

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SB 1978

INTRODUCER: Transportation Committee and Senator Baker

SUBJECT: Department of Transportation

DATE: March 20, 2008 REVISED: 3/26/2008

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Meyer</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>ODonnell</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/4 amendments</u>
3.	<u> </u>	<u> </u>	<u>TA</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute for Senate Bill 1978 makes changes to a number of programs implemented by the Florida Department of Transportation (FDOT, the department). The bill:

- Adds contracts for maintenance work to claims heard by the State Arbitration Board;
- Exempts utilities from paying for relocation of a utility to accommodate a transportation project serving the transportation authority or its tenants;
- Requires all new or replacement electronic toll collection (ETC) systems to be interoperable with the department's ETC system;
- Revises current toll revenue bonding and usage provisions to accommodate specified high-occupancy toll (HOT) lanes and express lanes;
- Directs the Florida Turnpike Enterprise to implement new processes for toll collections, including video billing and variable pricing;
- Eliminates the requirement to maintain a uniform toll rate structure on the turnpike system, and provides for alternate tolling and payment methods;
- Makes a number of technical changes related to sign permits; and

- Provides flexibility to conform with federal program changes expanding the interstate highway Logo Sign Program and raises the authorized fee for the program.

This bill substantially amends the following sections of the Florida Statutes: 337.185, 337.403, 338.01, 338.165, 338.2216, 338.231, 479.01, 479.07, 479.08, 479.11, and 479.261.

This bill creates s. 338.166, F.S.

II. Present Situation:

State Arbitration Board

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 FDOT and the various contractors with whom it contracts. The section requires that every contractual claim in an amount up to \$250,000 per contract or, at the claimant's option, up to \$500,000 per contract or, upon agreement of the parties, up to \$1 million per contract, that cannot be resolved by negotiation between FDOT and the contractor be arbitrated by the board. Either party may request the claim be submitted to binding private arbitration. FDOT and contractors have used this dispute resolution 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 that would be expected in a civil judicial proceeding. The process benefits both FDOT and construction contractors by facilitating prompt claim settlement and reducing or eliminating litigation costs. Maintenance contracts are not included in this process. Routine maintenance contracts include:

- pavement patching
- shoulder repair
- cleaning and repair of drainage ditches
- traffic signs, and structures
- mowing
- bridge inspection and maintenance
- pavement striping
- litter cleanup
- other similar activities

Relocation of Utilities

Section 337.403, F.S., requires utility owners to remove or relocate utilities at their own expense when necessary for the construction of a publicly-owned transportation project. There are three exceptions:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, the FDOT pays for the removal or relocation with federal funds.
- Where the cost of the utility improvement, installation, or removal exceeds the FDOT's official cost estimates for such work by 10 percent, FDOT participation is

- limited to the difference between the official estimate of all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract.
- When relocation of the utility takes place before construction commences, FDOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the relocation.

Toll Collection Systems

In addition to cash deposit toll collections, FDOT currently maintains one Electronic toll collection (ETC) system, SunPass, statewide on the turnpike and at other FDOT toll facilities. Although there is currently no statutory requirement for FDOT and any other transportation authority to use interoperable ETC systems, SunPass is compatible with the systems of most independent toll agencies within Florida. Interoperability of ETC systems enhances their usefulness and generally makes the concept of ETC more desirable. ETC is more cost effective and provides improved mobility and enhanced traffic flow when compared to cash toll collection. FDOT estimates more than \$450 million of costs have been avoided by not having to expand toll facilities for increased cash transactions since the 2001 deployment of the SunPass program. Currently, 65 percent of turnpike customers pay through electronic toll collection. FDOT has established a goal to increase the number of customers paying electronically to 75 percent by December 2008. As ETC continues to increase, FDOT intends to modify its toll collection process to provide more payment options to customers and improve mobility by eliminating cash toll collection at the roadside.

Today, SunPass accounts are replenished via credit card payments. Emerging technology will soon give customers the option of cash replenishment so that customers who wish to pay with cash and remain anonymous (i.e. 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 department is also anticipating the deployment of a video billing system. This method of payment will allow customers to use the roadway without a transponder or other device, instead using their license plate for identification and billing. Video billing, as this is called, 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 backroom processing costs, and therefore, will require additional administrative fees. FDOT currently lacks authorization to impose and recover certain administrative amounts in connection with the collection of tolls.

