HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1021 Department of Transportation
SPONSOR(S): Aubuchon
TIED BILLS: **IDEN./SIM. BILLS:** SB 932

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Cater	Miller
2)	Economic Development & Community Affairs Policy Council			
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

The bill is an omnibus transportation bill that addresses many issues related to the Department of Transportation (DOT). In summary, the bill:

- Directs DOT to conduct a study examining transportation alternatives for the I-95.
- Better integrates airport planning and adjacent land use in the local government comprehensive planning process.
- Exempts certain seaport-related projects from development-of-regional-impact (DRI) review.
- Authorizes transportation concurrency backlog authorities to issue bonds and exceed the 25 percent tax increment financing rate upon agreement of all affected taxing authorities.
- Authorizes DOT to award stipends to unsuccessful bidders for state-funded construction and maintenance contracts.
- Directs DOT to establish a goal of procuring up to 25 percent of construction contracts as design-build contracts.
- Includes maintenance contractors in the process used by construction contractors to arbitrate contract disputes.
- Provides additional exemptions to utility companies from utility relocation costs related to transportation projects.
- Authorizes the installation of public pay telephones and accompanying advertising within certain rights-of-way.
- Requires all new or replacement electronic toll collection systems to be interoperable with DOT's electronic toll collection system.
- Provides for alternative tolling and payment methods.
- Eliminates the requirement to maintain a uniform toll rate structure on the turnpike system.
- Increases from $100 million to $250 million, the maximum dollar amount for projects, which may be added to DOT's work program when funded by other governmental entities.
- Creates a new reimbursement program for small counties to loan up to $200 million to DOT in order to advance projects outside the adopted work program.
- Revises the notification process used by DOT when amending the work program.
- Reinstates the Small County Resurfacing Assistance Program in 2013 and removes certain eligibility criteria relating to ad valorem tax rates.
- Abolishes the non-functioning Tampa Bay Commuter Transit Authority.
- Authorizes all expressway authorities to index toll rates to the Consumer Price Index.
- Revises provisions relating to the regulation of wall murals.
- Makes changes to the interstate highway logo sign program.
- Creates a business partnership pilot program, which authorizes the Palm Beach County School District to display names of business partners on district property in unincorporated areas.
- Authorizes the use of, but does not appropriate, public funds for certain non-capacity improvements to Old Cutler Road in Miami-Dade County.
- Directs DOT to establish an approved methodology for calculating proportionate share exactions, which recognizes that sustainable DRIs will likely achieve an internal capture rate greater than 30 percent.

Except as otherwise provide, the bill is effective upon becoming law.

The bill has several fiscal impacts to the state, counties, municipalities, and the private section. A potentially significant fiscal impact relates to the wall murals and the Palm Beach County pilot program. According to DOT, it is possible that these provisions violated federal regulations and the state could lose up to $160 million in federal highway funding, if the federal government imposes sanctions for noncompliance.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill makes changes to numerous programs administered by or affecting the Department of Transportation (DOT or department). The bill is nearly identical to Senate Bill 682, which Governor Crist vetoed in 2008. The bill differs from the vetoed bill in the following ways:

- Language related to Turnpike concession and fuel contracting which was identified in the Governor's veto message as being objectionable has been removed;
- Sections which were duplicated in other legislation and subsequently adopted in law have been removed;
- A section extending the Strategic Aggregates Review Task Force has been removed since the task force has been dissolved; and
- Date-specific language has been updated by adding one year to each date.

Interstate 95 Corridor

Current Situation

Interstate 95 (I-95) is the predominant interstate highway on the United States (U.S.) eastern seaboard, paralleling the Atlantic Ocean for 1,917 miles from the Canadian border to South Florida. With approximately 1,040 miles traversing through urban areas, I-95 travels near or through some of the largest and most economically important cities in the country including Boston, Baltimore, Philadelphia, New York City, Washington, D.C., and Miami. According to the U.S. Census Bureau, only five counties along the route - two in South Carolina, one in southern Virginia, and two in northern Maine - are completely rural. I-95 is the longest north-south U.S. interstate highway and passes through fifteen states - more than any other.

The Federal Highway Administration (FHWA) estimates that without any further improvements to the corridor, virtually 100 percent of the urban segments will be heavily congestion by 2035. Congestion for non-urban corridors would increase from the current 26 percent impacted to over 55 percent impacted.

Florida's 382 miles of I-95 comprise the highest number of miles for any state. According to DOT calculations using 2006 data, 159 miles (42%) fail to meet the adopted minimum level of service standards and may be considered congested.

County	Total Length (In Miles)	Number of Congested Miles	Percent Congested
Brevard	73	45	62%
Duval	38	19	50%
Flagler	19	19	100%
Nassau	12	0	0%
St. Johns	35	0	0%
Volusia	46	1	2%
Broward	25	25	100%
Miami-Dade	17	15	88%
Indian River	19	0	0%
Martin	25	7	28%
Palm Beach	46	28	61%
St. Lucie	27	0	0%
Total	**382**	**159**	**42%**

Routes paralleling I-95 for long distances in Florida include:

- U.S. Route 1, which closely parallels I-95 from Jacksonville to Miami;
- State Road A1A, along the coastline;
- U.S. Route 17, running through Jacksonville, Palatka, Deland, Orlando, before heading West through Bartow to Punta Gorda;
- U.S. Route 301, from the Georgia line to Interstate 75 in Marion County; and
- The Florida Turnpike, especially from Fort Pierce to Miami.

There are ongoing studies of I-95 at both the federal and state level. At the federal level, the United State's Department of Transportation approved six Interstate highway routes including I-95 as "Corridors of the Future."[1] A total of $21 million was approved for use in implementing two proposals for further development of the I-95 corridor from Florida to the Canadian Border. A five-state proposal including Florida offered the potential for moderate to significant congestion reduction and mobility improvements along I-95 from Washington, D.C. to Florida. A second proposal from the I-95 Corridor Coalition proposed Intelligent Transportation System (ITS) enhancements to optimize traffic operations along the corridor.

At the state level, DOT's Systems Planning Office, in cooperation with its Districts 2 and 5, is performing a Sketch Interstate Plan for mainline I-95 from the Indian River/Brevard County Line north to the Florida/Georgia State Line. The purpose of this Plan is to develop a baseline needs analysis for travel demand through the year 2035 and the equivalent need for transportation improvements in the corridor. A special emphasis is the investigation of freight movements within the corridor, analyzing the anticipated growth of major SIS Hubs and the effects anticipated in freight movement through the corridor. The I-95 Sketch Interstate Plan will do a macro analysis of modal opportunities to move freight in the congested portions of I-95. The Study is anticipated to be complete in February 2010.

There are also Interstate Master Plans and project development and environmental (PD&E) studies under development for portions of I-95 throughout the corridor. In Southeast Florida, there are also multi-modal studies evaluating parallel rail corridors.

Proposed Changes

The bill directs DOT, in consultation with the Department of Law Enforcement, the Division of Emergency Management of the Department of Community Affairs, and the Office of Tourism, Trade,

1 See http://www.fhwa.dot.gov/pressroom/dot0795.htm

and Economic Development and the regional planning councils to study transportation alternatives for the I-95 corridor. The study is to consider state needs relating to:

- transportation,
- emergency management,
- homeland security, and
- economic development.

The report must identify cost-effective measures for:

- alleviating congestion,
- facilitating emergency and security responses, and
- fostering economic development.

The report must be completed by June 30, 2010. DOT is required to send the report to:

- the Governor,
- the President of the Senate,
- the Speaker of the House of Representatives, and
- each affected metropolitan planning organization (MPO).

DOT points out that there are some overlaps between the bill, its Sketch Interstate Plan, the Interstate Master Plans and other studies underway. Generally, the studies underway evaluate the future needs for the movement of people and good through the corridor.

