

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 972

SPONSOR: Transportation Committee and Senator Casas

SUBJECT: Department of Transportation

DATE: March 5, 1999                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill authorizes the Florida Department of Transportation (FDOT) to change the name of "The Office of Construction" within FDOT to "The Office of Highway Operations." The bill authorizes an increase in the revenues which may be annually transferred into the Right-of-Way and Bridge Construction Trust Fund from the revenues deposited into the State Transportation Trust Fund, and authorizes FDOT and local governments to issue revenue bonds for fixed guideway systems. The bill authorizes FDOT to use future federal funds to bond projects for Federal Aid Highway Construction. The bill provides funding for the Center for Urban Transportation Research. The bill defines "public highway or the right-of-way of a public highway," and makes it unlawful to possess an open container or consume an alcoholic beverage while seated in the passenger area of a vehicle on a public highway or the right-of-way of a public highway.

The bill: provides drivers must yield to public transit vehicles when such vehicles are reentering traffic from a specifically designated pull out lane; provides the FDOT must install and maintain school zones for prekindergarten early intervention schools which receive federal funding through the Headstart program and which are located on state maintained roads; provides a maximum penalty charge of \$1,000 for operating a commercial vehicle where the registration or license plate has not been expired more than 180 days; and, makes various technical changes dealing with commercial motor vehicles.

The bill authorizes FDOT to continue its Career Service Model Classification System until 2002, and authorizes FDOT to designate "public roads" as scenic highways. The bill authorizes FDOT, upon determination work is needed for specified reasons, to enter into contracts up to \$60,000 without competitive bids. The bill: clarifies the jurisdiction of public roads and establishes the responsibility for operation and maintenance within the right-of-way of any road within the state, county, and municipal road system is that which existed on June 10, 1995; eliminates "unsatisfactory progress" as a determination of delinquency on a construction project; repeals the owner controlled insurance program; exempts individual licensees who are FDOT employees from

the obligation to report violations of state professional licensing laws; provides surety bonds are payable to the FDOT not the Governor; and, deletes the schedule of liquidated damages to be paid by a contractor due to untimely completion of work.

The bill: revises provisions relating to the State Arbitration Board; authorizes FDOT to purchase property interests; authorizes FDOT to provide replacement housing for transportation projects; provides a fixed guideway transportation system authorized by the FDOT to be wholly or partially within the FDOT right-of-way pursuant to a lease may operate at any safe speed; authorizes the FDOT to contract directly with utility companies for clearing and grubbing work; provides funds repaid by the Tampa-Hillsborough County Expressway Authority are to be loaned back to the authority for specified purposes; makes technical and clarifying revisions to the current mitigation program to provide FDOT and the Department of Environmental Protection increased flexibility in administering the program; and, authorizes the FDOT to restrict the sale, transfer or lease of any portion of the turnpike system.

The bill conforms Florida's transportation planning requirements to the planning requirements of Transportation Equity Act for the Twenty-First Century (TEA-21). Further, the bill: provides designation or redesignation of an MPO must first be approved by the Legislature by general law; requires the MPO Advisory Council and the Office of the Governor to recommend to the Legislature the redesignation of the existing MPOs by December 31, 1999; authorizes FDOT to create and maintain a common self-retention insurance fund for public transportation projects; authorizes FDOT to inspect trains transporting hazardous materials during loading, unloading and labeling at shippers, receivers, and transfer points; provides a definition of a commercial or industrial zone and an unzoned commercial or industrial area for the purposes of outdoor advertising; and, provides communication towers may not be recognized as commercial or industrial activities.

This bill creates sections 215.615, 215.616, and 316.0815 and substantially amends sections 20.23, 206.46, 206.606, 316.1895, 316.1936, 316.302, 316.3025, 316.545, 334.0445, 335.041, 335.093, 337.11, 337.16, 337.162, 337.18, 337.185, 337.2251, 337.25, 337.403, 338.223, 338.229, 338.251, 339.155, 339.175, 341.041, 341.302, 373.4137, 479.01, 479.07, 479.16 of the Florida Statutes.

## **II. Present Situation:**

Section 20.23, F.S., provides the organizational structure for the Florida Department of Transportation (FDOT). Subsection (3) designates, within the FDOT, the Office of Construction. The FDOT recently reorganized the Office of Construction by combining it with the Office of Maintenance, Traffic Engineering, Contracts Administration and the Materials Testing Laboratory.

