DATE: March 7, 2002

HOUSE OF REPRESENTATIVES

COUNCIL FOR READY INFRASTRUCTURE ANALYSIS

BILL #: CS/HB 261

RELATING TO: The Department of Transportation

SPONSOR(S): Council for Ready Infrastructure and Representative(s) Russell & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) TRANSPORTATION (RIC) YEAS 11 NAYS 1

- (2) TRANSPORTATION & ECONOMIC DEVELOPMENT COMMITTEE YEAS 15 NAYS 0
- (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 12 NAYS 1

(4)

(5)

I. SUMMARY:

The bill is a comprehensive package of legislation affecting the Department of Transportation (DOT).

The key component of the bill is replacing the Turnpike District with a "Turnpike Enterprise," which will operate more independently and utilize private-sector best management practices.

The bill also:

- Raises the debt service cap on Right-of-Way and Bridge Construction Bonds;
- Corrects obsolete statutory and date references related to federal requirements;
- Establishes a process by which DOT employees may bid on agency contracts;
- Re-instates erroneously deleted truck weight requirements;
- Makes changes to recently passed legislation on what types of DOT projects or project phases are eligible for design-build contracts;
- Clarifies the role of DOT's Motor Carrier Compliance Office; and
- Raises contract-value thresholds in order to promote fast-tracking of small projects.

The bill has an indeterminate fiscal impact.

Except where otherwise expressly indicated, the bill takes effect July 1, 2002.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [x]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes [x]	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Because of the comprehensive nature of the bill, the "Present Situation" relating to each issue included in the bill is set out in the "Section-By-Section Analysis" below.

C. EFFECT OF PROPOSED CHANGES:

Because of the comprehensive nature of the bill, the "Effect of Proposed Changes" relating to each issue included in the bill is set out in the "Section-By-Section Analysis" below.

D. SECTION-BY-SECTION ANALYSIS:

Sections 1, 10 and 15-29: Creation of "Turnpike Enterprise"

Current Situation

In 1953, the Legislature created an independent Florida State Turnpike Authority to finance, build, and operate the Sunshine State Parkway. By 1964, the original 265-mile Mainline, connecting Miami to Wildwood, was completed. With the passage of the State Government Reorganization Act of 1969, the authority was dissolved and oversight responsibility of the Florida Turnpike shifted to the Department of Transportation (DOT). Since 1994, the Florida Turnpike has been DOT's eighth "district," with ultimate oversight by the DOT Secretary.

Today, the Florida Turnpike is 401 miles long, and includes the Beeline West in Orange County, the Veterans Expressway near Tampa, the Suncoast Parkway in Hernando County, the Sawgrass Expressway, and the Polk Parkway. Nearly 60 more miles of turnpike are under construction. It is the fourth-largest toll highway system in the United States, and has 174 employees.

In 1999, the Turnpike District generated \$311 million in toll revenues and \$8 million in concession revenues. This reliable and steady stream of revenues supports the repayment of state bonds issued to build turnpike projects, and finances their operation and maintenance. One of the reasons the Florida Turnpike is financially solid is that its projects are required by law to generate sufficient revenue to pay at least 50 percent of its bond debt service by the end of its fifth year in operation, and to pay at least 100 percent of its debt serve by the end of its fifteenth year.

Because it is a significant revenue-generator and outsources more than 80 percent of its activities (including many toll-collection duties), the Florida Turnpike has been mentioned as one of the better

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examples of state government that could be privatized. Separate studies by KPMG and the Infrastructure Management Group (IMG), Inc., evaluated the potential of privatizing the Florida Turnpike. Released in early 2001, these studies concluded that outright privatization would result in short-term cash flow benefits to the state, but could raise long-term public policy concerns. These studies seemed to support a middle ground, between outright privatization and retaining the status quo. The IMG study seemed to support turning the system into an enterprise (utilizing private-sector business practices but remaining under state oversight), while KPMG favorably discussed making the system into an independent authority.

Effect of Proposed Changes

The bill creates two new sections of law related to the Turnpike Enterprise. The new s. 338.2215, F.S., expresses legislative intent language about how transforming the current Turnpike District into an "enterprise" will allow its managers the flexibility to adopt private-sector business practices. These practices may lead to more cost-effective operations, increased revenues, better customer service, and an expanded transportation system.

The new s. 338.2216, F.S., lists the powers and authority of the Turnpike Enterprise, such as: the ability to plan, build, maintain, and operate the Florida Turnpike System; the ability of the Enterprise's executive director to hire staff; the ability to use procurement methods utilized by the Department of Management Services (DMS) under chapters 255 and 287, F.S.; the right to be treated as a single budget entity, whose budget is submitted along with DOT's each year to the Governor; and the ability to carry forward its unspent funds from one fiscal year to the next.

