HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Infrastructure	9 Y, 1 N	Creamer	Miller
2) Economic Expansion & Infrastructure Council		Creamer	Tinker
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

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

- Allows Transportation Concurrency Authorities to issue debt to address transportation concurrency backlogs and establishes a 40 year maturity date of debt issued;
- Requires all hybrid and other low emission and energy efficient vehicles using the High Occupancy Vehicle (HOV) lanes to comply with federally mandated minimum fuel economy standards;
- Authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to withhold license plate issuances for owners of vehicles that fail to pay tolls;
- Lowers the blood and breath alcohol level (BAL) for the purposes of triggering driving under the influence enhanced penalties to maintain eligibility for federal safety grant funding;
- Provides that the Department of Transportation (DOT) performs duties assigned to the Field Administrator of the Federal Motor Carrier Safety Administration under the federal rules;
- Directs DOT to maintain specified training programs for professional engineer and right of way trainees and authorizes incremental pay increases for trainees completing certain phases of training;
- Includes claims arising out of certain maintenance contracts in the State Arbitration Board process;
- Requires DOT or a local governmental entity to pay the cost of relocation of a utility interfering with public road or publicly owned rail corridor improvements if the utility facility serves the DOT or governmental entity exclusively;
- Directs DOT to pursue and implement technologies and processes to provide all electronic toll collections and requires that all new and replacement electronic toll collection systems belonging to other toll entities be interoperable with the DOT's system;
- Removes specific mention of state owned toll facilities under DOT's authority that are currently authorized for bond financing; clarifies that public transit is an option for use of toll revenues generated by the State Highway System;
- Revises the DOT's authority to amend the adopted work program by increasing the minimum threshold for certain work program amendments from $150,000 to $500,000;
- Revises DOT's logo sign program and requires the DOT to set annual permit fees not to exceed $3,000 by DOT rule based upon such factors as population, traffic volume, market demand, and costs.

The bill is effective upon becoming law, with the exception of section 5 of the bill which is effective October 1, 2008. The bill will have an indeterminate positive fiscal impact to DOT, see fiscal analysis and Economic impact statement for details.

Note: Please see Section IV for a summary of the ten amendments traveling with HB 1399.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principals.

B. EFFECT OF PROPOSED CHANGES:

Transportation Concurrency Backlog Authorities

Current Situation

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

- The amount of ad valorem tax levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the jurisdiction of the transportation concurrency backlog authority and within the transportation backlog area; and

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

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

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

- Identify all transportation facilities that have been designated as deficient and require the expenditure of moneys to upgrade, modify, or mitigate the deficiency.

- Include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy concurrency requirements and the applicable local government comprehensive plan.

- Establish a schedule for financing and construction of transportation concurrency backlog projects that will eliminate transportation concurrency backlogs within the jurisdiction of the authority within 10 years after the transportation concurrency backlog plan adoption. The schedule must also be adopted as part of the local government comprehensive plan.

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

Proposed Changes

HB 1399 specifically:

- Provides legislative findings regarding the public purpose of transportation concurrency backlog authorities;
- Authorizes transportation concurrency backlog authorities to issue debt including, but not limited to, bonds, notes, certificates, or similar debt instruments;
- Requires that the debt issued must not exceed a term of 40 years;
- Requires that the local trust funds continue to be funded for the period of time until projects included in the transportation concurrency backlog plan are completed or until all debt incurred to finance or refinance the projects is satisfied;
- Increases the percentage of funding from ad valorem taxes from 25 percent to 50 percent of the incremental difference described above;
- Provides that when all of the affected taxing authorities agree pursuant to an interlocal agreement, a particular local trust fund may be funded by the proceeds of an ad valorem tax increment greater than 50 percent; and
- Clarifies that the transportation concurrency backlog authorities are not dissolved until all issued debt is repaid or defeased.

<u>High Occupancy Vehicles Lanes</u>

Current Situation

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

- Motorcycles and bicycles are allowed to use the HOV facility, unless either or both create a safety hazard. If so, the state must certify, the DOT Secretary must accept certification, and it must be published in the Federal Register with opportunity for public comment;

- Public transportation vehicles are allowed if vehicle identification requirements are established and enforced;

- High occupancy toll (HOT) vehicles are allowed to use the facility if the vehicles pay a toll; if a program is established to address enrollment and participation; if the vehicles are prepared to accommodate automatic toll collections; and if variable pricing and enforcement procedures have been established;

- Inherently low-emission and energy-efficient vehicles (as established by EPA prior to September 30, 2009), may be allowed to use HOV facilities if procedures for enforcing restrictions on use are established; and if vehicles are certified and labeled under federal regulations;