Section 206.46, F.S., provides for the transfer of up to 6 percent of revenues deposited into the State Transportation Trust Fund annually, not to exceed \$115 million, to pay for debt service on Right-of-Way Acquisition and Bridge Construction Bonds. Subsection (3), commits 14.3 percent of revenues deposited into the State Transportation Trust Fund annually for public transportation projects, increasing to 15 percent in fiscal year 2000-2001. The FDOT is not currently authorized by state law to enter into interlocal agreements with local governments which have jurisdiction of

a fixed guideway system to provide for the financing by either party of total project costs by the issuance of revenue bonds.

Section 206.606, F.S., provides distribution of proceeds from the State Transportation Trust Fund. There is no current distribution for the Center for Urban Transportation research.

Currently, section 122 of Title 23, United States Code, authorizes states to borrow against future year apportionments of Federal funds for the payment of debt service on bonds issued to provide for 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 FDOT is not currently authorized by state law to borrow against future year apportionments of Federal funds.

Chapter 316, F.S., does not currently provide drivers must yield to public transit vehicles.

Section 316.1895, F.S., provides where school speed zones exist on state maintained roads, the school zone must be maintained by the FDOT. The FDOT does not currently install or maintain school zones for prekindergarten early intervention schools which receive federal funding through the Headstart program.

Section 316.1936, F.S., provides possessing an open container of an alcoholic beverage while operating a vehicle or while a passenger in an operating vehicle is unlawful. TEA-21 contains a new program requiring each state to have in effect an open container law prohibiting the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway. The law must include possession or consumption by a driver or by a passenger. Failure to have such a law in effect by October 1, 2001, will result in federal-aid highway funds being transferred to the State's Section 402 State and Community Highway Safety grant program. Section 402 funds must be used only for alcohol-impaired driving countermeasures or enforcement of DUI and other related laws.

Section 316.302, F.S., provides for the regulation of commercial motor vehicles.

Section 316.3025, F.S., provides for penalties for violations of commercial motor vehicle regulations.

Section 316.545, F.S., provides for unlawful weight and loads for commercial vehicles. The section provides the penalty for driving with an expired license plate or registration is as much as \$3,000.

Section 334.0445, F.S., authorizes the FDOT to develop and implement a model career service classification and compensation system. The authorization for the pilot program is for three fiscal years beginning July 1, 1994, and ending June 30, 1997. The Department of Management Services is directed by the Legislature to facilitate the statewide planning of the career service broad banding compensation and classification system. However, a suitable replacement for FDOT's system has not yet been developed, and it does not appear the Department of Management Services will be able to develop and implement a new system by June 30, 1999. Under current law, the FDOT would have to return to the State's Career Service and

Classification Plan which, according to FDOT, is more restrictive and complex to administer and would diminish the flexibility in work force utilization by the FDOT.

Section 335.0415, F.S., provides the jurisdiction of public roads and the responsibility for operation and maintenance within the right-of-way of any road within the state, county, and municipal road system is that which existed on July 1, 1995.

Section 335.093, F.S., authorizes FDOT, after consultation with other state agencies and local governments, to designate scenic highways on the State Highway System. Such a designation is intended to preserve, maintain, and protect segments of Florida's cultural, historical, and scenic routes.

Section 337.11, F.S., provides the contracting authority for the FDOT. If the FDOT Secretary determines an emergency in regard to the restoration or repair of any state transportation facility exists and delays due to competitive bidding would be detrimental to the interests of the state, then the provisions for competitive bidding do not apply. The section further provides for the owner controlled insurance program (OCIP) on any FDOT construction project. The OCIP provides insurance coverage for the FDOT 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 FDOT projects.

Section 337.16, F.S., provides for the disqualification of delinquent contractors. The section provides intermediate delinquency exists 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, 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 in accordance with the approved working schedule for the project. According to FDOT, attempts 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.

Section 337.162, F.S., requires professional and occupational licensees working for FDOT to report violations of state professional licensing laws or rules to the Department of Business and Professional Regulation. Failure to submit a complaint about violations may be grounds for disciplinary action. Section 475.624, F.S., exempts licensed appraisers from the reporting requirement 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 FDOT.