The bill also amends s. 20.23, F.S., DOT's organizational statute, to reflect creation of Florida Turnpike Enterprise. It allows the DOT secretary to delegate responsibility for Turnpike operations to the executive director of the Turnpike Enterprise; specifies the executive director shall report directly to the DOT secretary; and exempts the Turnpike Enterprise from DOT policies, procedures, and standards, subject to the DOT secretary's ability to apply such policies, procedures, and standards as deemed appropriate. Changes to this section of law also allow the DOT secretary to promulgate rules that exempt the Turnpike Enterprise from DOT rules and authorize the Turnpike Enterprise to use private-sector business practices, except the Enterprise must continue to use bidding and competitive negotiation processes required under chapter 287, F.S.

Other substantive law changes include:

- Amends s. 337.025, F.S., to specify the annual \$120 million cap on innovative contracts issued by DOT shall not apply to the Turnpike Enterprise.
- Amends s. 337.11, F.S., to exempt the Turnpike Enterprise from the requirement that title to all necessary rights-of-way or easements must be acquired before projects can be advertised for bid.
- Amends s. 338.221, F.S., to redefine "economically feasible." Currently, an economically feasible Turnpike project must generate sufficient net revenues to pay at least 50 percent of its debt service by the end of its fifth year in operation, and 80 percent of its debt service by the fifteenth year in operation.

Under the bill, an economically feasible Turnpike project is one where its revenues, in combination with those of the existing turnpike system, are sufficient to pay the debt service of the outstanding turnpike bonds.

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Turnpike and DOT staffs say the change puts the Turnpike on equal footing with the various expressway authorities operating in Florida. They added that the existing language dates back to the creation of the Florida, when the Legislature felt a more conservative approach was necessary for an untried and unproven system. Today, the Florida Turnpike is one of the top five rated turnpike systems in the United States and enjoys a AA-bond rating, meaning it has a solid fiscal reputation.

- Amends s. 338.223, F.S., to raise the annual threshold amount of loans from the State
 Transportation Trust Fund to the Turnpike Enterprise for operating or maintenance
 purposes. The current loan limit is 0.5 percent of state transportation revenues in the same
 fiscal year as the loan. In the bill, the loan limit would be raised to 1.5 percent. Agency staff
 says the change is necessary to give the Turnpike Enterprise more flexibility to manage its
 resources.
- Amends s. 338.2275, F.S., to allow DOT to advertise for construction bids for Turnpike
 projects prior to obtaining all of the required environmental permits. This change puts the
 Turnpike on equal footing with the rest of DOT and with the expressway authorities, where
 typically only the award of contract and commencement of construction are contingent on
 having first obtained all necessary environmental permits.
- Amends s. 338.234, F.S., to allow the Turnpike Enterprise to sell, and to enter into contracts
 and licenses with any person wanting to sell services, products, or business opportunities
 along the turnpike system. Specifies a broad range of products and services that may be
 sold. Deletes specific references to concessions, banking and other business services, and
 public information services. Deletes provision allowing DOT to offer opportunities for other
 governmental agencies to hold public events at turnpike plazas.
- Amends s. 338.235, F.S., to allow DOT to reduce or eliminate a fee for placement of wireless facilities on Turnpike property, in exchange for goods, as well as services.
- Amends s. 338.239, F.S., to direct the Turnpike Enterprise to reimburse the Department of Highway Safety and Motor Vehicles (DHSMV) for law enforcement services. Specifies Troop K of the Florida Highway Patrol (FHP) shall be headquartered at the Turnpike Enterprise and shall be the "official and preferred" law enforcement troop for the Turnpike. Specifies DHSMV, upon request of the Turnpike Enterprise's executive director and approval by the Legislature, may add more troopers to patrol the turnpike system, or the Turnpike's executive director may contract with the DHSMV for additional patrol troops.
- Amends s. 338.241, F.S., to require the Turnpike Enterprise to plan its annual budget so it has a minimum 5-percent cash reserve as the end of each fiscal year. Deletes requirement that the reserve be a minimum 10 percent. This change is another way to give the Turnpike more flexibility to manage its finances.
- Amends s. 338.251, F.S., to make the Turnpike Enterprise eligible to receive loans from the Toll Facilities Revolving Trust Fund, as local governments and expressway authorities currently do. Allowing the Turnpike to access loans from the trust fund makes available short-term, start-up financing for the initial work on expansion projects. In most cases, these expenses cannot be financed with bond proceeds, because they occur early in the project development stage.