Florida Transportation Commission

Current Situation

In 1987, the Legislature created the Florida Transportation Commission to serve as a citizen's oversight board for the Florida Department of Transportation. The Commission administratively housed in DOT; however, it is independent of DOT's control and direction. The Commission is composed of nine Commissioners who are appointed by the Governor and confirmed by the Senate. While the Commission is required to meet at least four times per year, it usually meets around seven times per year, in locations throughout the state in order to receive local input.

The Commissioners must represent transportation needs of the state as a whole and may not subordinate state needs to those of any particular area. The Commission is prohibited from involvement in day-to-day operations of the DOT (e.g., consultant or contractor selection, specific projects, personnel matters, etc.). The Commission's primary functions are to:

- Review major transportation policy initiatives or revisions submitted by the Department pursuant to law.
- Recommend major transportation policy to the Governor and Legislature.
- Serve as an oversight body for the Department.
- Serve as an oversight body for transportation authorities, monitors and reports on the efficiency, productivity and management regional transportation and transit authorities and expressway and bridge authorities.
- Serve as nominating Commission in the selection of the Secretary of Transportation (the Governor appoints the Secretary from among three candidates nominated by the Commission).[2]

[2] The Florida Transportation Commission is created in s. 20.23, F.S. Information from the Florida Transportation Commission Website http://www.ftc.state.fl.us/about.htm (January 7, 2009).

The commission currently has five employees all of whose positions are classified as Select Exempt Service, with the commission having the complete authority for fixing the salary of the executive director and the assistant executive director.

Proposed Changes
The bill amends s. 20.23, F.S., to set the salary and benefits of the executive director of the Florida Transportation Commission in accordance with the Senior Management Service. The remainder of the Commission's positions would remain classified as Select Exempt Service.

Comprehensive Plans

The Local Government Comprehensive Planning and Land Development Regulation Act[3]- also known as Florida's Growth Management Act - requires all of Florida's 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development. Comprehensive plans address issues such as future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.[4]

1. Required and Optional Elements of Comprehensive Plans

Current Situation
Section 166.3177, F.S., provides the requirements for elements of comprehensive plans. The required elements include capital improvement, future land use, intergovernmental coordination, housing and transportation.

Proposed Changes
The bill amends s. 166.3177, F.S. to include airport planning provisions in local comprehensive plans. Local governments are required to update their plans and transmit them to the state land planning agency by June 30, 2012. Additionally, the bill requires the intergovernmental coordination element to provide for interlocal agreements as established pursuant to s. 333.03(1)(b), F.S, relating to airport zoning regulations

2. Coastal Management

Current Situation
Section 163.3178, F.S., addresses coastal management as it relates to comprehensive plans. This section provides that expansions of port harbors, spoil disposal sites, navigation channels, turning basins, harbor berths, and the related inwater harbor facilities of ports, port transportation facilities, and certain other port projects are not developments of regional impact (DRI)[5] when the expansion, projects, or facilities are consistent with comprehensive master plans. An exemption from the development of regional impact process does not currently exist for projects near, but outside of the ports.

Proposed Changes
The bill amends s. 163.3178, F.S., to provide that facilities determined by the Department of Community Affairs and the applicable general-purpose local government to be port related industrial or commercial projects located within three miles of or in a port master plan area which rely upon the use

[3] Part II of Chapter 163, F.S.

[4] Department of Community Affairs website on Growth Management and Comprehensive Planning. http://www.dca.state.fl.us/fdcp/dcp/compplanning/index.cfm (January 7, 2009).

[5] Section 380.06(1), F.S., defines "development of regional impact" as "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens in more than one county."

of port and intermodal transportation facilities are not DRIs when the expansion, project, or facilities are consistent with comprehensive master plans.

Transportation Concurrency Backlog Authorities (TCBAs)

Current Situation

Local governments are required to use a systematic process to ensure that new development does not occur unless the growth is supported by adequate infrastructure. The requirement for public facilities and infrastructure to be available concurrent with new development is known as concurrency. Transportation concurrency uses a graded scale of roadway level of service (LOS) standards assigned to all public roads. The LOS standards are a proxy for the allowable level of congestion on a given road in a given area. Stringent standards (i.e., fewer vehicles allowed) are applied in rural areas and easier standards (i.e., more vehicles allowed) are applied in urban areas to help promote compact urban development. DOT is responsible for establishing LOS standards on the highway component of the Strategic Intermodal System (SIS) and for developing guidelines to be used by local governments on other roads. Local governments, however, have discretion in the implementation of transportation concurrency because they designate the concurrency management strategies and exception areas within their boundaries, and control land use decisions within their jurisdictions.

In 2007, the legislature created s. 163.3182, F.S. which provides that a county or municipality with an identified transportation concurrency backlog[6] may create a TCBA.[7] Acting as the TCBA within the authority's jurisdictional boundary, the governing board of the county or municipality is authorized to develop and implement a plan to eliminate all backlogs within the transportation concurrency backlog area. The plan must identify all roads designated as failing to meet concurrency requirements and include a schedule for financing and construction to eliminate the backlog within 10 years of plan adoption. The plan is not subject to the twice-per-year restrictions on comprehensive plan amendments.

To fund the plan's implementation, each authority must establish a 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 is funded by the proceeds of an ad valorem tax increment collected within each transportation concurrency backlog area. The increment collected is 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 concurrency 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 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.

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;

[6] Section 163.3182(1)(d), F.S., defines "transportation concurrency backlog" as "the plan adopted as part of a local government comprehensive plan by the governing body or municipality acting as a transportation concurrency backlog authority."

[7] Section 163.3182, F.S.

- 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; and
- 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
The bill amends s. 163.3182, F.S to provide legislative findings that many counties and municipalities have significant transportation deficiencies. Many of these inadequacies and deficiencies severely limit or prohibit the satisfaction of transportation concurrency standards, and transportation deficiencies and inadequacies affect the health, safety, and welfare of the state's residents, and adversely affect economic development and growth of the tax base where these inadequacies and deficiencies exist. Finally, the satisfaction of transportation concurrency standards are paramount public purposes for the state, counties, and municipalities.

The bill authorizes the TCBAs to issue bonds and other similar debt instruments. The maturity date of any debt may be no more than 40 years provided; however, all projects eliminating the concurrency backlog are scheduled within the first 10 years. Transportation concurrency trust funds must remain funded and the TCBA must remain in existence until all projects are completed or all debts incurred to finance or refinance a project are no longer outstanding, whichever is later.

The tax increment to be earmarked for the transportation concurrency trust fund is increased from 25 percent to a minimum of 25 percent of the difference. Upon agreement by all taxing authorities included in the interlocal agreement creating the TCBA, the percentage may exceed 25 percent of the difference.

Construction and Maintenance Services

Construction and maintenance services such as roadway and bridge construction, right of way mowing, etc. are acquired pursuant to s. 337.11, F.S. Current law authorizes DOT to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System or the State Park Road System or of any roads placed under its supervision by law. DOT is also authorized to enter into contracts for the construction and maintenance of rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities. Specifically DOT is required to:

- Ensure that all project descriptions, including design plans, are complete, accurate, and up to date prior to the advertisement for bids on such projects.
- On all construction contracts of $250,000 or less, and any construction contract of less than$500,000 for which DOT has waived prequalification, DOT must advertise for bids in a newspaper having general circulation in the county where the proposed work is located.
- On all construction contracts greater than $250,000, DOT must provide a bid solicitation notice to all prequalified contractors at least 2 weeks before the date bids are scheduled to be received.

DOT may not publish advertisements for bids or provide a bid solicitation notices provided until title to all necessary rights-of-way and easements, and all railroad crossing and utility agreements have been executed. The turnpike enterprise is exempt from this paragraph for all turnpike enterprise projects.