High-occupancy Toll/Express Lanes

FDOT is currently engaged in a pilot project to provide 'managed lanes' on the existing I-95 corridor from I-395 to the Golden Glades Interchange in Miami-Dade County. The project will convert the existing High Occupancy Vehicle Lanes (HOV) to managed lanes, also known as HOT lanes. By restriping the existing road and shoulder into narrower lanes, the existing single HOV lane will be replaced by two HOT/managed lanes. After the conversion, buses and HOVs with three or more occupants (HOV-3) will be able to use the HOT/managed lanes at no cost

while single occupant vehicles (SOVs) will pay a variable toll which will be based on the operating speed of the managed lanes. HOT/managed lanes would have variable congestion pricing, i.e., tolls fluctuate with increased congestion so that a minimum operating speed of 50 MPH could be maintained at all times. Transit (buses) and vehicles with a minimum occupancy of two persons (HOV-2) may currently use the existing HOV lanes. Operational changes to shoulders on I-95 may allow for provision of additional HOT lanes south of the Golden Glades Interchange. Phase II of the I-95 Express project would extend the lanes to I-595 in Broward County.

Toll Facilities Bonding

The Florida Constitution requires legislative authorization in order to bond a revenue project. Current law (s. 338.165, F.S.) authorizes FDOT to request issuance of bonds secured by excess 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. These facilities, although being toll facilities, are not part of the turnpike system.

Outdoor Advertising

Chapter 479 provides for the control and permitting of signs adjacent to the highways of the state. Signs on the State Highway System which are outside of an incorporated area require a permit from the department. The department-issued permit tag currently must be posted on the sign face. After a permit has been issued, an applicant must be provided 30 days to make corrections if it is determined the application for the permit contained knowingly false or misleading information. A service fee of \$3 is currently required for a replacement tag.

The department has noted the boundaries of incorporated areas change frequently, often without notice to the department, making the control area difficult to define for both the department and the regulated industry. Also, with the advent vinyl sign wraps and the use of digital displays, it is often impractical to affix the permit to the sign face. The result is that tags are posted in many different locations, making it difficult for FDOT to determine whether the tag is properly posted. The department has also noted the \$3 fee for a replacement permit tag is well below the cost to provide the tag.

Logo Program

Signs on the interstate highway system are regulated and approved by the Federal Highway Administration (FHWA). Section 479.261(1), F.S., requires FDOT to establish a Logo Sign Program for the interstate highway system rights of way. The program provides information to motorists about available gas, food, lodging, camping, and attraction services at interstate interchanges. From time to time, FHWA approves new categories of signs; however, the statute as currently written does not allow the addition of other categories of services as they achieve federal approval.

Permits for participation in the gas, food, lodging, and camping categories are based only 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 department to the highest bidder.

The department is required to establish permit fees in an amount sufficient to offset the total cost of administering the logo sign program, but the permit fee is capped at \$1,250 by law. The annual fee is currently set at \$1,000 by department 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 program for several interchanges on the interstate system where the structure displaying the particular business category is full. The proposal provides for the implementation of a 3-year rotation of participating businesses at those interchanges where wait lists exist.

III. Effect of Proposed Changes:

Section 1 – State Arbitration Board

Section 337.185, F.S., is amended to include maintenance contracts in the existing State Arbitration Board process.

Section 2 - Relocation of Utilities

Section 337.403, F.S., is amended to add a fourth exception to the requirement for utility owners to remove or relocate utilities at their own expense, when necessary for the construction of a transportation project. The bill places the responsibility for relocating a utility on the authority having jurisdiction over the transportation facility if the utility was initially installed to serve only the authority, its tenants, or both. For example, if a power line originally installed to supply electricity to a toll plaza must be relocated due to widening the toll road, the toll authority, not the power company, must pay the cost of moving the line. However, if the power line was subsequently expanded to serve a nearby development, the power company would be responsible for the costs of relocating the expanded portion of the line.

Section 3 – Interoperability of ETC Systems

A new paragraph (6) is added to s. 338.01, F.S., requiring all operators of limited access toll facilities to maintain interoperability with FDOT's ETC when providing new, or replacing existing systems.