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• Amends s. 553.80, F.S., to exempt toll-collection facilities of the Turnpike Enterprise from compliance with the State Building Code inspection regulations.

Section 2: Debt Service on Right-of-Way and Bridge Construction Bonds Current Situation

Section 206.46(2), F.S., authorizes a maximum of 7 percent of the total revenues deposited in the State Transportation Trust Fund to be transferred to the Right-of-Way Acquisition and Bridge Construction Trust Fund to pay debt service on bonds issued to buy right-of-way and build/repair bridges. The law also specifies no more than the amount actually needed to pay debt service, up to a maximum \$135 million, shall be transferred.

In fiscal year 2000-2001, 7 percent of the State Transportation Trust Fund revenues equaled \$139 million. The actual debt service was \$59.3 million.

However, DOT financial projections indicate that by fiscal year 2006-2007, the debt service will be \$139.5 million, which exceeds the \$135 million statutory cap. Although exceeding the cap is projected to be 5 years away, DOT staff recommends raising the cap to \$200 million now, because the agency plans its Work Program in 5-year increments.

Effect of Proposed Changes

Amends s. 206.46, F.S., to raise the maximum annual debt service on bonds, issued to acquire right-of-way and build bridges, from \$135 million to \$200 million.

Sections 3 and 4: Consistency with Federal Regulations

Current Situation

DOT has general authority over the State Highway System, certain federally delegated responsibilities for the Interstate System, and general responsibilities for public transportation systems. In terms of federal transportation regulations or federally delegated responsibilities to DOT, Florida Statutes periodically need to be reviewed for compliance and accuracy with federal law.

Effect of Proposed Changes

The bill amends s. 316.302, F.S., to reflect date changes in the Code of Federal Regulations for commercial motor vehicles, and amends s. 316.3025, F.S., to replace references to state statutes with the Code of Federal Regulations, pertaining to penalties for violators of commercial vehicle laws.

Sections 3 and 8: DOT's Office of Motor Carrier Compliance

Current Situation:

Pursuant to chapters 207 and 316, F.S., the DOT's Motor Carrier Compliance Office (MCCO) enforces state and federal laws and rules regulating the safety of commercial motor vehicles and their drivers, and the weight and size of commercial vehicles operating on the state's highways.

The MCCO officers patrolling Florida's highways perform vehicle safety inspections to determine whether commercial drivers are appropriately licensed, are not under the influence of drugs or alcohol, have maintained required logbooks of their hours of service, and are not operating their vehicles in an unsafe manner. They visit truck and bus terminals to examine company vehicles and records. In the course of performing these duties, MCCO officers also check to see that other commercial motor vehicle-related laws, such as registration and fuel taxes, are complied with. This program helps to ensure that trucks and buses operating in Florida are mechanically sound, are licensed, do not exceed size and weight limits, and that vehicle operators are properly qualified, licensed, and driving their vehicles in a safe manner.

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Key MCCO tasks are enforcing truck weight and size limits. MCCO's non-sworn weight inspectors weigh trucks and check truck registrations at 21 fixed-scale stations located along Florida's major highways. MCCO sworn officers use portable scales to weigh trucks when the trucks do not pass fixed-scale stations or when drivers deliberately avoid weighing at the fixed-scale stations.

In recent months, DOT legal staff raised questions about whether the wording of s. 316.302(8), F.S., accurately reflects the MCCO's long-standing authority to stop commercial vehicles for the purpose of inspecting a vehicle and its driver's paperwork, as allowed by federal regulations and judicial decisions. Their legal opinion was that the subsection of Florida law should be clarified.

Effect of Proposed Changes:

Section 316.302(8), F.S., is substantially reworded to reflect that MCCO officers and any duly appointed agents who are certified in commercial vehicle inspections are able to stop a commercial vehicle and its driver in order to perform a records inspection. However, Florida Highway Patrol troopers and other law enforcement officers can only stop a commercial vehicle if they have reason to believe the truck or its driver is operating in an unsafe condition.

If a commercial vehicle or its driver is deemed by any of these officers to be operating in an unsafe condition, the vehicle or the driver can be ordered to stop until the unsafe conditions are addressed.

The proposed law change also specifies any person who fails to comply with an officer's request to submit to an inspection pursuant to this subsection commits either a first-degree misdemeanor, pursuant to s. 843.02, F.S., or a third-degree felony, pursuant to s. 843.01, F.S., depending on whether that person resists the officer with or without violence.