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

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

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

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

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

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

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

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

Proposed Changes

HB 1399 specifically:

- Requires all hybrid and other low-emission and energy-efficient vehicles that do not meet the minimum occupancy requirement and are driven in a HOV lane to comply with federally mandated minimum fuel economy standards;

- Provides for determination of continued eligibility of hybrid and other low-emission and energy-efficient vehicles for operation in an HOV lane;

- Authorizes limitation or discontinuance of vehicle decals for use of an HOV lane if the facilities are degraded due to congestion;

- Provides that vehicles eligible to be driven in an HOV lane that is redesignated as a high-occupancy toll (HOT) lane may continue to be driven in the HOT lane without payment of a toll; and

- Transfers rulemaking responsibility with regard to HOV lanes from the DHSMV to the DOT.

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

Toll Enforcement

Current Situation

Current law provides that if a person fails to comply with certain civil penalties, which includes failure to pay a toll, within the time period specified, fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court shall notify the DHSMV of such failure within 10 days. Upon receipt of such notice, DHSMV shall immediately issue an order suspending the driver's license of such person effective 20 days after the date the order of suspension is mailed.

Although DHSMV has not questioned its authority and duty to suspend driver's licenses upon receipt of notice from the clerk of the court as set forth in section 318.15(1)(a), F.S., with regard to unpaid citations issued for toll violations, and has been suspending driver's licenses in such cases, DHSMV has questioned its authority to rely on similar notices from the clerks of the court with regard to vehicle registration stops and has not been issuing such registration stops.

Current law concerning registration stops for the failure to resolve a citation issued for the non-payment of a prescribed toll are sections 316.1001(4) and 320.03(8), F.S. Section 316.1001(4), F.S., provides that any governmental entity may supply the DOT with data that is machine readable by the DOT's computer system, listing persons who have one or more outstanding violations of this section. Pursuant to s. 320.03(8), those persons may not be issued a license plate or revalidation sticker for any motor vehicle. Section 320.20(8), F.S., concerning registration and the duties of tax collectors, provides that if the applicant's name appears on the list referred to in s. 316.1001(4), s. 316.1967(6), or s. 713.78 (13), a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the clerk showing that the fines outstanding have been paid.

Proposed Changes

HB 1399 provides clarification of the existing statute regarding notice to DHSMV for registration stops for the failure of the vehicle owner to address an unpaid citation issued for the failure to pay a required toll.

This provisions specifically authorize DHSMV to accept, from the clerks of the court, lists of persons who have one or more outstanding violations under s. 316.1001, F.S., the failure to pay a prescribed toll, a noncriminal traffic infraction; and pursuant to s. 320.03(8), F.S., those persons will not be issued

a license plate or revalidation sticker for any motor vehicle, by the tax collector or license tag agency, until that person's name no longer appears on the list or until the person presents a receipt from the clerk showing that the fines outstanding have been paid.

The bill also provides for lists to include license plate numbers, where the person is a business entity without a driver's license, instead of a natural person.

This bill is in response to the position taken by DHSMV that subsection (4) of section 316.1001, F.S., needs to be amended to clarify their authority as to registration stops for the failure to resolve a citation issued for the non-payment of a prescribed toll, a noncriminal traffic infraction.

Toll Collection

1. Inoperability of Toll Collections

Current Situation

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

Proposed Changes

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

2. All Electronic Toll Collection

Current Situation

DOT currently maintains two methods of toll collection on the turnpike system: cash collection and electronic toll collection via its SunPass program. Electronic toll collection is more cost effective and provides improved mobility as compared to cash toll collection. Since the deployment of the SunPass program in 2001, over $450 million of costs have been avoided by not having to expand toll facilities for increased cash transactions. Currently, 65 percent of turnpike customers pay through electronic toll collection. The DOT established a goal to increase the number of customers that pay electronically to 75 percent by December 2008.

Proposed Changes

HB 1399 directs DOT to pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage, including without limitation video billing and variable pricing.

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

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

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

3. Uniform Toll Rate - Administrative Costs

Current Situation

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

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

DOT has also implemented a new Video Account pilot program called Toll-by-Plate whereby infrequent customers or rental car users can create an account that uses the vehicle's license plate number as a form of identification. A prepaid account or credit card guarantee is used to fund transactions whenever a license plate matching process determines the user has a valid Video Account. The Toll-by-Plate program will be an integral part of the DOT's strategy to eliminate the need for all vehicles to stop at toll plazas to pay their tolls. Due to the higher operating costs associated with image processing and license plate verification and matching, the DOT is seeking clear authority to fix and collect amounts to cover the expenses of this new service. The new Video Account will be an optional service that customers may select if it best serves their individual needs.

