses may only claim business damages when there is a partial taking of a parcel for right-of-way by the DOT, county, municipality, board, district or other public body, and the taking damages or destroys a business established for more than five years standing. The bill changes the minimum number of years that a business must be established to be eligible for business damages to four years. In order to review the effects of this provision, the bill provides that this change stands repealed effective January 1, 2003.

3. Pre-judgment Interest on Attorney Fees and Costs

Section 73.091(1), F.S., requires condemning authorities to pay all reasonable costs incurred in the defense of the proceedings in the circuit court, including, but not limited to, reasonable appraisal fees and, when business damages are compensable, a reasonable accountant's fee. These costs are in addition to attorney fees that must be paid pursuant to s. 73.092, F.S. The amount of these cost are to be determined by the trial court. The bill adds a specific statutory prohibition against payment of pre-judgement interest on awards of costs or attorney fees.

4. Repeal of 'Whole Taking' Provisions

The bill repeals subsection 337.27(2), F.S., which applies to situations where DOT is acquiring land for a project and needs only a portion of a particular parcel of land for that project. If the costs of acquiring the entire parcel will be equal to or less than the cost of acquiring only that portion of the property which is needed for the project, DOT may acquire the entire parcel. In addition, the bill repeals provisions in chapter 348, F.S., which provide for taking entire parcels to reduce costs and which are related to the Florida Expressway Authority Act; the Orlando-Orange County Expressway Authority; and the Seminole County Expressway Authority. The bill also repeals the authority of counties and municipalities to convert partial takings to whole takings when the cost of taking the whole parcel is less than the cost of the partial taking. All of these repeals are effective January 1, 2000.

Section 65. Relocation of Non-conforming Outdoor Advertising Signs: Chapter 479, F.S., regulates outdoor advertising in Florida, including the use of signs and billboards adjacent to state highways. Many of the requirements of Chapter 479 implement requirements of the Highway Beautification Act of 1965. Under the federal act, states are required to provide for the effective control of the erection and maintenance along the Interstate System and the federal-aid primary system of outdoor advertising signs, displays and devices which are within 660 feet of the nearest edge of the right-of-way and additional outdoor advertising signs, displays, and devices which are more than 660 feet off the nearest edge of the right-of-way, located outside of urban areas and visible from the road and erected with the purpose of being read from the road. For purposes of the Highway Beautification Act, the term "Federal-aid primary system" means the Federal-aid primary system in existence on June 1, 1991, and any highway which is on the National Highway System.

Under the federal act, effective control means that the state limits signs to the following categories: 1) directional and official signs; 2) signs advertising the sale or lease of property upon which they are located; 3) signs advertising activities conducted on the property where they are located; 4) landmark signs; and 5) signs advertising the distribution of coffee by nonprofit organizations. If states do not comply with the requirements of the Highway Beautification Act, the federal Transportation Department can reduce the amount of federal highway funds a state would otherwise receive by ten percent.

The federal Highway Beautification Act does not preempt the power of local governments or the state to enact ordinances or laws regulating or prohibiting signs that are more stringent than the federal act or enforcing such ordinances. *Lamar Outdoor Advertising v. City of Ormond Beach* (Fla. 5th DCA 1982). A nonconforming sign is defined pursuant to s. 479.01(14), F.S., to mean a sign which was lawfully erected but which does not comply with land use, setback, size, spacing and lighting conditions of state or local law, rule or ordinance, passed at a later date, or a sign which was lawfully erected but later fails to conform with state or local laws, rules or ordinances. Section 479.15(2), F. S., provides that no local government entity may remove, cause to be removed, or alter any lawfully erected sign along the interstate or federal primary highway system without the payment of just compensation if the removal or alteration constitutes a taking under state law.

The bill amends s. 479.15, F.S., which applies to local government regulation of outdoor advertising located adjacent to the state highway system when the state is making improvements to such highways. The bill provides that, subject to approval by the Federal Highway Administration, a lawful nonconforming sign may, at the election of the sign owner and DOT, be relocated or reconstructed adjacent to the new right-of-way within 100 feet of the current location. Further, the sign may not be relocated to an area zoned for residential uses and must be subject to any setback requirements. The sign owner must pay for all costs associated with relocating or reconstructing any sign under this subsection and neither the state nor any local government shall reimburse the sign owner for these costs, unless payment is required by Federal law.

