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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
TRANSPORTATION & ECONOMIC DEVELOPMENT COMMITTEE
ANALYSIS**

BILL #: HB 261
RELATING TO: The Department of Transportation
SPONSOR(S): Representative(s) Russell and Johnson

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
 - (4)
 - (5)
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I. SUMMARY:

HB 261 is a comprehensive package of legislation affecting the Department of Transportation (DOT).

The key component of HB 261 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; and raises contract-value thresholds in order to promote fast-tracking of small projects.

HB 261 has an indeterminate fiscal impact.

HB 261 takes effect July 1, 2002.

(NOTE: The Transportation & Economic Development Appropriations Committee, adopted six amendments during its February 8, 2002 meeting before voting favorably on the bill. See "VI. Amendments and Committee Substitute Changes" section below.)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Because of the comprehensive nature of HB 261, 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 HB 261, 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 and 10-26: 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 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 15th 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

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

HB 261 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 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 that the executive director shall report directly to the DOT secretary; 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 that authorize the Turnpike Enterprise to use private-sector business practices.

Other substantive law changes include:

-- Amends s. 337.025, F.S., to specify that 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 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 15th year in operation.

Under HB 261, 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.

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 5 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 HB 261, 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 that FHP's Troop K shall be headquartered at the Turnpike Enterprise and shall be the "official and preferred" law enforcement troop for the Turnpike. Specifies that the 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 that 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 can't be financed with bond proceeds because they occur early in the project development stage.

-- Amends s. 553.80, F.S., to exempt from compliance with the State Building Code inspection regulations relating to the Turnpike Enterprise.

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

Current Situation

Section 206.46(2), F.S., authorizes that a maximum of 7 percent of the total revenues deposited in the State Transportation Trust Fund 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 that 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 five years away, DOT staff recommends raising the cap to \$200 million now because the agency plans its Work Program in five-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

HB 261 amends s. 316.302, F.S., to reflect date changes in 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.

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.

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 8: 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, 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 9 and 10: DOT Bidding 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),

amends state law to allow DOT, until July 1, 2003, 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 crossing 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.

The bill also includes 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 don't need to be competitively bid. Currently, s. 337.11(6)(c), F.S., sets the threshold at \$60,000 for projects that don't have to go through competitive bid. As construction and materials costs have increased, DOT staff considers the \$60,000 cap too low.

Effect of Proposed Changes

HB 261 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 specifies that actual construction may not begin on any portion of a design-build contracted project until all of the right-of-way has been acquired and titled in the name of DOT or a local government, easements have been vested in DOT or a local government, and/or all utility agreements and railroad crossings have been executed.

Section 27: Provides that this act shall take effect July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

HB 261 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.

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 HB 261 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:

HB 261 does not reduce the authority of municipalities or counties to raise revenues.

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

HB 261 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:

DOT has requested several mostly technical or clarifying amendments to be considered at the December 18, 2001, committee meeting.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 8, 2002, the Transportation and Economic Development Committee adopted the following six amendments which are now traveling with the bill.

- Amendment #1 conforms the time period to request arbitration of contract disputes to the time period for filing contract claims suits.
- Amendment #2 corrects a date reference.
- Amendment #3 clarifies 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 requires the Turnpike Enterprise to comply with the CCNA [Consultants Competitive Negotiation Act].
- Amendment #5 is a conforming amendment related to Amendment #4.
- Amendment #6 is 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.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION :

Prepared by:

Joyce Pugh

Staff Director:

Phillip B. Miller

AS REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC DEVELOPMENT
COMMITTEE:

Prepared by:

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