Title to all necessary rights-of-way is deemed to have been vested in the state when such title has been dedicated to the public or acquired by prescription. DOT may award the proposed construction and maintenance work to the lowest responsible bidder, or in the instance of a time-plus-money contract, the lowest evaluated responsible bidder, or it may reject all bids and proceed to rebid the work.

When DOT determines that it is in the best interest of the public for reasons of public concern, economy, improved operations or safety, and only when circumstances dictate rapid completion of the work, DOT may, enter into contracts for construction and maintenance up to the amount of $120,000, without advertising and receiving competitive bids.

1. Design-Build Contracting

Current Situation
Section 337.11, F.S., provides that if the secretary of DOT determines it is in the best interests of the public, DOT may combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, known as a design-build contract. In traditional contracting for transportation projects, the conventional process results in a linear progression of design-bid-build. In design-build contracts, the design and construction phases occur concurrently conserving considerable amounts of time. Design-build contracts may be advertised and awarded based on DOT rule and procedures for administering design-build contracts. DOT must receive at least three letters of interest in order to proceed with a request for design-build proposals. DOT must request proposals from no fewer than three of the design-build firms submitting letters of interest. If a design-build firm withdraws from consideration after the DOT requests proposals, the evaluation process may continue if at least two proposals are received.

Further, overall design costs are lower in a design-build contract versus a design-bid-build contract.

- A recent study by University of Florida concluded the following:

	Design-Build	Design-Bid-Build
Cost Growth	4.45 %	9.36 %
Time	7.08 %	16.47 %

Proposed Changes
The bill amends s. 337.11, F.S, to establish a goal for DOT to procure up to 25 percent of capacity construction projects as design-build contracts by 2013. According to DOT, 15.73 percent of its capacity projects are currently design-build.

2. Stipends

Since 2000, DOT has been paying stipends on federally-funded projects as allowed under federal rules and when DOT started using the design-build contracting technique more extensively to reduce the time it takes to deliver a construction project. This technique is predominantly used on major construction projects, such as I-95 and I-595 widening and the St. Johns River and St. George Island bridge replacements. Currently, DOT only pays stipends on design-build and public-private partnership (P3) contracts, which incorporate design-build elements. The rules of the FHWA[8] recommend paying stipends, and such amounts are eligible for federal-aid participation.

Stipend amounts range from 0.1 to 0.5 percent of construction cost and are only paid to shortlisted firms that are not awarded the project. Typically, DOT shortlists three firms to submit a technical and price proposal. Stipends are not intended to provide for full compensation of the entire proposal preparation costs and usually amount to one-third to one-half of the estimated cost.

[8] 23 C.F.R. 636.113

According to DOT, stipends are the norm nationally for these sorts of contracts and offer the following benefits:

- Increased competition, resulting in the state receiving competitive bids.
- More accurate bids as the firms use the stipend amount to advance design, thereby not pricing for risk that may never come to bear.
- In exchange for the stipends paid to the unsuccessful firms, the state owns the proposal, giving the state the ability to use any and all proposed innovations and obtain the overall benefit of innovations and reduced costs.

Proposed Changes
The bill amends s. 337.11, F.S., authorizing DOT to award a monetary stipend to unsuccessful bidders for construction and maintenance contracts to compensate for proposal development costs. In order to pay a stipend, DOT must determine that it is the best interest of the public to pay the stipend. The decision and amount of a stipend is based on DOT's analysis of the estimate proposal development costs and anticipated degree of competition in the procurement process. The stipends are to be used to encourage competition and to compensate unsuccessful firms for a portion of their costs in developing a proposal. DOT retains the right to use ideas from unsuccessful firms that receive a stipend. The bill requires DOT to include stipend requirements in its rule procedures for design-build contracts.

3. Contractor Surety Bonds

Current Situation
Section 337.18, F.S., in general, requires a surety bond of the successful bidder on a construction or maintenance contract in an amount equal to the awarded contract price. Upon execution of the contract, and prior to beginning any work under the contract, the contractor must record the required bond in the public records of the county where the improvement is located.

Proposed Changes
The bill amends s. 337.18, F.S., to require a contractor, prior to beginning any work under a DOT contract to maintain a copy for the required payment and performance bond at its principal place of business and at the jobsite office if one is established, and to provide a copy of the bond within five days after receipt of any request for a copy. A copy of the bond may also be obtained from DOT through a public records request.

4. 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 DOT and the various contractors. The law requires the board arbitrate 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 DOT and the contractor. However, either party may request the claim be submitted to binding private arbitration.

DOT and its contractors have very successfully utilized this dispute resolution process to resolve many claims arising out of construction contracts. Most frequently, parties present matters without active legal representation, 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 overall result benefits both DOT and construction contractors by facilitating prompt claim settlement and reducing or eliminating litigation costs. Maintenance contracts are not included in this process, but the same benefit would be realized by including maintenance contracts in the negotiation and board 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

Proposed Changes
The bill amends s. 337.185, F.S, 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.

5. Relocation of Utilities

Current Situation
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 DOT pays for the removal or relocation with federal funds.
- Where the cost of the utility improvement, installation, or removal exceeds the DOT's official cost estimates for such work by 10 percent, DOT 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, DOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the relocation.

Proposed Changes
The bill amends s. 337.403, F.S., to provide additional exceptions to utility owners from the responsibility for relocating along county roads and highways when necessary for the construction of a transportation project.

- If the utility facility being removed or relocated was initially installed to benefit DOT, its tenants, or both, DOT bears the cost of removal or relocation, but DOT is not responsible for bearing the cost of removal or relocation of any subsequent additions to the facility for the purpose of serving others;
- If pursuant to an agreement between a utility and the authority (DOT and local governments) entered into after the bill takes effect, the utility conveys, subordinates, or relinquishes a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation, but nothing impairs or restricts, or may be used to interpret, the terms of any agreement entered into prior to the bill's effective date; and
- If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, DOT bears all costs of the relocation.

The bill also amends s. 125.42, F.S., to provide that these provisions apply to counties.

6. Public Pay Telephones

Current Situation

Section 337.408, F.S., regulates the placement of benches, transit shelters, street light poles, waste disposal receptacles, and modular news racks within rights of way to ensure they meet federal law, regulations and safety standards. DOT is authorized to relocate or removal these structures if they are in violation of law or create a safety hazard to the public. Commercial advertising is allowed on benches, transit shelters, waste disposal receptacles and modular news racks within rights of way.

Proposed Changes
The bill amends s. 337.408, F.S., to include the regulation of public pay telephones. These types of structures, including advertising placed on them, are prohibited on a limited access highway. The pay telephone must be installed by a provider authorized and regulated by the Public Service Commission and must operate in accordance with all applicable federal and state telecommunications regulations. The provider must also have written authority from the appropriate municipal or county government. Each advertisement accompanying pay telephones are limited to a size of no greater than eight square feet and there cannot be any more than three advertisements per pay telephone. Advertisements are not permitted on public pay telephones located in rest areas, welcome center, and other similar facilities located on interstate highways. According to DOT, there are no federal requirements that would prohibit public pay telephones, including advertising, on state rights of way.

Toll Collection Systems

1. Interoperability of Toll Collections

Current Situation
In addition to cash deposit toll collections, DOT currently maintains one electronic toll collection (ETC) system, SunPass, statewide on the turnpike and at other DOT toll facilities. While there is currently no statutory requirement for DOT 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 ETC more desirable.

ETC is more cost effective than cash toll collection, provides improved mobility, and enhanced traffic flow. Since the 2001 deployment of the SunPass, DOT estimates that it has avoided more than $450 million in costs by not having to expand toll facilities for increased cash transactions. Currently, 65 percent of turnpike customers pay through electronic toll collection. DOT has established a goal to increase the number of customers paying electronically to 75 percent.

Proposed Changes
The bill amends s. 338.01, F.S., requiring all operators of limited access toll facilities to maintain interoperability with DOT's ETC (SunPass) when providing new, or replacing existing systems.