Sections 4 and 5 – HOT and Express Lanes Revenue Bonding

Section 338.165, F.S., is amended to clarify this section does not apply to HOT and express lane facilities. A new section (s. 338.166, F.S.) is created relating only to HOT or express lanes which:

- allows FDOT to request bonds to be issued which are secured by toll revenues from the I-95 Express project in Miami-Dade and Broward Counties;
- authorizes the department to charge variable tolls on HOT or express lanes;
- authorizes the department to continue to collect tolls on the HOT or express lanes after the bonds are discharged;
- directs the department to use any remaining toll revenue for the construction, maintenance, or improvement of other roads on the State Highway System;
- extends the prohibition on the charging of tolls on interstate highways except where tolls were being charged on July 1, 1997 or on HOT or express lanes; and

- provides the section does not apply to the turnpike system.

Section 6 – All-Electronic Toll Collection

Section 338.2216, F.S., is amended directing the Florida Turnpike Enterprise to implement new toll collection technologies and processes including video billing and variable pricing. Additional payment methods, such as video billing and cash replenishment would provide drivers with more flexibility for payment options without compromising the other benefits of non-stop travel. Drivers will still have the flexibility to pay tolls with cash but will no longer have to stop on the roadway to do so.

Section 7 – Uniform Toll Rates and Administration Costs

Section 338.231, F.S., is amended to delete language comprising subsection (1) which requires a system wide equivalent-cost-per-mile toll structure. The deletion of subsection (1), including the only statutory reference to a “uniform system rate,” allows the Florida Turnpike Enterprise to provide innovative methods of toll collection, such as variable pricing. New language is added allowing the Florida Turnpike Enterprise to temporarily establish a toll-rate lower than the rate established through FDOT’s rule-making process. These changes provide flexibility for additional toll payment options and allow the administrative costs of such additional customer options to be allocated fairly among the customers selecting such payment options.

Sections 8 – 11 – Outdoor Advertising

Several technical revisions are made to ch. 479, F.S., to resolve known problems:

- Section 479.01(1), F.S., is amended to update the definition of “automatic changeable facing.” The new definition recognizes signs and billboards may be changed by other than mechanical means, e.g., electronic or digital display.
- Section 479.07(1), F.S., which requires permits for signs on the State Highway System outside of *incorporated* areas is revised to require permits for signs outside of *urban* areas. The urban area boundaries, which are designated using U.S. Census Bureau and Federal Highway Administration guidelines, change much less frequently than those of incorporated areas. Designated urban areas are typically larger than incorporated areas.
- Section 479.07(5)(a), F.S., is amended to define the specific placement of sign permit tags on sign structures. The provision affords the industry 2 years within which to comply.
- The bill amends s. 479.07(5)(b), F.S., directing the department to establish by rule, a fee for replacement tags in an amount covering the actual cost. A permittee may also provide its own replacement tag if it conforms to department specifications established by rule.
- Section 479.08, F.S., is amended to clarify the department’s ability to revoke any sign permit for violating the requirements of the chapter. Under the revision, knowingly false or misleading information must be corrected immediately in order to maintain compliance with the permit. When notifying a permittee of a revocation, the

department must describe in detail the alleged violation and any necessary corrective action. The existing provision allowing aggrieved persons to apply for an administrative hearing under ch. 120, F.S., is not changed.

- Section 479.11(2), F.S., is amended to conform with the definition of “controlled area” in s. 479.01, F.S.

Section 12 – Logo Sign Program

A number of changes are made to s. 479.261, F.S., relating to the interstate highway Logo Sign Program:

- The program is revised to include logo signs for other services approved by FHWA thereby eliminating the need for repetitive statutory changes as the service categories achieve federal approval.
- The requirement for attractions to charge admission fees in order to be eligible for the program is removed.
- The requirement for a competitive bidding process for permits, unique to the attractions category of services, is removed, making the attractions category consistent with the annual permit fees of the other logo categories.
- The \$1,250 cap on the annual permit fee for business participants is raised to \$3000. Proceeds, taking into account costs, are deposited in the State Transportation Trust Fund to be used for transportation purposes.
- The department is authorized to implement a 3-year rotation for program participants which will provide for the eventual replacement of participating businesses at interchanges where waiting lists exist.
- Obsolete language dealing with reimbursement for privately funded signs has been deleted.