The bill also provides that in the event the relocation of the sign is inconsistent with the ordinances of the affected municipality or county, the local government is responsible for providing just compensation to the owner of the sign for its removal. In addition, the bill provides that the provisions of this section shall not impair any agreement or future agreements between a city or county and the owner of a sign or signs within the jurisdiction of the city or county. Finally, the bill's provisions do not apply to a municipality engaged in sign ordinance litigation on April 23,

1999, nor to any municipality whose boundaries are identical to the county boundaries (the latter currently only applies to Jacksonville/Duval County).

Section 66. Technical: Amends s. 20.23, F.S., to correct a statutory cross reference.

Section 67. Technical: Amends s. 206.46, F.S., to correct a statutory cross reference.

Section 68. Grant Anticipation Revenue Bonds Currently, Section 122 of Title 23, United States Code, allows states to borrow against future year apportionments of Federal funds for the payment of debt service on bonds issued to fund the costs of Federal-aid projects. Article VII of the Florida Constitution allows for the issuance of revenue bonds to finance fixed capital projects authorized by law. The bill creates section 215.616, F.S., to authorize a bond program for Federal Aid Highway Construction and to authorize a pledge of up to 10 percent of the state's future federal-aid allocations as payment for debt service. The bill would allow the state to issue bonds with a maximum term of 12 years backed by a pledge of future federal-aid funds.

DOT's Official Federal-Aid Forecast estimates Florida will receive an average of $1.24 billion of federal aid annually for highway transportation purposes during federal fiscal years 1999 through 2004. Under the bill, up to 10 percent, or $124 million of the annual federal aid may be pledged for debt service. Assuming a 4.25 percent interest rate and a 10 year term, this provision will allow over $1 billion in bonds to be issued. After debt service is subtracted this bond issue would add $840 million to the 5-year work program. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding.

Bond proceeds could be used to advance major transportation project phases and to add new transportation projects to the work program. Specific projects will be identified through the planning and programming process of ss. 339.135 & 339.155, F.S., and included in the tentative work program presented to the legislature each session.

Section 69. Technical: Repeals s. 234.112, F.S., to eliminate duplication of s. 234.012 (12)(c),F.S.

Section 70. Technical: Amends s. 288.9607, F.S., to correct a statutory cross reference.

Section 71. Technical: Amends s. 311.09, F.S., to delete an obsolete date reference.

Section 72. Technical: Amends s. 331.303, F.S., to change a reference to an abolished council to a reference to Enterprise Florida, Inc.

Section 73. Technical: Amends s. 331.305, F.S., to correct a reference to the title of chapter 607, F.S.; to delete a reference to an obsolete report requirement; and to delete a reference to obsolete bond restrictions.

Section 74. Technical: Amends s. 331.308, F.S., to delete a reference to obsolete initial appointment requirements.

Section 75. Technical: Amends s. 331.331, F.S., to delete a reference to obsolete bond restrictions.

Section 76. Technical: Amends s. 334.03, F.S., to delete an obsolete reference to a repealed statutory section.

Section 77. Technical: Amends s. 335.074, F.S., to delete a reporting requirement which was part of an agency annual report; the requirement for this annual report was repealed in 1994.

Section 78. Technical: Repeals s. 335.165, F.S., which is an obsolete provision relating to budgeting for improvements to Welcome Stations by the Department of Commerce. The Department of Commerce has been abolished, and s. 335.166, F.S., sets up the Welcome Station Office within DOT.

Section 79. Technical: Amends s. 335.182, F.S., to delete an obsolete date reference.

Section 80. Technical: Amends s. 335.188, F.S., to delete obsolete date references.

Section 81. Technical: Reenacts s. 336.01, F.S. to incorporate a change made by statutory revision editors.

Section 82. Technical: Amends s. 336.044, F.S., to delete an obsolete date reference; and to delete an obsolete reporting requirement.

Section 83. Technical: Amends s. 337.015, F.S., to delete a reporting requirement which was a part of a agency annual report; the requirement for this annual report was repealed in 1994.

Section 84. Technical: Amends s. 337.139, F.S., to delete an obsolete reporting requirement.

Section 85. Technical: Amends s. 337.29, F.S., to correct statutory cross references.

Section 86. Technical: Repeals s. 137 of Chapter 96-320, Laws of Florida, to delete an obsolete requirement related to utility relocation cost write-offs.

Section 87. Technical: Amends s. 337.407, F.S., to correct an internal reference.

Section 88. Technical: Amends s. 338.22, F.S., to correct a statutory cross reference.

Section 89. Technical: Amends s. 338.221, F.S., to correct statutory cross references; and to reenact subsection (8) to incorporate a change made by statutory revision editors.