2. **Continuation of Tolls**

Current Situation
Section 338.165, F.S., permits DOT, any transportation or expressway authority or, in the absence of an authority, a county or counties to continue to collect tolls on a revenue-producing project after any bonded indebtedness related to the project has been discharged and the authority may increase any such tolls. The tolls collected are to first be used to pay the annual cost of operating, maintaining, and improving the toll project. For revenue producing projects on the State Highway System, any remaining toll revenue is to be used within the county or counties where the project is located.

DOT is also required to index toll rates to inflation, no more frequently than once a year and no less frequently than once every five years. However, toll rates may be increased beyond those limits as directed by bond documents, covenants, governing body authorization, or pursuant to DOT administrative rule.

The Florida Constitution requires legislative authorization in order to bond a revenue project. Section 338.165, F.S., permits DOT to request issuance of bonds secured by the excess toll revenues collected on the Alligator Alley, the Sunshine Skyway, 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.

Proposed Changes
The bill amends s. 339.165, F.S., in three ways. First, it permits remaining toll revenue after paying the costs associated with the revenue producing project to be used for public transit in the county or counties where the revenue producing projects are located. The bill also provides that the provisions requiring DOT to increase toll rates to inflation does not apply to toll rates on HOV toll lanes or express lanes. Finally, the bill removes the specific roads from the provision permitting the issuance of bonds on certain toll facilities to fund projects within the counties where they are located.

3. Toll Technologies and Pricing

Current Situation
Florida's Turnpike Enterprise operates the state's turnpike system, which is governed in Florida's Turnpike Enterprise Law. Section 338.231, F.S., addresses tolls on the Turnpike System.

The law requires DOT to fix, adjust, charge, and collect the tolls required for the use of the turnpike system to provide funds sufficient to cover the costs of maintaining, improving, repairing, and operating the turnpike system; to pay the principal and interest on all bonds issued to finance or refinance any portion of the turnpike system as they become due and payable and to create reserves.

To the extent feasible, DOT is required to have "uniform toll rates" where by vehicle class, the toll rate per mile will be approximately equal across the system. However, new projects may have a higher toll rate if it is necessary to qualify the project under turnpike law, but DOT must reduce these rates when it generates enough revenue to support itself at the uniform system rate. DOT may also establish a temporary toll rate, for up to one year, at less than the uniform system rate in order to build patronage for the ultimate benefit of the turnpike system.[9]

As ETC continues to increase, DOT intends to modify its toll collection process to provide more payment options 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 allowing customers to pay with cash and remain anonymous. DOT will maintain the cash payment method off the roadway, so cash customers will enjoy the same non-stop travel as SunPass customers.

DOT also anticipates deploying of a video billing system. This system will allow customers to use the roadway without a transponder or other device, and instead use 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 has a higher administrative 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 has significant processing costs, and therefore, will require additional administrative fees. DOT currently lacks authorization to impose and recover certain administrative amounts in connection with the collection of tolls.

Proposed Change
The bill amends s. 334.044, F.S., relating to the powers and duties of DOT to give DOT the authority to establish variable rate tolls.

[9] Section 338.223, F.S.

The bill amends s. 338.2216, F.S. to direct the Florida Turnpike Enterprise to pursue implement new toll collection technologies and processes including, without limitation, video billing and variable pricing. The additional payments 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.

The bill amends s. 338.231, F.S., to delete the requirement for "uniform toll rates," which requires a system wide equivalent-cost-per-mile toll structure. The deletion of this section, which includes 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. Current language allowing the Florida Turnpike Enterprise to temporarily establish a toll rate lower than the rate established through DOT's rule-making process is relocated. 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 option.

Local Government Reimbursement Program

Current Situation

Section 339.12, F.S., provides any governmental entity may aid in any project or project phase included in DOT's five-year adopted work program by contributions of cash, bond proceeds, time warrants, or other goods or services of value.

Prior to accepting a contribution, DOT must enter into agreements with the governmental entity for the project or project phases. DOT may not receive contributions that exceed the actual cost of the project or project phase. By specific provisions in the written agreement between the DOT and the governmental entity, DOT is authorized to reimburse the governmental entity for the actual amount of the contribution on a highway project or project phases that are not revenue producing and are contained in DOT's adopted work program, or any public transportation project contained in the adopted work program.

Subject to legislative appropriations, DOT may commit state funds for reimbursement of projects or project phases. Reimbursement to the governmental entity for these projects or project phase must be made from the appropriated funds, and reimbursement for the cost of the projects or project phase is to begin in the year the project or project phase is scheduled in the work program.

Funds advanced pursuant to this program, which were originally designated for transportation purposes and reimbursed to a county or municipality, must be used by the county or municipality for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. Reimbursements may not be used to fund routine maintenance expenditures

In addition, DOT may enter into agreements for projects or project phases not included in the five-year adopted work program. These advancements include only projects or project phases for acquisition of rights-of-way, construction, construction inspection, and related support phases. Agreements for advancement of projects or project phases from outside the five-year work program shall only include high priorities of the governmental entity.

The total amount of project agreements for projects or project phases not included in the adopted work program may not at any time exceed a statewide cap of $100 million.

Proposed Changes

The bill amends s. 339.12, F.S., to raise the $100 million cap on projects advanced into the work program by contributions from local governments to $250 million.

Additionally, the bill authorizes DOT to enter long-term repayment agreements with counties having a population of 150,000 or fewer persons,[10,11] to advance a transportation projects or project phases not already included in the adopted work program. The bill defines "project phase" to mean the acquisition of rights of way, construction, construction inspection, and related support phases. The bill requires that any project or project phase that is advanced must be a high priority of the governmental entity and be included in the local comprehensive plan. Reimbursements must be made from funds appropriated by the Legislature through the work program process. The bill limits the advancement of projects under this program to $200 million any given time. The bill also authorizes DOT to enter into long-term repayment agreements of up to 30 years.

Work Program

Current Situation
Section 339.135, F.S. requires DOT to submit the following proposed work program amendments to the Governor for approval:

- Any amendment that deletes any project or phase
- Any amendment that adds a project estimated to cost over $150,000 in funds appropriated by the Legislature; and
- 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, in funds appropriated by the Legislature, except an amendment advancing or deferring a phase for a period of 90 days or less.

DOT is required to immediately notify the chairs of the legislative appropriations committees, each member of the Legislature who represents a district affected by the proposed amendment, each metropolitan planning organization affected by the proposed amendment, and each unit of local government affected by the proposed amendment. The Governor may not approve a proposed amendment until 14 days following the notification and must disapprove the amendment if either of the chairs of the legislative appropriations committee or the President of the Senate or the Speaker of the House of Representatives objects in writing within 14 days following notification.

Proposed Changes
The bill amends s. 339.135, F.S., requiring DOT to notify each affected counties and each municipality within the county of specified work program amendments that delete or defer a construction phase on a capacity project. Each affected county and each municipality in the county are encouraged to coordinate to determine how the amendment affects local concurrency management and regional transportation planning effort. The bill provides for local governments to submit comments within 14 days. DOT must include these comments in its preparation of the work program amendment.

Transportation Planning Regulations and Duplicative Reporting Requirements

Current Situation
Federal law requires states to adhere to certain requirements in the transportation planning process. Occasionally these requirements have been amended and the state has revised its statutes from time to time in accordance with federal revisions. For example, the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)[12] contained 23 planning factors to be considered in the

[10] This is determined by the most recent official population estimate pursuant to s. 186.901, F.S.

[11] The 38 counties that would be eligible are; Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Martin, Monroe, Nassau, Okeechobee, Putnam, Santa Rosa, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, and Washington.