Section 337.18, F.S., requires a surety bond from successful bidders on FDOT 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 or his or her successor in office. In 1992 the Legislature amended s. 337.17, F.S., to require post bid guaranties for construction contracts be made payable to FDOT rather than the Governor. In current practice, surety bonds are made payable to FDOT.

Further, the section requires the FDOT to include in each of its contracts a reasonable estimate of the damages that would be incurred by the FDOT as a result of the contractor's failure to timely complete the contract work. The FDOT must establish and incorporate into every contract a schedule of daily liquidated damage charges. The FDOT bases the schedule on the average construction, engineering, and inspection costs experienced by the FDOT on contracts over the two preceding fiscal years, and the schedule is divided, in s. 337.18 (2), F.S., into specified categories based on original contract amounts.

Section 337.185, F.S., provides for the State Arbitration Board to facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between the FDOT and the various contractors with whom it transacts business. 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 between the FDOT and the contractor may go before the board.

The State Arbitration Board is composed of three members: one appointed by the FDOT; one elected by the construction companies under contract with the FDOT; and one chosen by agreement of those two members. Each member serves a 2-year term. Board members who are not employees of the FDOT 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.

Section 337.25, F.S., authorizes FDOT 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 transportation facilities on the State Highway System, on the State Park Road System, in a rail corridor, or in a transportation corridor designated by the FDOT. The section does not authorize FDOT to purchase options to purchase land for such purposes. The section further provides the FDOT 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. The section restricts such purchases to federally assisted projects only.

Section 337.251, F.S., authorizes the FDOT to lease property for joint public-private development.

Section 337.403, F.S., provides, when necessary for a FDOT project, utility owners must remove or relocate utilities at their own expense. One exception occurs when the project is on the federal-aid interstate system and federal funding is identified for at least 90 percent of the cost under the Federal Aid Highway Act, in which case the FDOT pays for the removal or relocation with federal funds. Another exemption occurs where the cost of the utility improvement, installation, or removal exceeds the FDOT's official cost estimates for such work by 10 percent. In the latter exception, the FDOT's participation is limited to the difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract.

Most construction contracts impact utilities, generally requiring relocations. These relocations often occur in areas where clearing and grubbing of existing vegetation or removal of other features is necessary. Currently, these activities occur as part of the construction contract (i.e., the contractor performs the clearing and grubbing, which then allows the utility company to relocate the utilities.) Delays are sometimes caused by lack of adequate coordination, material or labor issues, or scheduling conflicts between the contractor's clearing and grubbing activities and the utility company's needs. According to the FDOT, these delays extend project time and add cost.

Section 338.223, F.S., authorizes the FDOT to acquire lands and property for proposed turnpike projects before making a final determination of the economic feasibility of a project.

Section 338.229, F.S., provides a pledge to turnpike bond holders which does not limit or restrict the rights vested in the FDOT to construct, reconstruct, maintain, and operate any turnpike project. Bond rating agencies have expressed to FDOT the concern threats of the sale or transfer of portions of the turnpike may negatively affect the turnpike's bond rating.

Section 338.251, F.S., provides for the Toll Facilities Revolving Trust Fund. The trust fund was created to encourage the development, and to enhance the financial feasibility of revenue-producing road projects undertaken by local governmental entities in a county or combination of contiguous counties.

Section 339.155, F.S., provides the transportation planning duties of the FDOT. 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). In accordance with that Act, both the MPO long and short-range plans, and the State Transportation Plan must include:

- (1) The results of transportation management systems.
- (2) International border crossings and points of access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations.
- (3) Consistency between local, metropolitan, and regional transportation and land-use plans.
- (4) Connectivity between metropolitan areas within the State and with metropolitan areas in other States.
- (5) Recreational travel and tourism.
- (6) Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities.
- (7) The overall social, economic, energy, and environmental effects of transportation decisions.

- (8) Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel.
- (9) Methods to expand and enhance transit services and to increase the use of such services.
- (10) The effect of transportation decisions on land use and land development, including the need for consistency between transportation decision making and the provisions of all applicable short-range and long-range land use and development plans.
- (11) Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, and identify those corridors for which action is most needed to prevent destruction or loss.
- (12) The use of life-cycle costs in the design and engineering of bridges, tunnels or pavement.