Section 90. Technical: Reenacts s. 338.222, F.S., to incorporate a change made by statutory revision editors.

Section 91. Technical: Amends and reenacts s. 338.223, F.S., to incorporate a change made by statutory revision editors in subsection (1); and to correct a statutory cross reference.

Section 92. Technical: Amends s. 338.225, F.S., to correct a statutory cross reference.

Section 93. Technical: Amends s. 338.227, F.S., to correct statutory cross references.

Section 94. Technical: Amends s. 338.228, F.S., to correct statutory cross references.

Section 95. Technical: Amends s. 338.229, F.S., to correct statutory cross references.

Section 96. Technical: Amends s. 338.231, F.S., to correct statutory cross references.

Section 97. Technical: Amends s. 338.232, F.S., to correct a statutory cross reference.

Section 98. Technical: Amends s. 338.239, F.S., to correct statutory cross references.

Section 99. Technical: Amends s. 339.08, F.S., to correct a statutory cross reference.

Section 100. Technical: Repeals s. 339.091, F.S., to delete an obsolete program created in 1971.

Section 101. Technical: Reenacts subsection (7)(e) of s. 339.135, F.S., to incorporate a change made by statutory revision editors.

Section 102. Technical: Repeals s. 339.145, F.S., to delete authorization for a trust fund that is no longer needed; and repeals s. 339.147, F.S., to delete an obsolete provision for DOT reimbursement of Auditor General audit expenses.

Section 103. Technical: Amends s. 339.175, F.S., to correct a statutory cross reference.

Section 104. Technical: Amends s. 339.2405, F.S., to delete an obsolete reporting requirement.

Section 105. Technical: Amends s. 339.241, F.S., to change a reference to a repealed Florida Statute to a reference of a U.S. Code provision relating to certain definitions.

Section 106. Technical: Amends s. 341.051, F.S., to delete an obsolete requirement for providing the Legislature with certain documents; and to clarify the applicability of a definition provided at the end of the section.

Section 107. Technical: Reenacts subsection (1) of s. 341.321, F.S., to incorporate changes made by statutory revision editors.

Section 108. Technical: Amends s. 341.3333, F.S., to correct a statutory cross reference.

Section 109. Technical: Amends s. 341.352, F.S., to delete a reference to the Department of Commerce which was abolished; and to provide authorization for Enterprise Florida to participate in High Speed Rail certification proceedings.

Section 110. Technical: Amends s. 343.64, F.S., to delete an obsolete date reference.

Section 111. Technical: Amends s. 343.74, F.S., to delete an obsolete date reference.

Section 112. Technical: Amends s. 348.0005, F.S., to correct a scrivener's error.

Section 113. Technical: Amends s. 348.0009, F.S., to correct a statutory cross reference.

Section 114. Technical: Amends s. 348.248, F.S., to correct a statutory cross reference.

Section 115. Technical: Amends s. 348.948, F.S., to correct a statutory cross reference.

Section 116. Technical: Amends s. 349.05, F.S., to correct an internal cross reference.

Section 117. Technical: Amends 378.411, F.S., to delete provisions related to DOT being certified by the Department of Environmental Protection to receive and review notices of intent to mine; these provisions are no longer needed.

Section 118. Technical: Amends s. 427.012, F.S., to change a reference to the "Department of Health and Rehabilitative Services" representative on the Commission for the Transportation Disadvantaged to a representative for the "Department of Children and Family Services."

Section 119. Technical: Amends s. 427.013, F.S., to make a grammatical correction.

Section 120. Technical: Amends s. 479.01, F.S., to correct an internal cross reference.

Section 121. Technical: Amends s. 951.05, F.S., to delete a reference to DOT's "Division of Road Operation" which has been abolished.

Section 122. Technical: Amends section 2 of Senate Bill 182 (Chapter 99-203, Laws of Florida) to delete a requirement for a three-fifths vote of the legislature for that bill to become effective.

Section 123. Effective Date: July 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate, see *D. Fiscal Comments*.

2. Recurring Effects:

   Indeterminate, see *D. Fiscal Comments*.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   Indeterminate, see *D. Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   Indeterminate, see *D. Fiscal Comments*.

2. Recurring Effects:

   Indeterminate, see *D. Fiscal Comments*.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Inspection of Hazardous Materials on Florida Rail Lines. The bill authorizes DOT to conduct hazardous materials inspections on Florida rail lines, including the loading, unloading and labeling of hazardous materials at shipping, receiving and transfer facilities. This would impact the private sector as manufacturers, shippers and receivers of hazardous materials would periodically and randomly be subject to inspections.