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

Proposed Changes

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

4. Toll Revenues and Bonding

Current Situation

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

Proposed Changes

HB 1399 specifically:

- Clarifies that the DOT may use remaining toll revenues for public transit within the county from which it is collected as an additional tool to enhance mobility on the State Highway System; and

- Deletes specific references revenue producing facilities to alleviate the need for repeated statutory changes to include new facilities within the DOT's existing authority to request bond issuance.

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

Current Situation

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

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

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

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

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

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

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

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

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

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

Proposed Changes

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

For the purpose of incorporating these changes, numerous sections of law related to DUI violations are reenacted. (See sections 24-63 of the bill.)

Motor Carrier Compliance

Current Situation

DOT's Office of Motor Carrier Compliance is charged with enforcement of laws relating to the operation of commercial motor vehicles within the state, including those safety regulations applicable to owners or drivers engaged in intrastate commerce. Section 316.302(1)(b), F.S., provides for the adoption of specified federal safety regulations, as they existed on October 1, 2005.

Proposed Changes

HB 1399 makes technical changes to authorize DOT to enforce the most current federal regulations applicable to owners and operators of commercial motor vehicles.

Professional Engineer and Right-of-Way Training

Current Situation

DOT administers three separate trainee programs:

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

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

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

Proposed Changes

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

State Arbitration Board

Current Situation

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

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

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

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

Proposed Changes

HB 1399 revises current law to include claims for additional compensation arising out of maintenance contracts in the existing State Arbitration Board process for claims arising out of construction contracts.

Maintenance contracts have not previously been included in this process, but the same benefits would be realized by including maintenance contracts in the negotiation and board process.

Utility Relocation

Current Situation

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

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

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

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

Proposed Changes

HB 1399 adds an additional exception to s. 337.403, F.S., providing that DOT, or a governmental entity, will bear all costs of the removal or relocation of a utility, when the utility facility only serves the purpose of the DOT or the governmental entity.

Work Program Amendments

Current Situation

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

- Any amendment that deletes any project or project phase;

- Any amendment that adds a project estimated to cost over $150,000;

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

- Any amendment that advances or defers to another fiscal year any preliminary engineering phase or design phase estimated to cost over $150,000, except an amendment advancing or deferring a phase for a period of 90 days or less.

Proposed Changes

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

- Any amendment that deletes a project or project phase;

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

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

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

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

Transportation Planning

Current Situation

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

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

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

Proposed Changes

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

Outdoor Advertising

Current Situation

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

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

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

Proposed Changes

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

- Recognize that an "automatic changeable facing" may be changed by other than mechanical means;

- Provide a more stable regulatory structure by requiring permits for signs on the State Highway System outside an urban area, rather than an outside incorporated area (the urban area boundaries change much less frequently than those of incorporated areas);

- Define a specific placement of permit tags other than the sign face and would give the industry 2 years within which to comply;

- Direct the DOT to establish by rule a fee for replacement tags in an amount that covers actual cost (the current service fee is $3);

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

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

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

Logo Signs

Current Situation

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

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

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

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

Proposed Changes

HB 1399 authorizes signs for "other" services "which are approved by the FHWA.

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

In addition, the bill increases the $1,250 cap on the annual permit fee for business participants to $3,000. The fees within this cap are to be established by DOT rule in a reasonable amount determined by factors such as, population, traffic volume, market demand, and costs. Proceeds are to be deposited in the State Transportation Trust Fund to be used for transportation purposes after all costs have been accounted for.

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

C. SECTION DIRECTORY:

Section 1. Amends s. 163.3182, F.S., relating to transportation concurrency backlog authorities; providing legislative findings and declarations; expanding the power of authorities to borrow money to include issuing certain debt obligations; providing a maximum maturity date for certain debt incurred to finance or refinance certain transportation concurrency backlog projects; authorizing authorities to continue operations and administer certain trust funds for the period of the remaining outstanding debt; requiring local transportation concurrency backlog trust funds to continue to be funded for certain purposes; and providing for increased ad valorem tax increment funding for such trust funds under certain circumstances.

Section 2. Amends s. 316.0741, F.S., requiring vehicles to comply with certain federal standards to be driven in an HOV lane at any time, regardless of occupancy; and providing for the DHSMV to limit or discontinue issuance of decals for the use of HOV facilities by hybrid and low-emission and energy-efficient vehicles under certain circumstances.