The following specific factors must be addressed in MPO long and short-range transportation plans but not in the State Transportation Plan:

- (1) The programming of expenditures on transportation enhancement activities.
- (2) The effects of all transportation projects to be undertaken in the metropolitan area, without regard to whether such projects are publicly funded.
- (3) Capital investments that would result in increased security in transit systems.

The following specific factors must be addressed in the State Transportation Plan but not in MPO long and short-range transportation plans:

- (1) Any federal, state, or local energy goals, objectives, programs or requirements.
- (2) Strategies for incorporating bicycle transportation facilities and pedestrian walkways in projects where appropriate throughout the state.
- (3) Identification of the transportation needs of nonmetropolitan areas through a process that includes consultation with local elected officials who have jurisdiction over transportation.
- (4) Any state plan that is developed pursuant to the Federal Water Pollution Control Act.
- (5) Where appropriate, the use of innovative mechanisms for financing projects, including value capture pricing, tolls, and congestion pricing.
- (6) Long-range needs of the state transportation system.
- (7) Methods to enhance the efficient movement of commercial motor vehicles.

- (8) Investment strategies to improve adjoining state and local roads that support rural economic growth.
- (9) The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the state.
- (10) A seaport or airport master plan, which has been incorporated into an approved local comprehensive plan, and the linkage of transportation modes which are needed to move people and goods between ports and other transportation facilities.
- (11) The joint use of transportation corridors and major transportation facilities for alternate transportation and community uses.
- (12) The integration of any proposed system into all other types of transportation facilities in the community.

These planning factors have been changed for both MPOs and FDOT by TEA-21.

Section 341.041, F.S., provides the transit responsibilities of the FDOT. The section does not authorize FDOT to create and maintain a common self-retention insurance fund to support public transit projects. However, the 1987-88 General Appropriations Act contained proviso language creating a \$5 million self-retention fund to satisfy the requirements of the insurance provisions in the contract between the FDOT and CSX Transportation to support Tri-Rail commuter service, but this authorization does not apply to other transit projects.

Section 341.302, F.S., provides the duties and responsibilities of the rail program within the FDOT. The section authorizes FDOT to secure and administer federal grants and apportionments for rail projects, but does not authorize the FDOT to secure federal loans. TEA-21 includes a new federal credit program entitled "Railroad Rehabilitation and Improvement Financing" which will allow FDOT to pursue federal loans for existing railroad capital improvements.

The section also requires the FDOT to insure the proper maintenance, safety revitalization and expansion of the rail system. The FDOT is authorized by the section 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. The section does not expressly authorize FDOT to conduct hazardous materials inspection during the loading, unloading and labeling of hazardous materials at shippers, and receivers, and transfer points.

Section 373.4137, F.S., provides the environmental mitigation requirements for the FDOT projects. The FDOT is required to submit annually to the Department of Environmental Protection and the water management districts a copy of its adopted work program and an inventory of habitats which may be impacted by its plan of construction for transportation projects in the first 3 years of the adopted work program.

To fund the mitigation plan for the projected impacts identified in the inventory, the FDOT must identify funds quarterly in an escrow account within the State Transportation Trust Fund established by the FDOT for the benefit of the Department of Environmental Protection. Any



interest earnings from the escrow account are returned to the FDOT. The Department of Environmental Protection requests a transfer of funds from the escrow account to the Ecosystem Management and Restoration Trust Fund 30 days prior to the date the funds are needed to pay for activities contained in the mitigation programs. The amount transferred each year by the FDOT must correspond to a cost per acre of \$75,000 multiplied by the projected acres of impact identified in the inventory within the water management district for that year. The water management district may draw from the trust fund to pay for activities associated with development or implementation of the mitigation plan. Each July 1, beginning in 1998, the cost per acre is required to be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. At the end of each year, the projected acreage of impact must be reconciled with the acreage of impact of projects.

Each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, and other appropriate federal, state, and local governments, develops a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. This plan must also address significant aquatic and exotic plant problems within wetlands and other surface waters. In developing such plans, the districts shall utilize sound ecosystem management practices to address significant water resource needs. In determining the activities to be included in such plans, the districts must also consider the purchase of credits from public or private mitigation banks permitted under this part and include such purchase as a part of the mitigation plan when the purchase would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option. The mitigation plan is preliminarily approved by the water management district governing board and submitted to the secretary of the Department of Environmental Protection for review and final approval.