In addition, the bill corrects a technical oversight by including in DOT's "Powers and Duties" section of law, as expressed in s. 334.044, F.S., the ability to have a staff of certified law enforcement officers to enforce not only DOT regulations, but Florida traffic and criminal laws. As mentioned above, such statutory authority has existed for many years for DOT in chapters 207 and 316, F.S.

Section 5: Truck Height Regulations

Current Situation

DOT regulates the height, width, and length of motor vehicles, pursuant to s. 316.515, F.S. Subsection (2), for example, establishes a maximum height of 13 feet, 6 inches for a vehicle, regardless of cargo, although it allows automobile transporters to have a maximum height of 14 feet if they obtain a DOT permit. The industry standard for automobile transports is 14 feet high.

Last fiscal year, DOT issued 715 permits, for a total revenue of \$84,105.

Effect of Proposed Changes:

The DOT permit requirement for automobile transporters with heights up to 14 feet is repealed because it is unnecessary paperwork.

Sections 6 and 7: Truck Weight Regulations

Current Situation

Section 316.535, F.S., regulates the weights of trucks, based on their axle spacing. During the 2000 Legislative Session, s. 316.540, F.S., was identified as an obsolete section of law and repealed. However, upon further review in the interim, DOT came to the conclusion that one subsection in the repealed law was necessary, because without it, there would be no weight limits on concrete mixers, septic tank pump trucks, dump trucks, and other "special use trucks" that don't comply with the standard axle spacing.

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Effect of Proposed Changes:

A new subsection (6) is added to s. 316.535, F.S., to include weight limits on these specialty trucks, and to specify they have to meet all safety and operational requirements under law. Also, section 316.545, F.S., is amended to add a cross-reference, in light of the amendment to s. 316.535, F.S.

Section 9: DOT Employee Bidding

Current Situation

Section 334.193, F.S., forbids DOT employees from entering into agreements for, or having a financial interest in, the purchase or furnishing of materials or supplies to the agency, contracts to build roads or acquire land, or any other work for which DOT is responsible.

As part of the Governor's initiative to outsource state agency work and to trim staffs, DOT has been researching ways to creatively address these issues.

Effect of Proposed Changes:

Section 334.193, F.S., is amended to authorize DOT to consider competitive bids or proposals from its employees for services that are being outsourced. If the DOT employee, or group of employees, is determined to be the successful bidder, the employee or group of employees must resign from the agency prior to executing an agreement to perform the work.

In addition, DOT can consider bids from an employee or group of employees, submitted on behalf of the agency, to continue to perform the work in-house.

DOT is directed to either update existing rules, or promulgate new rules, pertaining to employee usage of department equipment, facilities, and supplies during business hours, in order to prevent any abuses that could occur under these employee-bidding procedures

Sections 11-14: DOT Bidding/Contracting Requirements Current Situation

Chapter 337, F.S., describes DOT's contracting and acquisition processes. In particular, s.337.107, F.S., gives DOT the authority to enter into contracts, using state procurement guidelines, to purchase right-of-way or related services for transportation corridors and facilities. Section 337.11, F.S., governs DOT's overall contracting authority. One of its provisions prohibits the advertisement of bids and the publication of bid notices for projects until title to the affected right-of-way has either been vested in DOT or a local government, and all railroad crossing and utility agreements have been executed.

Traditionally, individual phases of a transportation project are separately bid and awarded. Florida's DOT is among a handful of state transportation agencies that are awarding contracts to one provider who agrees to perform multiple project tasks. In Florida, these are called "design-build contracts," because the bidders agree to design and build the entire project. In fiscal year 2000-2001, DOT programmed \$349.4 million for design-build projects, primarily to widen or replace bridges.

During the recently concluded Special Session B, the Legislature passed CS/SB 24-B, which amended ss. 337.107 and 337.11(7), F.S. CS/SB 24-B (chapter 2001-350, Laws of Florida), amended state law to allow DOT, <u>until July 1, 2003</u>, to enter into design-build contracts before all of the necessary right-of-way has been acquired and vested in the state or a local governmental entity, and before all easements, railroad crossings or utility agreements have been executed. Project engineering and design could begin even though all of the rights-of-way necessary to build the project have not been acquired. However, project construction cannot commence until all of the necessary rights-of-way have been vested and other necessary agreements executed.

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The bill also included right-of-way services as part of design-build contract. These statutory changes were necessary to fully implement DOT's portion of the Governor's economic stimulus package, but are applicable to DOT's entire 5-Year Work Program.

DOT also has interpreted s. 337.025, F.S., related to "innovative highway projects," to include design-build contracts for all types of transportation work. DOT is limited to spending no more than \$120 million annually for innovative highway projects, so most of these projects have been small resurfacing jobs. In fiscal year 2000-2001, DOT has programmed into its budget to spend about \$74 million on projects in this category.