Section 3. Amends s. 316.1001, F.S., revising provisions prohibiting the DHSMV from issuing a license plate or revalidation sticker to a person who is on a list of persons with outstanding toll violations; specifying that the list may be supplied by the clerk of court; prohibiting issuance of the plate or sticker until the person's name is no longer on the list or until the person presents a receipt from the clerk showing all amounts owed have been paid.

Section 4. Amends s. 316.193, F.S., revising the prohibition against driving under the influence of alcohol; and revising the blood-alcohol or breath-alcohol level at which certain penalties apply.

Section 5. Amends s. 316.302, F.S., revising references to rules, regulations, and criteria governing commercial motor vehicles engaged in intrastate commerce; providing that the DOT performs duties assigned to the Field Administrator of the Federal Motor Carrier Safety Administration under the federal rules and may enforce those rules.

Section 6. Amends s. 316.656, F.S., revising the prohibition against a judge accepting a plea to a lesser offense from a person charged under certain DUI provisions; and revising the blood-alcohol or breath-alcohol level at which the prohibition applies.

Section 7. Amends s. 334.044, F.S., requiring the DOT to maintain certain training programs; and authorizing such programs to provide for incremental increases to base salary for employees successfully completing training phases.

Section 8. Amends s. 337.185, F.S., providing for the State Arbitration Board to arbitrate certain claims relating to maintenance contracts; and providing for a member of the board to be elected by maintenance companies as well as construction companies.

Section 9. Amends s. 337.403, F.S., requiring the DOT or local governmental entity to pay the cost of relocation of a utility that is found to be interfering with the use, maintenance, improvement, extension, or expansion, of a public road or publicly owned rail corridor if the facility serves the DOT or governmental entity exclusively.

Section 10. Amends s. 338.01, F.S., requiring new and replacement electronic toll collection systems to be interoperable with the DOT's system.

Section 11. Amends s. 338.165, F.S., revising provisions for use of certain toll revenue.

Section 12. Amends s. 338.2216, F.S., directing the Florida Turnpike Enterprise to implement new technologies and processes in its operations and collection of tolls and other amounts.

Section 13. Amends s. 338.223, F.S., conforming a cross-reference.

Section 14. Amends s. 338.231, F.S., revising provisions for establishing and collecting tolls.

Section 15. Amends s. 338.231, F.S., revising the DOT's authority to amend the adopted work program.

Section 16. Amends s. 339.155, F.S., revising provisions for development of the Florida Transportation Plan.

Sections 17 and 18. Amends ss. 339.2819 and 339.285, F.S., conforming cross-references.

Section 19. Amends s. 479.01, F.S., revising provisions for outdoor advertising; and revising the definition of the term "automatic changeable facing".

Section 20. Amends s. 479.07, F.S., revising a prohibition against signs on the State Highway System; revising requirements for display of the sign permit tag; and directing the DOT to establish by rule a fee for furnishing a replacement permit tag.

Section 21. Amends s. 479.08, F.S., revising provisions for denial or revocation of a sign permit.

Section 22. Amends s. 479.11, F.S., revising a prohibition against certain signs located outside an urban area.

Section 23. Amends s. 479.261, F.S., revising provisions for the logo sign program; revising requirements for businesses to participate in the program; authorizing the DOT to adopt rules for removing and adding businesses on a rotating basis; removing a provision for an application fee; revising the provisions for an annual permit fee; and providing for rules to phase in the fee.

Sections 24-63. Reenacts ss. 316.066(3)(a), 316.072(4)(b), 316.1932(3), 316.1933(4), 316.1937(1) and (2)(d), 316.1939(1)(b), 316.656(1), 318.143(4) and (5), 318.17(3), 320.055(1)(c), 322.03(2), 322.0602(2)(a), 322.21(8), 322.25(5), 322.26(1)(a), 322.2615(14)(a) and (16), 322.2616(15) and (19), 322.264(1)(b), 322.271(2)(a), (c) and (4), 322.2715(2), (3)(a), (c), and (4), 322.28(2), 322.282(2)(a), 322.291(1)(a), 322.34(9)(a), 322.62(3), 322.63(2)(d) and (6), 322.64(1), (2), (7)(a), (8)(b), (14), and

(15), 323.001(4)(f), 324.023, 324.131, 327.35(6), 337.195(1), 440.02(17)(c), 440.09(7)(b), 493.6106(1)(d), 627.7275(2)(a), 627.758(4), 790.06(2)(f) and (10)(f), 903.36(2), and 907.041(4)(c), F.S., to incorporate references in changes made by the act.