[12] Pub.L. 102-240, Dec. 18, 1991, 105 Stat. 1914

statewide planning process and 16 planning factors to be included in the metropolitan planning process. The subsequent reauthorization, the Transportation Equity Act for the 21st Century (TEA-21) passed by Congress in 1998,[13] consolidated the statewide and metropolitan planning factors into seven broad areas. State law was amended to accommodate the TEA-21 revisions.[14] Currently, s. 339.155, F.S., reflects the seven broad planning factors and is once again nonconforming with federal law due to the 2005 reauthorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU),[15] which separated the "safety and security" factor into two separate factors and modified the wording of the other factors. Once again, state 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 on an annual performance report. In the past, DOT has 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 to the Florida Transportation Plan. DOT and the Florida Transportation Commission conduct extensive performance measurement of Florida’s transportation system and DOT. An annual long-range program plan, which is required of every state agency,[16] is also submitted by DOT to the Governor and Legislature that reflects state goals, agency program objectives and service outcomes.

Proposed Changes

The bill amends section 339.155, F.S., to remove references to portions of the United States Code in which the planning factors are contained, but which states are nonetheless required to follow. This avoids the need to modify state law to match the federal requirements each time the planning factors are changed. The bill also deletes the short-range component of the long-rang plan and the annual performance requirements from state law, as they are not required by federal law and contain duplicative information provided in other reports.

Small County Road Assistance Program

Current Situation

Section 339.2816, F.S., creates the Small County Rural Assistance Program (SCRAP) within DOT. The purpose of this program is to assist small county governments with a population of 75,000 or less,[17] in resurfacing or reconstruction county roads. Capacity improvements on county roads are not eligible for funding under this program.

Beginning with Fiscal Year 1999-2000 until fiscal year 2009-2010, DOT is authorized to fund the SCRAP program in an amount of up to $25 million annually from the State Transportation Trust Fund. County roads in small counties that were part of the county road system on June 10, 1995, are eligible to compete for funds that have been designated for the SCRAP program. At a minimum, for a county to be eligible for these funds, it must:

[13] Pub.L. 105-206, Title IX, July 22, 1998, 112 Stat. 834

[14] Chapter 99-385, L.O.F.

[15] Pub.L. 109-59, Aug. 10, 2005, 119 Stat. 1144

[16] Section 216.013, F.S.

[17] Currently 23 counties are eligible for the SCRAP program. Those counties are Baker, Bradford, Calhoun, Columbia, Dixie, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Highlands, Holmes, Jackson, Jefferson, Lafayette, Liberty, Madison, Putnam, Suwannee, Taylor, Union, Wakulla, and Washington.

- Have enacted the maximum rate of the local option fuel tax and must have an ad valorem millage rate of at least 8 mills; or
- Has imposed an ad valorem millage rate of 10 mills.

The following criteria are used to prioritize road projects for funding under the program:

- The primary criterion is the physical condition of the road as measured by DOT.
- As secondary criteria, DOT may consider:
    - Whether a road is used as an evacuation route;
    - Whether a road has high levels of agricultural travel;
    - Whether a road is considered a major arterial route; and
    - Whether a road is considered a feeder road.

Other criteria related to the impact on the public road system or on the state or local economy may also be considered in DOT's prioritization process.

Proposed Changes
The bill amends s. 339.2816, F.S., to reenact the SCRAP program beginning again in fiscal year 2013-2014 and continues it thereafter. The bill revises the criteria for counties that are eligible to participate by removing references to millage rates and to add whether a road is located in a fiscally-constrained county.

Tampa Bay Commuter Transit Authority

Current Situation
Currently, there are five regional transportation authorities created in ch. 343, F.S.; the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority; and the Tampa Bay Area Commuter Transit Authority, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Regional Transportation Authority. These authorities have various membership structures, and powers and duties. All have some form of bond financing authority to carry out their individual transportation missions.

The Florida Legislature created the Tampa Bay Commuter Transit Authority (TBCTA) in 1990 for the purposes of developing and operating a commuter rail or ferry system.[18] The authority's board comprises elected and citizen representatives from Hernando, Hillsborough, Pasco, Pinellas, and Polk Counties, as well as the affected DOT District Secretaries or their designees, and an appointee of the Governor. Representatives from each of the five counties' local transit authorities serve as ex officio members. The authority has directed some organizational work and feasibility studies; however, the authority has been dormant for several years due to a lack of consensus among local authorities regarding the funding of a system, routes and design features.

Proposed Changes
The bill repeals Part III of chapter 343, F.S. to abolish the Tampa Bay Commuter Transit Authority.

Expressways

Current Situation
The Florida Legislature has created nine expressway and bridge authorities[19] in ch. 348, F.S. The Miami-Dade County Commission pursuant to the process in Part I of Ch. 348, F.S., created a tenth, the

[18] Ch. 90-136, L.O.F.

[19] These expressway and bridge authorities are the Brevard County Expressway Authority, the Broward County Expressway Authority, the Tampa-Hillsborough Expressway Authority, the Orlando-Orange County Expressway Authority, the Pasco County

Miami-Dade County Expressway Authority. The purpose of these authorities is to construct, maintain, and operate toll transportation facilities that compliment the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. These authorities have boards of directors that typically include a combination of local-government officials or residents and Governor appointees who decide on projects and the expenditure of funds.

Members of the authority created pursuant to Part I of Ch. 343, F.S., are required to apply with applicable financial disclosure requirements of s. 8, Art. II of the State Constitution. These requirements include:

- Full and public disclosure of financial interest by filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value together with one of the following:
    - A copy of the person's most frequent income tax return; or
    - A sworn statement, which identifies each separate source and amount of income that exceeds $1,000

Proposed Changes
The bill amends s. 348.0003, F.S., to extend the constitutional financial reporting requirements applicable to the Miami-Dade Expressway Authority to of all expressway, transportation, toll, and bridge authority members. However, the authorities not created under part I of ch. 348, F.S., relating to expressway authorities, are not subject to any other requirements of that part.

The bill amends s. 348.0004, F.S., to permit expressway authorities created in ch. 348, F.S. to index toll rates to the Consumer Price Index or similar inflation index. The indexed rate must be adopted and approved by the expressway authority board at a public meeting. Once the expressway authority implements a toll rate index, it may not be revoked. The adjustment is required to be made no more frequently that once an year and must be made no less frequently than once every five years as necessary to accommodate cash toll rate schedules. Toll rates may be increased beyond these limits as directed by bond documents, covenants, or governing body authorization, or pursuant to DOT administrative rules.

The bill amends s. 120.52, F.S., to exclude transportation authorities created under ch. 343, F.S., from the definition of "Agency" for purposes of the Administrative Procedures Act.[20]

Outdoor Advertising

Current Situation
Chapter 479, F.S., 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 DOT. The DOT-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.

DOT has noted that 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. Additionally, with the advent of 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 DOT to determine whether the tag is properly posted.

Expressway Authority, The St. Lucie County Expressway and Bridge Authority, the Seminole County Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Southwest Florida Expressway Authority.

[20] Ch. 120, F.S.

DOT has also noted the $3 fee for a replacement permit tag is well below the cost to provide the tag.

DOT also has a pilot program in Orange and Osceola Counties under which the distance between permitted signs on the same side of the interstate highway may be reduced to 1,000 feet if:

- The local government has adopted a plan, program, resolution, ordinance, or other policy encouraging the voluntary removal of signs in a downtown, historic, redevelopment, infill, or other designated area which also provides for a new or replacement sign to be erected on an interstate highway within that jurisdiction if a sign in the designated area has been removed;
- The sign owner and the local government mutually agree to the terms of the removal and replacement; and
- The local government notifies DOT of its intention to allow such removal and replacement as agreed upon.

DOT is required to maintain statistics tracking the use of the pilot program based on the notifications it receives from local governments.

Proposed Changes
The bill makes several technical revisions to ch. 479, F.S., to resolve known problems.

The bill updates the definition of "automatic changeable facing" To recognize that signs and billboards may be changed by other than mechanical means, e.g., electronic or digital display.