Section 13 – Effective Date

The provisions of the bill take effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Increased toll charges are authorized to fund state transportation projects. Variable toll rates may be charged on HOT lanes or express lanes. The bill increases fees for replacing permit tags affixed to roadside signs. The maximum fee authorized for logo signs placed near interchanges is increased.

B. Private Sector Impact:

Section 1 – The provisions adding maintenance contracts to the State Arbitration Board process may result in indeterminate reduced costs for maintenance contractors because of reduced litigation costs. The general public benefits from increased efficiency in the delivery of maintenance projects.

Section 2 – Utility owners can see reduced costs from the utility relocation cost provision.

Sections 3-5 – None.

Section 6 – According to FDOT, removing stop and go cash collection in the travel lanes will:

- reduce congestion on the roadway;
- significantly improve safety at tolling points for both drivers and personnel;
- reduce carbon emissions from idling vehicles by an estimated 185 tons per year; and
- save 24 million gallons of fuel.

Section 7 – Revisions facilitating alternative payment methods and toll collection technologies will ensure the amount paid by drivers relates fairly to the payment option selected by the individual.

Section 8 – None.

Sections 9 – The potential need to relocate sign permits and an increase in replacement tag fees will have an indeterminate negative cost impact on outdoor advertisers. The impact will be spread over two years and may be partially offset by enhanced specificity in the statutory description of permit placement.

Sections 1-11 – None.

Section 12 – The provisions relating to the Logo Sign Program may result in increased annual costs for participating businesses. The implementation of participant rotation at wait-listed locations may result in additional businesses participating while also temporarily denying participation to others during the rotation period. Participants in the attractions category may experience savings due to the elimination of the competitive bid requirement.

C. Government Sector Impact:

Section 1 – The provisions adding maintenance contracts to the State Arbitration Board process may result in indeterminate positive administrative cost reductions to FDOT because of reduced litigation costs.

Section 2 – FDOT, local governments, and other authorities will experience indeterminate increases in construction project costs due to bearing the cost of relocating some utilities during the construction of some transportation projects.

Section 3 – The required interoperability of ETC systems may result in transportation authorities experiencing limited alternatives when implementing toll technology solutions.

Section 4 – None.

Section 5 – Increased toll revenues may be applied to state transportation projects.

Section 6 - The department estimates the provisions facilitating all-electronic toll collection could eventually result in the elimination of 142 state employee positions.

Sections 8-11 – Increased fees for replacement permit tags will remove a negative impact stemming from current fees which do not currently cover costs to the department.

Section 12 – An increase in the maximum fee authorized for logo signs could result in an indeterminate positive impact to FDOT.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

By Transportation on March 11, 2008:

The CS:

- i. clarifies a public authority's responsibility for utility relocations does not extend to subsequent expansions of utility facilities originally serving the authority if the expansions do not serve the authority exclusively;
- ii. authorizes the department to charge variable toll rates on HOT lanes or express lanes;

- iii. allows sign permittees to provide their own replacement permit tags when the original is lost or destroyed;
- iv. requires the department's notification of sign permit revocation to describe in detail the cause of the revocation and necessary corrective actions; and
- v. removes the department's authority to expand the interstate highway logo sign program beyond interchange locations.

B. Amendments:

Barcode 221564 by Finance and Tax on March 26:

Revises notice requirements to require the Department of Transportation to notify affected local governments regarding amendments to an adopted 5-year work program. (WITH TITLE AMENDMENT)

Barcode 070910 by Finance and Tax on March 26:

Revises land use and intergovernmental comprehensive plan provisions in s.163.3177, F.S., to include provisions that relate to airport land use plan compatibility planning. (WITH TITLE AMENDMENT)

Barcode 525620 by Finance and Tax on March 26:

Provides a July 1, 2011, effective date for placement of a permit tag at a specified location on a permitted sign.

Barcode 964422 by Finance and Tax on March 26:

Authorizes rates based on market demand and traffic count at each location. Provides that after recovery of program costs, proceeds go into the State Transportation Trust Fund. (WITH TITLE AMENDMENT)