If the Department of Environmental Protection and water management districts are unable to identify mitigation that would offset the impacts of a project included in the inventory, either due to the nature of the impact or the amount of funds available, that project is not be addressed in the mitigation plan and the project is not subject to the provisions of this section.

Specific projects may be excluded from the mitigation plan and may not be subject to this section upon the agreement of the FDOT, the Department of Environmental Protection, and the appropriate water management district that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process.

The water management districts are responsible for ensuring that federal mitigation requirements are met for the impacts identified in the inventory by implementation of the approved plan as funded by the FDOT. During the federal permitting process, the water management district may deviate from the approved mitigation plan in order to comply with federal permitting requirements.

The mitigation plan is updated annually to reflect the most current FDOT work program. Each update of the mitigation plan must be submitted to the secretary of the Department of

Environmental Protection for approval. Upon approval by the secretary of the Department of Environmental Protection, the mitigation plan must be deemed to satisfy the mitigation requirements under this section and any other mitigation requirements imposed by local, regional, and state agencies for impacts identified in the inventory. The approval of the secretary authorizes the activities proposed in the mitigation plan, and no other state, regional, or local permit or approval is necessary.

The section further provides the mitigation plan must be annually submitted to the Executive Office of the Governor and the Legislature through the legislative budget request of the Department of Environmental Protection. Any funds not directed to implement the mitigation plan should, to the greatest extent possible, be directed to fund aquatic and exotic plant problems within the wetlands and other surface waters.

Chapter 479, F.S., and the agreement between Florida and the U.S. Department of Transportation requires outdoor advertising signs to be located in commercial or industrial zones, or in unzoned commercial or industrial areas.

Section 479.01, F.S., provides a “commercial or industrial zone” means an area within 660 feet of the nearest edge of the right-of-way of the interstate or federal-aid primary system designated predominately for commercial or industrial use under the future land use map of the comprehensive plan. In a case where the local government has not enacted a comprehensive plan by local ordinance, the zoning of the area determines whether the area may be designated for commercial and industrial use for the purposes of outdoor advertising.

The section further provides an “unzoned commercial or industrial area” means an area within 660 feet of the nearest edge of the right-of-way of the interstate or federal-aid primary system where land use is not designated by a future land use map or zoning regulations, where there are located three or more separate and distinct industrial or commercial uses located within a 1,600 foot radius of each other and generally recognized as commercial or industrial by zoning authorities in the state.

The section provides the following are not recognized as commercial or industrial activities:

1. Signs;
2. Communication towers;
3. Agriculture, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;
4. Transient or temporary activities;
5. Activities not visible from the main-traveled way;
6. Activities conducted more than 660 feet from the nearest edge of the right-of-way;
7. Activities conducted in a building principally used as a residence;
8. Railroad tracks or minor sidings.

The FDOT’s interpretation of comprehensive plans and land use maps, which are developed from the inexact definition of a zoned or unzoned commercial or industrial area provided in this section for the purpose of outdoor advertising placement, has resulted in numerous lawsuits by outdoor advertising companies challenging the FDOT’s interpretation.

Section 479.07, F.S., provides if a permittee for an outdoor advertising sign does not pay for the permit, and does not respond to a notice of violation from the FDOT within 30-days, then the FDOT will, within 30 days, issue a final notice of sign removal, and may remove the sign within 90 days of the final notice of sign removal. However, if the permittee demonstrates a good faith error by the permittee resulted in the cancellation or nonrenewal of the permit then the FDOT may reinstate the permit if: the sign has not yet been disassembled; conflicting applications have not been filed; a reinstatement fee of \$300 is paid; all other delinquent fees are paid; and, the permittee reimburses the FDOT for all costs resulting from the cancellation.

Section 479.16, F.S., currently has contradicting measurements (16 and 8 square feet) for outdoor signs which do not require a permit.

### **III. Effect of Proposed Changes:**

Section 20.23, F.S., is amended to rename the Office of Construction to the Office of Highway Operations to better reflect the operations of the Office.

Section 206.46, F.S., is amended to increase from 6 percent, capped at \$115 million, to 7 percent, capped at \$135 million, the revenues transferred from the State Transportation Trust Fund annually to pay for debt service on Right-of-Way Acquisition and Bridge Construction Bonds. According to the FDOT, this would support additional capacity of \$475 million in 30-year bonds at a 5 percent interest rate.