The bill amends s. 479.07(1), F.S., which requires permits for signs on the State Highway System outside of *incorporated* areas, 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.

The bill amends Section 479.07(5) F.S., requiring the sign permit to be placed on the upper 50 percent of the pole facing the highway. The provision gives the industry until July 1, 2011, to comply. The bill directs DOT to establish by rule, a fee for replacement tags in an amount covering its actual cost. A permittee may also provide its own replacement tag if it conforms to DOT specifications established by rule.

The bill requires that if a sign is visible from the controlled area of more than one highway subject to DOT jurisdiction, the sign is to meet the permitting requirements. If the sign meets the applicable permitting requirements, be permitted to, the highway with the more stringent permitting requirements.

The bill revises a pilot program for permitted signs to include Hillsborough County and areas within the boundaries of the City of Miami .

The bill amends s. 479.08, F.S., to clarify the department's ability to revoke any sign permit for violating the statutory requirements. Under the revision, knowingly false or misleading information must be corrected in order to maintain compliance with the permit. When notifying a permittee of a violation, 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., does not change.

Wall Murals

Current Situation
Section 479.156, F.S., was enacted in 2007 and currently allows for local regulation of wall murals as an exception to state laws regulating outdoor advertising signs if such signs are consistent with the

intent of the Highway Beautification Act of 1965[21].and with customary use. Section 23 USC 131(d) required the United States Secretary of Transportation to enter into agreements with the several states to determine the size, lighting and spacing of signs consistent with customary use for signs within 660 feet of interstate and federal-aid primary highways. These agreements are referred to as federal/state agreements. Florida's federal/state agreement was executed on January 27, 1972.

Section 479.156, Florida Statues, currently provides that such murals may not violate federal/state agreement. The law also provides that approval of such murals, which are within 660 feet of the right of way of an interstate highway, or a federal-aid primary highway must be obtained from DOT and from the Federal Highway Administration.

DOT has published proposed rules to establish the process for obtaining approval of wall murals as required by the statute. The rules are drafted in accordance with Federal Highway Administration (FHWA) guidance providing that the term "customary use" means the predominant, usual outdoor advertising signs existing in a zoning authority's jurisdiction as of the date the federal/state agreement was executed. These rules have been challenged through the Administrative Hearing process and hearings are currently ongoing. The issue in the rule challenge is primarily the definition of "customary use."

Proposed Changes

The bill amends s. 479.156, F.S., to provide whenever a municipality or county exercise such control and make a determination of customary use pursuant to 23 U.S.C. s. 131, (d), such determination shall be accepted in lieu of controls in the agreement between the state and the United States Department of Transportation. The bill requires DOT to notify the FHWA pursuant to the agreement and federal regulations.[22]. A wall mural subject to municipal or county regulation and the Highway Beautification Act of 1965 must be approved by DOT and the FHWA where required by federal law and by federal regulation pursuant to the agreement between the state and the United States Department of Transportation and specified regulations enforced by DOT.

These proposed changes incorporate provisions from existing federal law and regulations into Florida law. According to DOT, however, language in the bill could be interpreted to provide that "customary use" is determined by a municipality or county and DOT would have no option regarding whether to accept the determination. This could cause the state to be in non-compliance with the guidance received from the FHWA regarding their interpretation of "customary use." If this is the case, the Secretary of the United States Department of Transportation could determine that the state failed to maintain effective control of signs.

The bill also removes the provision that the wall murals may not violate the federal/state agreement and provides for approval of murals by DOT only if such approval is required by federal law and the federal/state agreement. DOT has pointed out that since the federal/state agreement does not specifically require approval of wall murals, the bill effectively removes any DOT approval requirement of wall murals.

Logo Program

Current Situation

Logo signs on the interstate highway system are regulated and approved by the FHWA. Section 479.261(1), F.S., requires DOT 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.

[21] 23 U.S.C. s. 131

[22] 23 U.S.C. s. 131(d) and 23 C.F.R. s. 750.706(c)

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 in order to have a logo sign. For the attractions category, DOT must annually award logo sign permits permits 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, 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 that expired on December 31, 2008. The current fees were set based upon the cost of the program as determined from the proposals evaluated during the procurement of the consultant. The program is being operated by DOT staff on an interim basis.

The existing logo program is 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.

Proposed Changes
The bill makes a number of changes to s. 479.261, F.S., relating to the interstate highway Logo Sign Program:

- Revises the program to include logo signs for other services approved by FHWA thereby eliminating the need for statutory changes as the service categories achieve federal approval;
- Removes the requirement for attractions to charge admission fees in order to be eligible for the program;
- Removes the need for a competitive bidding process for permits, unique to the attractions category of services making the attractions category consistent with the annual permit fees of the other logo categories;
- Authorizes DOT 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;
- Directs DOT to adopt rules that set reasonable rates based upon such factors as population, traffic volume, market demand, and costs for annual permit fees;
- Caps the annual permit fee for signs locations inside an urban area at $5,000, and for sign locations outside the defined urban area at $2,400;
- Directs the proceeds, after recovering program costs, to the State Transportation Trust Fund to be used for transportation purposes;
- Removes obsolete language dealing with reimbursement for privately funded signs.

Palm Beach County Pilot Program

Current Situation
Chapter 479.01(4), F.S., requires the DOT to control advertising signs, which are visible from any portion of the State Highway System, Interstate, or federal-aid primary system. This control is in accordance with the 1972 agreement between the State of Florida and the United States Secretary of Transportation (federal/state agreement). These regulations prohibit signs that are not located in areas zoned for commercial or industrial uses. There are also specific requirements for the size, lighting and spacing of signs, which are allowed in commercial or industrial zones. Signs located on the premises of a business or other entity which only advertises goods or services available on the premises are generally exempt from the regulations. Section 479.11(4), F.S., prohibits signs within 100 feet of a school, which is located outside an incorporated area.

Signs on school property, which carry an advertisement for any activity other than a school activity, are required to comply with the applicable provisions of ch. 479, F.S., for land use, size, lighting and spacing and if subject to outdoor advertising regulations must have a permit from DOT.

Proposed Changes
The bill establishes a pilot program authorizing the Palm Beach County School District to publicly display the names and recognitions of their business partners on school district property in unincorporated areas. Examples of appropriate business partner recognition include "Project Graduation" and athletic sponsorships. The district is directed to make every effort to display business partner names in a manner that is consistent with county standards for uniformity in size, color, and placement of signs. If inconsistent with the provisions of the county ordinance or regulations relating to signs or the provisions of chs. 125, 166, or 479, F.S.[23], the bill's provisions will prevail.

According to DOT, the bill would allow, signs which carry off-premises advertising to be placed in locations which are not permitted under the federal/state agreement and could, therefore, violate the federal Highway Beautification Act.

Old Cutler Road

Current Situation
In 1974, the Legislature designated Old Cutler Road in the Miami area as a historic highway. The bill granting Old Cutler Road status as a historic highway prohibits state funds from being used to make any alterations to Old Cutler Road, except in limited circumstances. The Department of State is authorized to take certain measures to preserve the road as an historic highway.[24]

Proposed Changes
The bill authorizes, but does not appropriate, public funds to be used for the alteration of Old Cutler Road, between Southwest 136th Street and Southwest 184th Street, in the Village of Palmetto Bay. These alterations may include the installation of sidewalks, curbing, and landscaping to enhance pedestrian access to the road. Before any project is started pursuant to this section, it must be approved by the Department of State.

This language was enacted in 2008 in a bill designating state facilities.[25]

Internal Capture

Current Situation
According to DOT, establishing the traffic analysis conditions for a Development of Regional Impact (DRI) is done as a part of the Methodology Agreement between the developer and the reviewing agencies. The basis for setting the conditions has usually been the Site Impact Handbook, which was developed by DOT and issued in 1997. The Handbook does not limit internal capture rate; it does indicate levels of 20 percent to 25 percent are considered high. While in many cases, this has been used as a ceiling, it was never intended as such. There was no provision for allowing the use of a regional transportation model to estimate internal capture.