2. Direct Private Sector Benefits:

   The additional funding available for transportation projects will benefit private sector contractors which do business with the DOT.

   The eminent domain provisions of the bill may increase compensation to property owners, specifically with respect to business damages, as it repeals the authority for the DOT to undertake a whole taking where the cost of acquisition is the same as or less than the cost for a partial taking. The bill also changes the minimum number of years that a business must be established to be eligible for business damages from five years to four years; this increases the number of businesses entitled to business damages and will therefore increase the amount of compensation paid to businesses.

3. Effects on Competition, Private Enterprise and Employment Markets:

   None.

D. FISCAL COMMENTS:

Right-of-Way Acquisition and Bridge Construction Bonds. (Section 2) Amending the statute to allow a $135 million annual transfer for debt service would support additional bonding capacity of $475 million in 30-year bonds at a 5% interest rate. After debt service is subtracted, this provision would add $370 million to the 5-year work program. The increase in the cap allowed for debt service will require up to $31.5 million of transportation revenues annually to fund the additional debt service for the life of the bonds ($135 million cap minus previous cap of $103.5 million). The

department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding. The issuance of additional bonds will provide increased funding for the purchase of right-of-way and bridge repairs/replacements. This financing technique provides a benefit to the public by providing new or improved transportation services in a more timely manner. Because DOT uses private sector construction companies to build roads and bridges, the private sector will also benefit from this change.

Fixed Guideway Transportation Financing/Bonding. (Section 4) The bill authorizes DOT or commuter rail authorities and regional transportation authorities to issue bonds to fund fixed guideway projects; each party would be contractually liable for an equal share of debt service. DOT's share of debt service would be payable from, and limited to, two percent of all state revenues deposited into the STTF. These debt service payments would be part of the 15 percent of transportation revenues committed to public transportation projects pursuant to s. 206.46, F.S. The local share would be payable from any available revenues other than revenues of the DOT.

State transportation tax revenues are projected to total nearly $1.7 billion in the current fiscal year. Two percent of this amount (about $33 million in FY 1999-00) would be available annually for debt service under this bill. This could generate up to $600 million from the sale of bonds. After debt service is subtracted and the local match is added, this provision would add $550 million to the 5-year work program. Since the annual debt service is based on a percentage of STTF revenues (similar to the Department's "Amendment 4" bond program), bonding capacity will grow in the future as state transportation tax revenues increase. The department would incur recurring annual costs for the debt service transfers for as long as bonds are outstanding.

This bill will permit accelerated financing of fixed guideway projects and would permit the Department to assist in the financing of fixed guideway projects where the demand for financing exist today, rather than waiting many years to accumulate adequate financing. The public will receive the benefits of the fixed guideway systems sooner, and local governments will be better able to incorporate these public transportation systems into their growth management and local comprehensive planning initiatives. Because private construction firms will be used to construct fixed guideway systems, the private sector will also benefit from this change. A project must first be submitted to and approved by an act of the Legislature before it can be funded under this bond program.

Motorized Bicycles Registration (Section 6) Florida law requires that a motorized bicycle propelled by a combination of human power and an electric helper motor must be registered and pay a one-time $5 registration fee. This bill provides that such motorized bicycles are not required to be registered, and revenues from these fees will no longer be collected. The Department of Highway Safety and Motor Vehicles registered 22 motorized bicycles in the 1997-98 fiscal year.

Commercial Motor Vehicles/Registration Penalties. (Section 13) Current law provides a penalty for driving a truck with an expired license plate or registration; the penalty is based on the weight and configuration of the truck and can exceed $2,000, plus the payment of the appropriate registration fee. The bill provides a maximum penalty charge of $1,000 for operating a truck where the registration or license plate has not been expired more than 90 days. This penalty is in addition to payment of the appropriate registration fee for the truck. Because of the way data on these violations is currently collected, the fiscal impact of this change cannot be determined. According to DOT, there were 1,199 truck registration violations in 1997 with a penalty in excess of $1,000. If all of these penalties met the criteria of the bill and were reduced to $1,000, the net loss of revenue would be in excess of $800,000.

Florida Seaport Transportation and Economic Development Program. (Section 14) The bill amends s. 320.20, F.S., to advance the $10 million annual funding to the FSTED Program that was to begin in 2001 to the 1999 fiscal year. This will allow the FSTED program to issue bonds sooner for seaport infrastructure projects. With the changes made by the bill, total state funding for the FSTED program will be $35 million per year.