Section 206.606, F.S., is amended to authorize \$1.5 million in funding for the Center for Urban Transportation Research.

Section 215.615, F.S., is created to allow FDOT 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 is contractually liable for an equal share of the debt service. The FDOT's share is payable from the State Transportation Trust Fund (STTF) funds which are committed to public transportation projects, and may not exceed a maximum of two percent of all state revenues deposited into the STTF. Fifty percent of the bonding capacity must be held in reserve. State transportation tax revenues are projected to total \$1.689 billion in the current fiscal year.

Section 215.616, F.S., is created to authorize the Grant Anticipation Revenue bond program for Federal-Aid Highway Construction. This would authorize FDOT to borrow against future year apportionments of Federal funds for the payment of debt service on bonds issued to provide for costs of Federal-aid projects. The FDOT's Official Federal-Aid Forecasts estimates Florida will receive an average of \$1.24 billion of federal aid annually for highway transportation purposes during federal fiscal years 1999-2004. This provision will allow the pledge of up to 10 percent of future federal-aid funding as the repayment source of debt service on bonds to advance transportation projects.

Section 316.0815, F.S., is created to provide drivers must yield to public transit vehicles when such vehicles are reentering traffic from a specifically designated pull out lane. The section

provides this does not relieve the driver of a public transit bus from the duty to drive with due regard for the safety of all persons using the roadway.

Section 316.1895, F.S., is amended to provide the FDOT must install and maintain school zones for prekindergarten early intervention schools which receive federal funding through the Headstart program and which are located on state maintained roads.

Section 316.1936, F.S., is amended to provide it is unlawful to possess an open container or consume an alcoholic beverage while seated in the passenger area of a motor vehicle which is parked or stopped within a public highway, or the right-of-way of a public highway. This provision would conform Florida's law to the requirements of TEA-21 and prevent restrictions of certain federal funds.

Section 316.302, F.S., is amended to update a reference, and to add a reference to a requirement regarding vehicle maintenance. The section is amended to clarify when an officer may issue a notice to repair, and is amended to delete unnecessary language. The section is further amended to remove an obsolete reference to drug testing provisions which is no longer in the Code of Federal Regulations.

Section 316.3025, F.S., is amended to correct an incorrect cite to current safety regulations contained in the Code of Federal Regulations.

Section 316.545, F.S., is amended to provide a maximum penalty charge of \$1,000 for operating a commercial vehicle where the registration or license plate has not been expired more than 180 days.

Section 334.0445, F.S., is amended to extend the current authorization for FDOT's Model Classification and Pay Project through June 30, 2002.

Section 335.0415, F.S., is amended to clarify the jurisdiction of public roads and the responsibility for operation and maintenance within the right-of-way of any road within the state, county, and municipal road system is that which existed on June 10, 1995.

Section 335.093, F.S., is amended to authorize FDOT, after consultation with other state agencies and local governments, to designate public roads as scenic highways. This would conform the Florida Scenic Highway Program to the National Scenic Byways Program. The criteria for designation remains unchanged, and such designation has no effect and provides no limitation on 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 337.11, F.S., is amended to allow the FDOT to enter into contracts up to \$60,000 for construction or maintenance of roadway and bridge elements without competitive bidding for one of the following reasons: 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. However, when the work exists within the limits of an existing contract, the FDOT shall make a good faith effort to negotiate and enter into a contract with the prime contractor on an existing contract.

The section is further amended to repeal the owner controlled insurance program.

Section 337.16, F.S., is amended to eliminate intermediate delinquency as grounds for suspension or revocation of a contractor's certificate of qualification to bid on FDOT construction contracts in excess of \$250,000.

Section 337.162, F.S., is amended to relieve FDOT appraisers from the obligation of reporting violations of state professional licensing laws or rules to the Department of Business and Professional Regulation. This would conform the provisions of this section to s. 475.624, F.S., to exempt licensed appraisers from the reporting requirements and possible disciplinary action.

Section 337.18, F.S., is amended to require that surety bonds posted by successful bidders on FDOT projects be made payable to FDOT and not the Governor.