Section 64. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 2, requiring HOV's to comply with federal standards has an indeterminate fiscal impact. According to DOT, federal law reveals no specific penalty to be assessed against a state for non-compliance, and the DOT assumes the EPA final rule will set forth that penalty. It is expected that the penalty will involve the diversion of use of federal funds for construction purposes to some other program. The number of $5 decals issued could go down if a facility is identified as degraded. DHSMV administrative expenses for decal issuance could decline if an HOV facility is identified as degraded and issuance is limited or discontinued. County tax offices that issue decals could experience a reduction in decal issuance and administrative expenses as described for DHSMV above. Nonpayment of tolls for use of HOT lanes that were formerly HOV lanes is not expected to present a fiscal impact, as vehicles currently eligible to be driven in HOV lanes do not pay tolls.

Sections 4 and 6, revising DUI provisions and enforcement, may prevent the loss of about $5 million annually in federal safety grant funds.

Section 5, revising references to federal rules, regulations, and criteria governing commercial motor vehicles engaged in intrastate commerce may prevent the loss of about $7 million annually in federal Motor Carrier Safety Assistance grant funds.

Section 14, authorizing DOT to recover administrative costs for toll collection would positively impact the State Transportation Trust Fund, the Turnpike Trust Fund and other toll facility revenues.

Section 20, authorizing DOT to set by rule a service fee, in an amount that recovers actual cost, for replacement of lost, stolen, or destroyed permit tags placed on outdoor advertising signs would have a positive fiscal impact on the State Transportation Trust Fund. The amount is indeterminate due to the fact it is unknown how many tags will be replaced. The current $3 fee is well below actual cost for the tags.

Section 23, increasing the cap for Logo signs on the interstate would have positive fiscal impact on the State Transportation Trust Fund. This amount is indeterminate due to the fact the fees have not been established by DOT rule at this time.

2. Expenditures:

Section 9, requiring DOT, or governmental entity, to pay all costs associated with the removal or relocation of utilities when the utility being relocated exclusively serves DOT could have a negative impact on the State Transportation Trust Fund should a project require removal or relocation of utilities that exclusively serve DOT .

Section 12, requires all tolling technology to be compatible. This results in standardization throughout the state and may result in indeterminate implementation costs. Currently, the only incompatible system in the state is in Miami-Dade County on the Rickenbacker and the Venetian Bridges. According to DOT, Miami-Dade County is currently working towards making its system compatible.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Section 9, requiring DOT, or governmental entity, to pay all costs associated with the removal or relocation of utilities when the utility being relocated exclusively serves the governmental entity could have a negative impact on local government revenues should a project require removal or relocation of utilities that exclusively serve the governmental entity.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 3 of the bill would require repeat toll violators who have ignored both the issuing agencies' attempts and the court's attempts to resolve toll violations.

Sections 4 and 6, revising DUI provisions and enforcement, would impact person's who drive under the influence alcohol.

Section 14, authorizes toll rates to include an amount necessary to cover the costs of administration for convenience toll collection methods, this would increase toll rates paid by citizens using a convenience method.

Section 20, revising the outdoor advertising permit tag fee would have initial cost to the industry to relocate or place tags in accordance with the statute. However, this is spread over 2 years to allow this to occur as part of routine maintenance activities and the number of replacement tags requested is expected to decrease.

Section 23, increasing the cap for Logo signs on the interstate could have a negative or positive impact on businesses requesting these signs. This amount is indeterminate due to the fact the fees have not been established by DOT rule at this time.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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

- Amendment 1 clarifies the process for DOT's legislative recommendations with reference to a future EPA's final rule relating to the eligibility of hybrid and other low-emission and energy efficient vehicles.

- Amendment 2 deletes section 3 of the bill which prohibited the DHSMV from issuing a license plate or revalidation sticker to a person who is on a list of persons with outstanding toll violations; specified that the list may be supplied by the clerk of court; and prohibited issuance of the plate or sticker until the person's name is no longer on the list or until the person presents a receipt from the clerk showing all amounts owed have been paid.

- Amendment 3 changes a date to reference existing federal law related to commercial motor vehicle rules and regulations.

- Amendment 4 deletes a federal law reference related to transportation planning processes; this provision referenced future changes to the law creating an unlawful delegation.

- Amendment 5 allows county correctional agencies to use blue lights on vehicles when responding to emergencies.

- Amendment 6 revises comprehensive plan requirements related to airports, land adjacent to airports, and certain related interlocal agreements.

- Amendment 7 specifies financial disclosure requirements for all statutorily created expressway and transportation authorities.

- Amendment 8 abolishes the Tampa Bay Commuter Transit Authority which has been inactive for a number of years.

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

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