DOT also is trying to promote "fast-tracking" of small construction and maintenance projects, meaning contracts that do not need to be competitively bid. Currently, s. 337.11(6)(c), F.S., sets the threshold at \$60,000 for projects that do not have to go through competitive bidding. As construction and materials costs have increased, DOT staff considers the \$60,000 cap too low.

Effect of Proposed Changes

The bill amends s. 337.11, F.S., to set a numeric threshold -- \$120,000 – for contracts that are not required to put out for competitive bid. It also adds "enhancement projects" – such as landscaping or traffic signal installation -- to those projects eligible for design-build contracts.

It also amends the design-build language adopted during Special Session 2001-B to extend until July 1, 2005, DOT's ability to include right-of-way services in design-build contracts, and it adds limited-access facilities as eligible projects for design-build.

Section 30: Provides that, except as otherwise provided, this act shall take effect July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill creates no new revenue sources for state government.

2. Expenditures:

Indeterminate, but minimal.

DOT will incur some costs in developing and publishing any new rules, or amending existing rules, related to the creation of the Turnpike Enterprise. Transferring staff in the Office of Toll Operations from Tallahassee to Orlando, as part of merging the office with the Turnpike Enterprise, also will have associated costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1.	Revenues:

None.

2. Expenditures:

None.

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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of the bill, because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities or counties to raise revenues.

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

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

V. **COMMENTS**:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Section 1 of the bill gives the DOT Secretary authority to promulgate rules that will assist the proposed Turnpike Enterprise in utilizing best management practices.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its December 18, 2001, meeting, the Transportation Committee adopted four amendments filed by Rep. Russell. A brief description of the amendments follows:

- Amendment #1 specified that DOT Motor Carrier Compliance officers and other law enforcement officers with applicable safety inspection certificates may require commercial vehicle drivers to pull off the highway and submit for inspection of the vehicle's or the driver's records.
- Amendment #2 deleted nearly identical design-build contract language in CS/SB 24-B that was passed during Special Session B and was signed into law by the Governor.

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 Amendment #3 specified the required credentials of the proposed Turnpike Enterprise's chief financial officer, and specified that the currently separate Office of Toll Operations will be moved to the Turnpike Enterprise.

Amendment #4 specified the duties of DOT's Office of Motor Carrier Compliance.

On February 8, 2002, the Transportation & Economic Development Committee adopted the following six amendments.

- Amendment #1 conformed the time period to request arbitration of contract disputes to the time period for filing contract claims suits.
- Amendment #2 corrected a date reference.
- Amendment #3 clarified that toll collection facilities are subject to building code inspections by the Turnpike. Other Turnpike buildings, such as offices and plazas, would be subject to local inspection.
- Amendment #4 required the Turnpike Enterprise to comply with the CCNA [Consultants Competitive Negotiation Act].
- Amendment #5 was a conforming amendment related to Amendment #4.
- Amendment #6 was an amendment to Transportation Committee Amendment #4. This
 amendment clarifies the definition of the word "contraband". DOT has worked with Agriculture
 to clarify the type of contraband DOT can seize.

At its February 26, 2002, meeting, the Ready Infrastructure Council adopted three amendments. Briefly:

- Amendment #1 made numerous changes to the design-build law adopted during Special Session 2001-B. It extended by 2 years, to July 1, 2005, the eligibility of right-of-way services to be included in design-build contracts and added limited-access facilities (such as toll plazas) to projects eligible for design-build.
- Amendment #2 was a technical amendment to adjust the bill's effective date, needed because of the previous amendment.
- Amendment #3 was compromise language, clarifying that only MCCO officers or any "duly
 appointed agent who holds a current safety inspector certification from the Commercial Vehicle
 Safety Alliance" may require the driver of a commercial vehicle to stop and submit to an
 inspection of the records of the vehicle or the driver. All other law enforcement officers must
 have reason to believe a commercial vehicle or its driver is operating in an unsafe condition
 before they can legally stop the vehicle.

The Council reported the bill favorably as a committee substitute.

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VII.	SIGNATURES:		
	COMMITTEE ON TRANSPORTATION:		
	Prepared by:	Staff Director:	
	Joyce Pugh	Phillip B. Miller	
	AS REVISED BY THE COMMITTEE ON TRANSPORT COMMITTEE: Prepared by:	Staff Director:	
	Eliza Hawkins	Eliza Hawkins	
	AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE: Prepared by: Council Director:		
	C. Scott Jenkins	Thomas J. Randle	