The section is further amended to remove the schedule of contract amount categories utilized to calculate liquidated damages to be paid by a contractor and allow the FDOT to adjust the categories. This would allow the FDOT the opportunity to ensure each category contains a valid number of samples and would result in a more realistic estimate of damages.

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. The section also provides the FDOT secretary may select an alternate or substitute to serve as the FDOT's member of the arbitration board for any hearing or term, and clarifies the FDOT's board member may not be compensated if a current employee of the FDOT. The section provides an hourly compensation for other board members of \$125 per hour and raises the daily maximum pay from \$750 to \$1,000, and raises the arbitration fees to cover administrative costs and compensation of the board.

Section 337.25, F.S., is amended to authorize FDOT to purchase options to purchase land for transportation facilities. The section is further amended to authorize the FDOT to acquire property as replacement housing for persons displaced by transportation projects regardless of federal project assistance.

Section 337.251, F.S., is amended to provide that a fixed guideway transportation system authorized by the FDOT to be wholly or partially within the FDOT right-of-way pursuant to a lease granted under this section may operate at any safe speed.

Section 337.403, F.S., is amended to authorize the FDOT to contract directly with utility companies for clearing and grubbing work necessary for the relocation of utilities prior to letting a construction contract for a FDOT project.

Section 338.223, F.S., is amended to require the FDOT 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 the FDOT. Hardship purchases are 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 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 the FDOT to notify the Department of Environmental Protection (DEP) to allow DEP to comment on the purchase. Costs to acquire and dispose of property acquired as hardship and protective purchases are considered costs of doing business for the FDOT and are not to be considered in the determination of environmental feasibility for the project.

Section 338.229, F.S., is amended to provide the state pledges to bondholders to restrict the sale, transfer, lease, other disposition or operation of any portion of the turnpike system, which would reduce the revenues available for payment to bondholders.

Section 338.251, F.S., is amended to provide funds repaid by the Tampa-Hillsborough County Expressway Authority to the Toll Facilities Revolving Trust Fund are to be loaned back to the authority for funding the design of and the advanced right-of-way acquisition for the Brandon area feeder roads, capital improvements to increase capacity to the expressway system and Lee Roy Selmon Crosstown Expressway System widening.

Sections 339.155, and 339.175, F.S., are amended to delete the former federally mandated planning factors to conform to TEA-21 providing FDOT and MPO plans must consider:

- (1) Supporting the economic vitality of the metropolitan area, 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 FDOT to consider, in addition to the seven planning factors:

- (1) The concerns of local elected officials in nonmetropolitan areas.
- (2) The concerns of Indian tribal governments and federal land management agencies.
- (3) 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 FDOT plans and programs. The section is amended to modify the procedures of public participation in transportation planning by only allowing an opportunity for public comment on the long-range component of the Florida Transportation Plan during development and prior to substantive revisions, not prior to adoption of all subsequent amendments as in current law; and by deleting the requirement notices be published twice prior to the day of the hearing, with the first notice appearing at least 14 days prior to the hearing. Notice is still required in a newspaper of general circulation within the area of each FDOT district office.

In addition to the change in planning factors, s. 339.175, F.S., is amended to add intermodal and freight emphasis, pursuant to TEA-21, to the development of plans and programs for each metropolitan area; and to require cooperation on projects located within the boundaries of more than one MPO. The section is amended to conform to TEA-21 by authorizing 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 must be retained, except the boundaries may be adjusted by agreement of the Governor and the affected MPOs. The section is amended to require the Governor to review the membership of all MPOs in conjunction with the 10 year Census as prepared by the U.S. Department of Commerce Bureau of Census.

In addition, the section provides designation or redesignation of an MPO must first be approved by the Legislature by general law. The section further requires the MPO Advisory Council and the Office of the Governor to recommend to the Legislature the redesignation of the existing MPOs by December 31, 1999.

Section 339.175, F.S., is amended to provide voting membership on the MPO is required in metropolitan areas which authorities or other agencies have been or may be created in law to perform transportation functions not under the jurisdiction of a general purpose government represented on the MPO must be provided. In all other MPOs where transportation authorities or agencies are to be represented by elected officials from general purpose local governments, the MPO must establish a process by which the collective interests of such authorities or other agencies are expressed and conveyed.

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 FDOT 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 341.041, F.S., is amended 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 fund in existence in order to provide public transit services.