Toll Facilities Revolving Trust Fund. (Section 29) The Tampa-Hillsborough County Expressway Authority (THCEA) has received loans totaling $8.9 million from this trust fund over the last nine years to develop expressway system projects. The bill requires that any funds repaid by THCEA to the trust fund will be re-advanced to THCEA.

Small County Road Assistance Program. (Section 30)The bill provides that for an 11 year period, from fiscal year 1999-2000 until fiscal year 2009-2010, up to $25 million from the STTF may be used annually to fund the Small County Road Assistance Program. Over this period a total of up to $275 million in state funds could be use to fund county road resurfacing and reconstruction in small counties. To the extent that these state funds are used on county roads, STTF funds would not be available for state transportation projects.

Railroad Financing/TEA-21. (Section 35) The bill authorizes DOT to secure and administer federal loans for rail projects. TEA-21 included a new federal credit program entitled "Railroad Rehabilitation and Improvement Financing." This will allow DOT to pursue federal loans for existing railroad capital improvements, to finance these improvements in Florida. According to DOT, it is sometimes more feasible to pursue a federal loan to finance a project rather than a grant or public debt financing. The bill will allow DOT to evaluate and, if appropriate, utilize this option in financing rail capital improvements. This will assist local governments in securing federal loans for rail projects. Any specific funding to be used in repayment of loans or to pay related costs would be specifically identified in the annual tentative work program submitted to the Legislature.

International Registration Plan/New Purchase & Repair Exemption. (Section 40) The state registers Florida-based commercial motor vehicles under the International Registration Plan (IRP), which is an interstate cooperative agreement for the payment of vehicle registration fees. This enables carriers to register in a single state and put one license plate on each vehicle for the right to travel in all participating jurisdictions. Each IRP jurisdiction collects the necessary fees for all other IRP jurisdictions through which each carrier will travel and then distributes each state's share accordingly. The bill exempts vehicles from IRP requirements if it is a newly purchased vehicle being picked-up, or if the vehicle is brought into Florida for repairs. The exemption only applies to an unloaded vehicle operated by its owner. The fiscal impact of this exemption cannot be accurately estimated, but given the narrow scope of the exemption the amount of lost revenue should not be significant.

Eminent Domain. (Sections 57 - 64) The bill could increase the costs to condemning authorities such as counties and municipalities that are not required under current law to provide a property owner with a written offer or engage in presuit negotiations or pay the costs to the property owner of presuit negotiation and settlement. However, if the requirements of the bill result in more presuit settlements, these costs may be offset by decreased litigation costs. The bill provides that no pre-judgment interest will be paid on costs and attorney fees of a property or business owner and this should reduce condemning authorities' costs. The bill changes the minimum number of years that a business must be established to be eligible for business damages from five years to four years; this will increase the number of businesses entitled to business damages and will increase the amount of compensation paid to businesses. The effect of repealing the case law in *Fortune Federal*, accrues to the financial advantage of the business owner and to the adverse interest of the governmental condemning authority. However, any increased cost incurred for partial takings that could no longer be converted to whole takings could be offset by decreased litigation costs for business damage cases resolved through negotiation.

Relocation of Non-Conforming Outdoor Advertising Signs. (Section 65) The bill may decrease the cost of right-of-way acquisition to the state of compensating billboard owners for the removal of nonconforming signs. The bill may increase the cost for local governments for compensating billboard owners if the local government has an ordinance that prohibits relocation of signs.

Grant Anticipation Revenue Bonds. (Section 68) The bill authorizes a bond program for Federal Aid Highway Construction and allows a pledge of up to 10 percent of the state's future federal-aid allocations as payment for debt service. The bill would allow the state to issue bonds with a maximum term of 12 years backed by a pledge of future federal-aid funds. Florida will receive an average of $1.24 billion of federal aid annually for highway transportation purposes during federal fiscal years 1999 through 2004. Under the bill, up to 10 percent ($124 million) of annual federal aid may be pledged for debt service. Assuming a 4.25 percent interest rate and a 10 year term, this provision will allow over $1 billion in bonds to be issued. After debt service is subtracted this bond issue would add $840 million to the 5-year work program. This funding could be used to advance project phases of major transportation projects and to add new transportation projects to the work program. The department would incur recurring annual costs for the debt service transfers for as

long as bonds are outstanding. Because DOT uses private sector construction companies to build roads and bridges, the private sector will also benefit from this provision.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

None.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VIII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:
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Phillip B. Miller — John R. Johnston

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:
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