DOT has been working with stakeholders to produce a Community Capture Methodology defining a category of large development, based on size, location and mix of land uses, for which the Community Capture Method could be appropriate. The Methodology will incorporate the use of a regional transportation model, modified to reflect the diverse land use mix of the proposed community. The level of Community Capture will be defined by the modeling process and will be documented through a program of data collection and monitoring during the implementation of the project. DOT anticipates

[23] Chapter 125, F.S., relates to county government, Chapter 166, F.S. relates to municipalities, and Chapter 479, F.S., relates to outdoor advertising.

[24] Ch. 74-400, L.O.F.

[25] Section 43, Ch. 2008, 256, L.O.F.

finalizing Community Capture Methodology by the end of June 2009. At that time, it will issue a revised, and re-named, Transportation Impact Handbook.

Proposed Changes
The bill directs DOT to establish an approved transportation methodology that recognizes that a planned, sustainable development of regional impact will likely achieve an internal capture rate of greater than 30 percent when fully developed. The transportation methodology must use a regional transportation model that incorporates professionally accepted modeling techniques applicable to well-planned, sustainable communities of the size, location, mix of uses, and design features consistent with such communities. The adopted transportation methodology shall serve as the basis for sustainable development traffic impact assessment by DOT. The methodology review must be completed by March 1, 2011.

As stated above, DOT is already working on this methodology and plans to have it completed by July 1, 2009.

Effective Date

Except as otherwise expressly provided, this act shall take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 Directs DOT to conduct a study of alternatives to the I-95 corridor.

Section 2 Amends s. 20.23, F.S., making the Executive Director of the Florida Transportation Commission a Senior Management Service Position.

Section 3 Amends s. 125.42, F.S., providing for counties to incur certain costs related to the relocation or removal of certain utility facilities under specified circumstances.

Section 4 Amends s. 163.337, F.S., to provide for airports, land adjacent to airports, and certain interlocal agreements relating thereto in certain elements of the comprehensive plan.

Section 5 Amends s. 163.3178, F.S., to exempt ports related projects within three miles of the port or in the port master plan from the designation of developments of regional impact.

Section 6 Amends s. 163.3182, F.S., relating to transportation concurrency backlogs; provides legislative findings with respect to the public purpose in eliminating transportation deficiencies; authorizes transportation concurrency backlog authorities to issue bonds; revises provisions related to financing schedules; increasing ad valorem tax increment used to fund a transportation concurrency backlog authority.

Section 7 Amend s. 287.055, F.S., to conform a cross-reference.

Section 8 Amends s. 334.044, F.S, relating to the powers and duties of DOT to allow for variable rate tolling.

Section 9 Amends s. 337.11, F.S., relating to the contracting authority of DOT to required DOT to set a goal of letting up 25 percent of its construction contracts which add capacity as design build contracts; authorizes DOT to pay a stipend to unsuccessful firms who have submitted responsive proposals to for construction and maintenance contracts.

Section 10 Amends s. 337.14, F.S., to conform a cross-reference.

Section 11 Amends s. 337.16, F.S., to conform a cross-reference.

Section 12 Amends s. 337.18,F.S., requiring the contractor upon execution of the contract and prior to the beginning of any work to maintain a copy of the payment and performance bond

required at its jobsite office and its principal place of business requires the contractor to provide a copy of these documents to the person or entity requesting a copy.

Section 13 Amends s. 337.185, F.S, allowing maintenance contracts to use the state arbitration board process.

Section 14 Amends s. 337.403, F.S., requiring DOT and local governments to bear the cost of removal or relocation of utilities if the utility is being removed or relocated exclusively services DOT or the local government entity and requires DOT to bear all costs of the relocation of underground electric utilities under certain circumstances.

Section 15 Amends s. 337.408, F.S., to allow advertising on pay telephones in rights-of-way in accordance with federal, state, and local regulations.

Section 16 Amends s. 338.01, F.S., to require interoperability with toll collection systems.

Section 17 Amends s. 338.165, F.S., relating to the continuation of tolls, authorizing DOT to use excess toll revenues for public transit, exempting high-occupancy toll lanes or express lanes from consumer price index provisions, removing the specific identification of certain state-owned facilities.

Section 18 Amends s. 338.2216, F.S., relating to Florida's Turnpike Enterprise to address electronic toll collection, variable pricing, and video billing.

Section 19 Amends s. 338.223, F.S., to conform a cross-reference.

Section 20 Amends s. 338.231, relating to turnpike tolls to allow DOT to recover administrative costs; deletes reference to "uniform system rate" to enable variable pricing.

Section 21 Amends s. 339.12, F.S., relating to the local government reimbursement program to increase the maximum amount of project agreements for projects or project phases; creates a new reimbursement program for counties with a population of 150,000 or less; authorizes DOT to enter into agreements with governmental entities to advance a maximum of $200 million in projects or project phases from outside the five-year adopted work program; authorizes DOT to enter into long-term repayment agreements with this counties for up to 30 years.

Section 22 Amends s. 339.135, F.S., relating to the work program to provide a process for DOT notification to local governments of certain changes in the work program.

Section 23 Amends s. 339.155, F.S., relating to transportation planning to remove references to federal planning regulations from statutes.

Section 24 Amends s. 339.2816, F.S., relating to the small county road assistance program, reenacting it in fiscal year 2012-2013, without a sunset of the program.

Section 25 Amends s. 339.2819, F.S., to conform a cross-reference.

Section 26 Amends s. 339.285, F.S., to conform a cross-reference.

Section 27 Repeals Part III of ch. 343, F.S., to repeal to Tampa Bay Commuter Transit Authority.

Section 28 Amends s. 348.0003, F.S., to relating to expressway authorities to require all expressway authority members to file certain financial disclosures.

Section 29 Amends s. 348.0004, F.S. relating to expressway toll rates providing that expressway authorities may increase tolls to the Consumer Price Index or similar inflation factor at

least every five years, but no more frequently than once a year if the expressway's executive board approves the indexing by a majority vote at a public meeting.

Section 30 Amends s. 497.01, F.S., relating to outdoor advertising to revise the definition of "automatic changeable facing."

Section 31 Amend s. 479.07 relating to sign permits to prohibit signs without permits outside an urban area rather than an unincorporated area; revises requirements for display of sign permit tags; directs DOT to establish by rule a fee for furnishing a replacement permit in an amount that covers the actual cost of the tag; relegates permitting of signs viewable from two or more roads to the more stringent requirements; adds Hillsborough County and the City of Miami to a pilot program.

Section 32 Amends s. 479.08, F.S., to revise provision for denial or revocation of sign permits; details of the violation must be included.

Section 33 Amends s. 479.156, F.S., relating to wall murals; revises provisions for a municipality or county to permit and regulate wall murals as "customary use" under federal law; requires approval by DOT and FHWA "under federal law."

Section 34 Amends s. 479.261, F.S., relating to the logo sign program, revising provisions relating to approved signs for the program; revises program participation requirements; authorizes DOT to adopt rules for removing and adding businesses on a rotating basis; removes a provision for an application fee.

Section 35 Creates a business partnership pilot program, which authorizes the Palm Beach County School District to display names of business partners on district property in unincorporated areas.

Section 36 Authorizes the use, but does not appropriate, public funds for certain non-capacity improvements on Old Cutler Road in Miami-Dade County.

Section 37 Amends s. 120.52 to exclude transportation authorities created in ch. 343, F.S. in the definition of "agency.'

Section 38 Requires "internal capture" methodology.

Section 39 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There are a few sections of the bill, which may provide a positive fiscal impact on DOT.

Section 20 (Toll Collection/Uniform Rates)-Giving DOT the authority to recover administrative expenses associated with various toll payment options, will have an indeterminate positive fiscal impact on DOT.