Section 341.302, F.S., is amended to authorize FDOT to secure and administer federal loans, and to expressly authorize FDOT to conduct hazardous materials inspection during the loading, unloading and labeling of hazardous materials at shippers, and receivers, and transfer points.

Section 373.4137, F.S., is amended to authorize FDOT to include additional projects identified in the adopted work program in the inventory of affected habitats submitted to the Department of Environmental Protection and the water management districts beyond the current three years, and to clarify mitigation plan funding for projected impacts identified in the environmental impact inventory for proposed transportation projects applies for the environmental mitigation phase of projects budgeted by FDOT for the current fiscal year. The section is amended to clarify the Department of Environmental Protection or water management districts may request a transfer from funds identified by FDOT and maintained in an escrow account to pay for activities associated with development or implementation of the mitigation plan for the current fiscal year, including but not limited to design, engineering, production, and staff support.

The section is amended to allow entities operating mitigation banks the opportunity to participate in the development of mitigation plans, and to require the districts to focus on restoration activities, such as surface water improvement and management of water bodies and lands identified for potential acquisition and restoration. The section is amended to provide preliminary approval of a mitigation plan by the water management district governing board does not constitute a decision that affects substantial interests as provided by the Administrative Procedures Act, thereby clarifying that affected parties objecting to a mitigation plan may only file for an administrative hearing after the plan receives final approval by the Department of Environmental Protection Secretary.

The section is further amended to require the mitigation plan for each transportation project with a funding request for the next fiscal year must include an explanation of why a mitigation bank was or was not chosen as a mitigation option, and to clarify projects may be excluded from the mitigation plan by agreement between FDOT, the Department of Environmental Protection, and the appropriate water management district where the inclusion of the project would hamper the efficiency or timeliness of the mitigation planning and permitting process or where the Department of Environmental Protection and the water management district are unable to identify mitigation that would offset the impacts of water and wetland management purposes will remain available for mitigation credit through fiscal year 2004-2005. The section is amended to allow for the



amendment of mitigation plans throughout the year to anticipate schedule changes or additional projects which may arise.

Section 479.01, F.S., is amended to define a commercial or industrial zone as a parcel of land designated by both the future land use map of a comprehensive plan and the land development regulations of a local government as commercial or industrial. If the parcel of land is located in an area designated for multiple uses on the future land use map of a comprehensive plan and land development regulations do not clearly designate the parcel for a specific use, the area may be considered an unzoned commercial area for the purposes of outdoor advertising if there are located three or more separate and distinct conforming industrial or commercial activities where:

1. At least one of the commercial or industrial activities is located on the same side of the highway and within 800 feet of the sign location;
2. The commercial or industrial activities are within 660 feet from the nearest edge of the right-of-way; and
3. The commercial or industrial activities are within 1600 feet of each other.

Distances must be measured from the nearest outer edge of the primary building, or primary building complex when the individual units of the complex are connected by covered walkways. The section is further amended to provide communication towers may not be recognized as commercial or industrial activities.

Section 479.07, F.S., is amended to provide the FDOT flexibility to lower the reinstatement fee for outdoor advertising permits if the owner demonstrates a good faith error prior to the FDOT removing the sign, and provides competing applications for the same site will not be approved until the sign with the expired permit has been removed.

Section 479.16, F.S., is amended to correct a technical problem by providing unpermitted signs denoting distance or direction to a small business not visible from the road junction or to farm operations, may be up to 16 square feet.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

D. Other Constitutional Issues:

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

According to the FDOT, amending s. 206.46, F.S., to increase the percentage transferred from the State Transportation Trust Fund to 7 percent, capped at \$135 million, to pay for debt service on Right-of-Way Acquisition and Bridge Construction Bonds would support additional capacity of \$475 million in 30-year bonds at a 5 percent interest rate. The increase in the cap allowed for debt service will require up to \$31.5 million of State transportation revenues to fund the additional debt service for the life of the bonds.

Further, authorizing FDOT and local governmental entities having jurisdiction of a fixed guide way system, to enter into an interlocal agreement to provide for the financing by FDOT of total project costs by the issuance of revenue bonds could generate \$200 million or more in proceeds upon the sale of bonds.

The issuance of Grant Anticipation Revenue bonds will provide additional funding for transportation projects. The FDOT estimates that after the debt service is offset, approximately \$842 million will be available for transportation projects.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.