Sections 31 (Outdoor Advertising)-The increased fees for replacement permit tags removes a negative impact stemming from current fees that do not currently cover DOT's costs.

Section 34. (Logo Programs)-According to DOT, an increase in revenue of approximately $6 million per year before costs is expected. This estimate is based on using a maximum fee of $5,000 in

urban areas and $2,500 in rural areas with adjustment for market conditions and traffic counts, and assuming that the average actual permit fees will be about 80 percent of the fee allowed with no significant increase in the number of signed interchanges or in the average number of businesses displaying signs at each interchanges.

2. Expenditures:

Section 1 (I-95 Study) According to DOT, the I-95 Corridor is 382 miles long and passes through nine existing or emerging MPO area. Accomplishing the study, along with the associated review and coordination, in the 12-14 month time frame provided will have a significant fiscal impact and require DOT to hire a consultant. DOT estimates that the cost, including staff time and consulting services, to approach $1 million.

Section 2 (Executive Director/Florida Transportation Commission). DOT expects a minimal fiscal impact associates with the slightly increased retirement contributions for Senior Management Service positions.

Section 9 (Stipends).-According to DOT, the exact fiscal impact is dependent on the details of individual projects. However, the stipend amounts range from .1 to .5 percent of the construction cost and usually amount to one-third to one-half of the entire estimated proposal development costs.

Section 12 (Contractor Bond)-DOT estimates that there will be insignificant administrative expense associated with responding to a public records request for a copy of a bond.

Section 13 (Arbitration Board).-DOT expects an unquantifiable reduction in expenditures from adding maintenance costs to the State Arbitration Board since this may result in reduced litigation expense.

Section 14 (Utility Relocation Expenses)-DOT expects an unquantifiable negative fiscal impact since the bill places the costs of relocating utilities onto DOT under more conditions.

Section 15 (Public pay telephones/Advertising)-DOT expects and unquantifiable fiscal impact associated with any necessary relocation or removal in cases involving violation of law or creating a safety hazard to the public. DOT is currently assessing the need to revise any administrative rule and, if so, expects to absorb any associated cost within existing resources.

Section 18 (All Electronic Toll Collection)-DOT estimates that provisions facilitating all electronic toll collection could eventually result in the elimination of 140 state employee positions. If 140 positions were eliminated, DOT estimates that the total reduction in contracted services budget to be $7.5 million.

Section 21 (Local Government Reimbursement Program)-There is an unknown fiscal impact since the number and terms of agreements permitted under the bill are unknown.

Section 22 (Work Program Amendments)-DOT expects any administrative expenses to be absorbed within existing resources.

Section 23 (Reporting Requirements)-The removal of duplicative reporting requirements will result in a minimal savings to DOT's administrative costs.

Section 24 (SCRAP)-Currently, up to $25 million may be programmed to SCRAP projects. Since the SCRAP program is currently set to be terminated in the 2009-2010 fiscal year, no funds have been programmed beyond this year. The bill reinstates SCRAP in fiscal year 2012-2013, which will result in up to $25 million per fiscal year being directed to the SCRAP program..

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Section 24 (SCRAP)-The bill reinstates the SCRAP program in fiscal year 2012-2013. Following the reinstatement, small counties will receive up to $25 million per fiscal year for road resurfacing projects.

   Section 29 (Toll Indexing)-Provisions allowing expressway authorities to index their toll rates to the Consumer Price Index is likely to increase their revenues. However, because the indexing is optional it is not known at this time, what the impact will be.

2. Expenditures:

   Section 14 (Utility Relocation). Local governments will experience indeterminate increases in construction project costs due to the cost of relocating some utilities during the construction of some transportation projects.

   Section 16 (Toll Interoperability) The required interoperability of electronic toll collection systems may result in transportation authorities experiencing limited alternatives when implementing toll technologies.

   Section 21 (Local government contribution)-The fiscal impact related to provision amending statutes related to contributions by government entities for DOT projects is unknown since it is unknown how many applicants there will be.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 13 (State Arbitration Board)-Adding maintenance costs to the State Arbitration Board process may result in reduced litigation costs to maintenance contractors.

Section 14 (Utility Relocation)-Provisions relating to when DOT or the local government pay for utility relocation related to construction projects may reduce the cost to the utility due to having to pay for fewer relocations.

Sections 8 and 18 (Toll Collection)-Provisions allowing alternative payment mechanisms and new toll collection technologies will ensure that the amount paid by drivers relates to the cost of the payment option selected.

Section 31 (Sign Permits) Provisions relating to sign permits that require the relocation of some sign permits and increases the replacement tag fees has an indeterminate negative impact on outdoor advertisers. However, the impact will be spread over two years and may be partially offset by the statutes being more specific as to where permits are to be placed.

Section 33 (Logo Sign)-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 attraction category may experience savings due to the elimination of the competitive bid requirement.

D. FISCAL COMMENTS:

Section 33: (Wall Murals) These proposed changes incorporate provisions from existing federal law and regulations into Florida law. According to DOT, however, should the proposed language be adopted and interpreted as allowing “customary use” to be determined exclusively by counties and municipalities, it is likely the United States Secretary of Transportation would determine the State to have failed to maintain effective control of signs. The likelihood of the Secretary making such a determination is based on a 1978 decision in which the State of South Dakota sought to enact statutes, which the Secretary determined to be inconsistent with what had been approved in other states for “customary use.” The Secretary’s determination and imposition of the penalty was upheld by the

United States District Court.[26] In the event such a determination is made, the penalty to the state would be loss of 10 percent of federal funding for transportation for each year there is lack of effective control. This is a potential penalty of approximately $160 million per year.

Section 35: (School Districts/Business Partnerships/Display of Names/Pilot) DOT has advised the FHWA of the proposed pilot program. The FHWA has advised that the probability of approval of the pilot project described in the proposed legislation is minimal because it appears it would allow the erection of new signs with off premise advertising without meeting any zoning, size or other pertinent Highway Beautification Act requirements. Because the bill would allow signs that carry off-premises advertising to be placed in locations not permitted under the federal/state agreement, DOT may potentially be subjected to a penalty of approximately $160 million per year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill may requires municipalities and counties to spend funds or take an action requiring the expenditure of funds. The bill requires a governmental entity to pay all costs of the removal or relocation of utilities under certain circumstances. The amount of these expenditures is unknown; therefore, it is not clear whether the insignificant fiscal impact exemption to the mandates provision applies. Article VII, section 18(a), of the state constitution provides an exceptions for laws that apply to all persons similarly situated. Since these provisions apply to all governments, not just municipalities and counties, the exception appears to apply and municipalities and counties will be bound by the law if the legislature determines that the law fulfills an important state interest.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Section 9 (Stipends)-The bill adds stipend requirements in DOT currently required rule procedures for design build contracts. DOR may have to amend its existing rules to include procedures relating to stipend requirements.

Section 14 (Pay Telephone)-DOT is assessing the need to revise any of its rules association with the public telephone/advertising provisions.

Section 31 (Sign Permits)-The bill permits DOT to establish, by rule, the fee for a replacement tag in order to recover its costs.

Section 34 (Logo Sign)-DOT is required to establish rules to set reasonable rates for logo signs based on factors such as population, traffic volume, market demand, and costs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Technical Drafting Issues

Lines 847 and 848 address a certain situation when an electric facility has been transferred from a private utility to a public utility within the past five years. The intent probably relates to a transfer from an investor-owned utility to a municipally owned utility. However, the definition of “public utility” in the state’s public utility law, ch. 366, F.S., defines “public utility” as:

[26] South Dakota v. Volpe (353 F.Supp. 335)

> Every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof;. . .

Therefore, a public utility includes an investor-owned utility, but not a municipally owned utility. There is also not statutory definition for "private utility."

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES