HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7061 PCB TPS 16-02 Transportation
SPONSOR(S): Transportation & Economic Development Appropriations Subcommittee; Transportation & Ports Subcommittee, Santiago
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Ports Subcommittee	11 Y, 0 N	Willson	Vickers
1) Transportation & Economic Development Appropriations Subcommittee	13 Y, 0 N, As CS	Dobson	Davis
2) Economic Affairs Committee	14 Y, 0 N, As CS	Willson	Pitts

SUMMARY ANALYSIS

This is a comprehensive bill related to transportation. In summary, the bill:

- Creates the Florida Seaport Security Advisory Committee to advise, report and make recommendations on matters related to maritime security in Florida.
- Establishes the Seaport Security Grant Program, subject to legislative appropriation, to assist in the implementation of security plans and measures at Florida's deepwater ports.
- Revises the definitions of Ch. 316, F.S., redesignating the subsections into alphanumerical order.
- Separates the definition of "autonomous technology" from "autonomous vehicle" and defines the term "driver-assistive truck platooning technology."
- Defines "commercial megacycle" and authorizes local governments to issue permits for the operation of commercial megacycles, including the sale of beer and wine.
- Provides certain specifications for deceleration lighting systems equipped on buses.
- Exempts vehicles operating in autonomous mode or with driver-assistive truck platooning technology from a prohibition against television-type receiving equipment being visible from the driver's seat.
- Provides that motor vehicles being relocated within a port facility via designated port district roads are exempt from motor vehicle registration requirements.
- Creates the Florida Aviation Transportation and Economic Development Program to finance airport transportation and facilities projects, and provides for a minimum of $15 million from the State Transportation Trust Fund to fund the program each year.
- Creates the Florida Aviation Transportation and Economic Development Council to review projects and allocate funds in a manner consistent with the DOT tentative work program.
- Allows municipalities to lease certain airport-related real estate for up to 50 years.
- Updates and revises Chapter 333, F.S., governing land use and airspace management at or around airports.
- Revises the surety bond requirements imposed on certain non-profit entities for specified contracts with the Department of Transportation.
- Transfers ownership of the Pinellas Bayway System from DOT to the Florida Turnpike Enterprise in order to expedite bridge replacement, and removes references to obsolete authorizations for certain toll facilities.
- Increases the maximum population for counties eligible for the Small County Outreach Program from 150,000 to 170,000.
- Provides that natural gas fueling facilities are eligible for State Infrastructure Bank loans.
- Repeals an obsolete provision relating to statewide transportation corridors.
- Authorizes DOT to contractually assume certain liability and indemnification obligations for private rail operators in certain situations.
- Revises the membership and structure of the Tampa Bay Area Regional Transportation Authority.
- Provides the Tampa Hillsborough Expressway Authority with additional authority to undertake capital projects that do not pledge the full faith and credit of the state.

- Provides that certain members of the Central Florida Expressway Authority's (CFX) board must be elected officials from their respective counties.
- Provides an expiration date for the terms of CFX board members appointed by the Governor.
- Removes the requirement for the CFX board to elect one of its members as secretary.
- Increases criminal penalties from a first degree misdemeanor to a third degree felony where an offender trespasses on operational areas of an airport with the intent to take certain actions.
- Requires DOT to study driver-assistive truck platooning and authorizes a pilot program to test the operation and use of driver-assistive truck platooning technologies, with certain requirements.
- Requires the Office of Economic and Demographic Research to evaluate and determine the economic benefits of DOT's Work Program.
- Revises a number of statutory cross-references, conforming to revisions made to s. 316.003, F.S.

The fiscal impact of the bill is indeterminate but likely insignificant. See fiscal section for specific details.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This is a comprehensive bill relating to transportation. For ease of understanding, this analysis is arranged by topic.

Current Situation

Seaport Security (Section 1)

Background

Chapter 311, F.S., provides security requirements for Florida's 15 deepwater public ports. Florida seaports are also regulated by federal laws created to protect against acts of terrorism, such as the Maritime Transportation Security Act of 2002,[1] the Security and Accountability for Every Port Act,[2] and the Code of Federal Regulations (CFR).[3] In addition, provisions of international treaties such as the Safety of Life at Sea, which protect the safety of merchant ships, have been incorporated within the CFR in fulfillment of treaty obligations that affect seaport security at United States and foreign ports.

The 2000 Legislature passed CS/CS/CS/SB 1258,[4] which provided additional regulations for money laundering and created s. 311.12, F.S., relating to seaport security. In creating s. 311.12, F.S., the Legislature introduced regulation of seaports that benefited from public financing, and provided for:

- Development and implementation of a statewide seaport security plan including minimum standards for seaport security that address the prevention of criminal activity and money laundering;
- Development of individual seaport security plans at each of the ports listed in s. 311.09 (1), F.S.;
- Establishment of a fingerprint-based criminal history check of current employees and future applicants for employment at Florida's seaports; and
- A requirement directing the Florida Department of Law Enforcement (FDLE) to annually conduct no less than one unannounced inspection at each of the public ports and report its findings to the Governor, the President of the Senate, the Speaker of the House, and the chief administrator of each seaport inspected.

Section 311.12, F.S., was amended during the 2001 Legislative Session to incorporate seaport security standards.[5] The section has been further amended to disqualify persons who have been convicted of certain offenses within the previous seven years from gaining initial employment within or regular access to a seaport or port restricted access area. Current disqualifying offenses relate to terrorism, distribution or smuggling of illicit drugs, felony theft and robbery, money laundering, and felony use of weapons or firearms.

After September 11, 2001, the U.S. Congress produced a series of laws which largely preempted the existing state law relating to seaport security. This effort included passage of the Homeland Security Act of 2002, which resulted in a major governmental reorganization that created the Department of Homeland Security (DHS).[6] The U. S. Customs and Border Protection agency (CBP) was transferred to DHS with the mission of preventing terrorists and terrorist weapons from entering the U. S.[7] The U. S. Coast Guard (USCG) was also transferred to DHS and given the mission of lead federal agency for

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[1] Pub. L No. 107-295, 116 Stat. 2064 (2002).
[2] Pub. L No. 109-347, 120 Stat. 1884 (2006).
[3] Principally 33 C.F.R. §§ 101 – 106, relating to various aspects of vessel and port security.
[4] Ch. 00-360, Laws of Fla.
[5] Ch. 01-112, Laws of Fla. These standards form the basis for FDLE's current seaport security inspection program.
[6] The Homeland Security Act of 2002, Pub. L. No. 107-296 (2002).
[7] Department of Homeland Security Fact Sheet. www.dhs.gov/dhspublic/display?theme=43&content=5437&print=true.

maritime homeland security including ports, waterways, and coastal security as well as drug interdiction.[8]

Congress passed the MTSA in November of 2002, thereby laying out the federal structure for defending U.S. ports against acts of terrorism. In passing MTSA, Congress set forth direction for anti-terrorism activities while also recognizing in its findings that port crimes such as drug smuggling, illegal car smuggling, fraud, and cargo theft had also been a problem in the late 1990s. In laying out a maritime security framework, MTSA established requirements for the development and implementation of national and area maritime transportation security plans, vessel and facility security plans, and a transportation security card,[9] along with requirements to conduct vulnerability assessments for port facilities and vessels, and for the establishment of a process that would assess foreign ports from which vessels embark on voyages to the United States.[10]

The United States Coast Guard is responsible for administration of the MTSA and its implementing regulations,[11] including review and approval of Facility Security Plans[12] by the Captain of the Port (COTP) responsible for each seaport area.[13] Section 311.12, F.S., requires each of the 15 deepwater seaports listed in s. 311.09(1), F.S.[14] to adopt and maintain an approved federal facility security plan and to receive a federal facility security assessment.[15] Furthermore, section 311.12(1)(a), F.S., authorizes seaports to implement security measures that are more stringent, more extensive or supplemental to the federal seaport security regulations.

Florida Seaport Transportation and Economic Development (FSTED) Council

In 1990, the Legislature created Ch. 311, F.S., authorizing the Florida Seaport Transportation and Economic Development (FSTED) Program.[16] This program established a collaborative relationship between DOT and the seaports and currently codifies an annual minimum of $15 million for a seaport grant program.[17] FSTED funds are to be used on approved projects on a 50-50 matching basis.[18] Funding grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port.
- The dredging or deepening of channels, turning basins, or harbors.
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing.

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[8] Congressional Research Service, "Homeland Security: Coast Guard Operations – Background and Issues for Congress," October 25, 2006. Note: According to this report, under the Ports and Waterways Safety Act of 1972, Pub. L. No. 92-340, and the Maritime Transportation Security ACT of 2002, Pub. L. No. 107-295 (Nov. 25, 2002), the Coast Guard has responsibility to protect vessels and harbors from subversive acts. With regard to port security, the Coast Guard is responsible for evaluating, boarding, and inspecting commercial ships approaching U. S. waters, countering terrorist threats in U.S. ports, and helping protect U. S. Navy ships in U. S. ports. A Coast Guard officer in each port area is designated the COPT to serve as the lead federal official for security and safety of vessels and waterways in that area.

[9] The Maritime Transportation Security Act of 2002, Pub. L. No. 107-295 (Nov. 25, 2002)

[10] Government Accountability Office, "Maritime Security, One Year Later: A Progress Report on the SAFE Port Act," GAO-18-171T, October 16, 2007, p. 1.

[11] 33 C.F.R. §§ 101 to 106

[12] 33 C.F.R. § 101.105 defines a facility as any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the U.S. and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation. A seaport may be considered a facility by itself or in the case of large seaports may include multiple facilities within the port boundaries.

[13] The USCG requires each port tenant to have a security plan, whereas under Ch. 311, F.S., the port authority is responsible for security plan development and implementation.

[14] The ports listed in s. 311.09(1), F.S., are the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

[15] 33 C.F.R. § 101.105

[16] Ch. 90-136, Laws of Fla.

[17] ss. 311.07 and 311.09, F.S.

[18] s. 311.07(3)(a), F.S.

- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce.
- The acquisition of land to be used for port purposes.
- The acquisition, improvement, enlargement, or extension of existing port facilities.
- Environmental protection projects: which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites; or which result from the funding of eligible projects.
- Transportation facilities which are not otherwise part of DOT's adopted Work Program.[19]
- Intermodal access projects.
- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in s. 311.09(1), F.S.,[20] with operating revenues of $5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports.
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.[21]

In order for a project to be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

The FSTED program is managed by the FSTED Council, which consists of the port director or designee of the 15 deepwater ports, the Secretary of DOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.[22]

<u>Proposed Changes</u>
The bill creates s. 311.12(5), F.S., establishing a Florida Seaport Security Advisory Committee (Committee) under the direction of the FSTED Council. The bill provides for the chair of the FSTED Council chair to appoint the following members to the Committee: at least five port security directors as voting members and a designee from the United States Coast Guard, the United States Custom and Border protection, and two representatives from local law enforcement as ex officio, nonvoting members. The bill provides that the Committee work closely with state and federal partners to identify security issues and concerns facing the maritime industry in Florida.

The bill creates s. 311.12(6), F.S., requiring the FSTED Council to establish a Seaport Security Grant Program to assist in the implementation of security plans and measures at the 15 deepwater seaports. The bill provides for the FSTED Council to grant funds appropriated by the Legislature, at up to 75 percent of the total cost, for the purchase of equipment, infrastructure, security programs and other measures. The bill provides that the FSTED Council must develop criteria for the implementation of this section.

The bill provides that the Committee is responsible for reviewing grant applications and for making recommendations to the FSTED Council for grant approvals.

<u>Definitions – Chapter 316</u> (Section 2)
The bill amends s. 316.003, F.S., revising and updating numerous definitions to provide alphanumerical order to the subsections.

<u>Commercial Megacycle</u> (Sections 2, 3, and 38)

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[19] DOT's work program is adopted pursuant to s. 339.135, F.S.
[20] The ports listed in s. 311.09(1), F.S., are the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.
[21] Part II of Ch. 163, F.S.
[22] s. 311.09(1), F.S.

Current Situation
Commercial megacycles are multi-passenger, pedal driven vehicles offered for private touring, often in conjunction with the service of alcoholic beverages, and are more prevalent in areas associated with popular tourist destinations.

In Florida, alcoholic beverages are regulated by the Beverage Law,[23] which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors. The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Proposed Changes
The bill amends s. 316.003, F.S., defining a commercial megacycle as a 4-wheel vehicle, propelled primarily by humans in a manner similar to a bicycle, used for commercial purposes with 5 to 15 passenger seats, which may have an auxiliary motor capable of no more than 15 miles per hour.

The bill creates s. 316.2069, F.S., authorizing local governments to permit the use of a commercial megacycle within their jurisdiction. Such authorization must clearly limit the area of operation of commercial megacycles and their hours of operation. During commercial operation, a commercial megacycle must be:

- Propelled solely by pedal power. Except under emergency circumstances, an auxiliary motor may not be operating while a passenger is in a vehicle.
- Operated at all times by its owner or lessee or an employee of the owner or lessee.
- Operated by a driver at least 21 years of age who possesses a Class E driver license, and a safety monitor at least 21 years of age who shall supervise the passengers while the megacycle is in motion.

Local governments may permit the use of commercial megacycles within their jurisdiction for the sale of beer or wine if the owner or lessee of the commercial megacycle is authorized to sell beer and wine under the Beverage Law, and the commercial megacycle does not operate within 100 feet of a licensed vendor of beer or spirituous beverages. The bill exempts commercial megacycles from the requirements of s. 316.1936; F.S.

The bill amends s. 565.02(12), F.S., authorizing, upon application and payment of a specified fee, the owner or lessee of a commercial megacycle to sell beer and wine for consumption on the megacycle.

Additional Lighting Equipment / Deceleration Lighting Systems (Section 4)

Current Situation
Deceleration lighting systems provide a visual indication that a vehicle is in the process of slowing down to a stop, or is stopped. Current law provides that a bus[24] may be equipped with a deceleration lighting system if it consists of amber lights, mounted in horizontal alignment on the rear of the vehicle, at or near the vertical centerline of the vehicle, not higher than the lower edge of the rear window or, if the vehicle has no rear window, not higher than 72 inches from the ground.

Proposed Changes
The bill amends s. 316.235(5), F.S., specifying that, when a deceleration lighting system is equipped on a bus, the system must consist of two red or amber lights mounted in horizontal alignment on the rear of the vehicle at the vertical centerline of the vehicle, no greater than 12 inches apart, not higher than the lower edge of the rear window or, if the vehicle has no window, not higher than 72 inches from the ground.

Driver-Assistive Truck Platooning (Sections 2, 5 and 41)

[23] The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.
[24] s. 316.003(3), F.S. defines "bus" as any motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Current Situation

In August 2014, the National Highway Traffic Safety Administration (NHTSA) issued an advance notice of proposed rulemaking, following NHTSA's earlier announcement that the agency will begin working on a regulatory proposal to require vehicle-to-vehicle (V2V) devices in passenger cars and light trucks in a future year. V2V is a crash avoidance technology, relying on communication of information between nearby vehicles to warn drivers about dangerous situations that could lead to a crash.[25] NHTSA advises that, "Using V2V technology, vehicles ranging from cars to trucks and buses to trains could one day be able to communicate important safety and mobility information to one another that can help save lives, prevent injuries, ease traffic congestion, and improve the environment."[26]

One form of V2V technology is known as driver-assistive truck platooning (DATP), which allows trucks to communicate with each other and to travel as close as thirty feet apart with automatic acceleration and braking. A draft is created, reducing wind resistance and cutting down on fuel consumption.[27]

The DATP concept is based on a system that controls inter-vehicle spacing based on information from forward-looking radars and direct vehicle-to-vehicle communications. Braking and other operational data is constantly exchanged between the trucks, enabling the control system to automatically adjust engine and brakes in real-time. This allows equipped trucks to travel closer together than manual operations would safely allow. Platooning technology is increasingly a subject of interest in the truck community, with multiple companies developing prototypes.[28]

One such system uses integrated sensors, controls, and wireless communications for "connected" trucks. The system is cloud-based, determining in real time whether specific trucks are clear to engage in platooning operations. The system synchronizes acceleration and braking between tractor-trailers, leaving steering to the drivers, but eliminating braking distance otherwise caused by lags in the front or rear driver's response time. The following vehicle is provided video showing the lead truck's line of sight while the lead vehicle is provided video showing the area behind the following truck. If another vehicle enters between platooning trucks, the system will automatically increase following distance or delink the trucks and then relink once the cut-in risk has passed. If data transfer between platooning trucks ceases, the driver is immediately notified that manual acceleration and braking control is about to resume.[29]

Section 316.0895(2), F.S., provides that it is unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. The subsection does not prevent overtaking and passing and does not apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles.

Section 316.303, F.S., prohibits the operation of a vehicle equipped with television-type receiving equipment if the screen is visible from the driver's seat. The prohibition does not apply to electronic displays used exclusively for safety or law enforcement purposes, provided such use is approved by DHSMV, or used in conjunction with a vehicle navigation system.

Proposed Changes

The bill amends s. 316.003, F.S., defining "driver-assistive truck platooning" as vehicle automation technology that integrates sensor arrays, wireless communications, vehicle controls, and specialized software to synchronize acceleration and braking between up to two truck tractor-semitrailer combinations, while leaving each vehicle's steering control systems command in the control of the vehicle's driver.

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[25] See the U.S. Department of Transportation Fact Sheet on Vehicle-To-Vehicle Communication Technology. On file in the House Transportation & Ports Subcommittee.

[26] See the NHTSA website: http://www.safercar.gov/v2v/index.html (last visited Dec. 12, 2015).

[27] See the GBT Global News website: http://www.gobytrucknews.com/driver-survey-platooning/123 (last visited Dec. 12, 2015).

[28] See the American Transportation Research Institute website: http://atri-online.org/2014/11/17/atri-seeks-input-on-driver-assistive-truck-platooning/ (last visited Dec. 12, 2015).

[29] *See* http://www.peloton-tech.com/faq/ (last visited Dec. 12, 2015).

The bill amends s. 316.303(1), F.S., providing that television-type receiving equipment may be located so that the viewer or screen is visible from the driver's seat if the vehicle is operating with driver-assistive truck platooning technology. The bill amends s. 316.303(3), F.S., providing that s. 316.303, F.S., does not prohibit the use of an electronic display used by the operator of a vehicle operating with driver-assistive truck platooning technology.

The bill requires DOT to study, in consultation with DHSMV, the use and safe operation of driver-assistive truck platooning technology. The purpose of the study is to develop a pilot project to test vehicles equipped with driver-assistive truck platooning technology.

The bill authorizes DOT to conduct a pilot project that tests the operation of vehicles equipped with driver-assistive truck platooning technology.

The bill authorizes DOT to conduct the pilot project in the manner and location determined by the study, and exempts participating vehicles from the requirements of ss. 316.0895 and 316.303, F.S.

The bill requires the manufacturers of driver–assistive truck platooning technology that will be tested in the pilot project to submit an instrument of insurance, surety bond, or proof of self-insurance acceptable to DHSMV in the amount of $5 million.

After the pilot project concludes, DOT must submit results, and any findings or recommendations from the pilot project, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Autonomous Vehicles (Sections 2 and 5)

Current Situation

Background

An autonomous vehicle is a vehicle equipped with advanced sensors and computing abilities to perceive its surroundings and activate steering, braking, and acceleration without operator input. While presently not in widespread use, autonomous vehicles have the potential to provide several distinct advantages when compared to conventional vehicles, including reduced fuel consumption, increased safety, reduced traffic congestion and improved traffic flow, increased speed limits and reduced need for parking spaces.

In 2012, the Legislature passed CS/CS/CS/HB 599,[30] related to autonomous vehicle technology, making Florida one of the first states in the nation to authorize the use of autonomous vehicles. Specifically, the bill:

- Defined "autonomous technology" and "autonomous vehicle."
- Provided legislative intent regarding vehicles with autonomous technology.
- Authorized the operation of autonomous vehicles under specified conditions.
- Provided requirements for autonomous vehicles.
- Provided guidelines for testing autonomous vehicles.
- Provided a framework for liability for autonomous vehicles.
- Required the Department of Highway Safety and Motor Vehicles (DHSMV) to submit a report by February 12, 2014.

DHSMV Report

On February 12, 2014, DHSMV issued its report on autonomous vehicles.[31] DHSMV's report noted that autonomous technology has potential to significantly improve highway safety by reducing crashes and saving lives. Similarly, the report found that autonomous technology offers business and economic

[30] Ch. 2012-174, Laws of Fla.

[31] A copy of DHSMV's report on autonomous vehicles is available at: http://flhsmv.gov/html/HSMVAutonomousVehicleReport2014.pdf (last visited Dec. 12, 2015).

opportunities for Florida, including technology and policy research, and testing, monitoring, and evaluating the technology. While Florida law allows the testing of autonomous vehicles on public roadways, there is limited regulatory oversight.

The report continued that technology is rapidly advancing and multiple industries are involved with many different approaches to autonomous vehicle technology development. Presently, national safety standards do not exist and there are many unknowns relating to the deployment of autonomous vehicles. The report noted that policy-making at this juncture would be very challenging. In its report, DHSMV proposed no changes to existing Florida law and rules in order to encourage innovation and foster a positive business environment.

2014 Legislation
In 2014, the Legislature passed CS/CS/HB 7005,[32] which expanded the entities authorized to conduct autonomous vehicle testing to include research organizations associated with accredited educational institutions.

Additionally, the bill provided that the Office of Insurance Regulation may approve a premium discount to any rates, rating schedules, or rating manuals for a liability, personal injury protection, and collision coverage of a motor vehicle insurance policy if the insured vehicle is equipped with autonomous driving technology or electronic vehicle collision avoidance technology that is factory installed or a retrofitted system that complies with federal standards.

Testing of Autonomous Vehicles
In January 2014, the Tampa-Hillsborough Expressway Authority designated the Lee Roy Selmon Expressway as a testing site for autonomous vehicles. The Volkswagen Group contacted DHMSV regarding limited testing on an Audi-brand autonomous vehicle on a closed course in Hillsborough County. The one day event took place on the Selmon Expressway on July 28, 2014.[33]

Department of Transportation Work on Autonomous Vehicles
DOT has also been working on numerous initiatives related to autonomous vehicles.[34] DOT has created several autonomous vehicle stakeholder working groups, and hosts an annual autonomous vehicle summit, the first of which was held in 2013.

DOT has collaborated with state universities and engineering consulting firms to gain a better understanding of some of the implications associated with planning for and integrating automated and connected vehicle technologies into the state's infrastructure. These research projects:

- Address policy implications related to federal, state, and local transportation plans;
- Explore how these technologies could assist the transportation disadvantaged to remain mobile, even as they age; and
- Assess the viability of various transit applications, particularly Bus Rapid Transit solutions.

Use of Television Receivers in Vehicles
Current law prohibits motor vehicles from being equipped with television-type receivers located where the viewer or screen can be seen from the driver's seat. The statute provides exceptions for safety or law enforcement purposes, and does not prohibit electronic displays used in conjunction with a vehicle navigation system. A violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in Ch. 318, F.S.[35]

Proposed Changes
The bill amends s. 316.003, F.S., removing the definition of the term "autonomous technology" from the definition for the term "autonomous vehicle," where it is embedded. The bill amends s. 316.003, F.S.,

[32] Ch. 2014-216, Laws of Fla.
[33] Email from the Department of Highway Safety and Motor Vehicles (November 6, 2014). Copy on file with Transportation & Ports Subcommittee Staff.
[34] Information on DOT's work on autonomous vehicles is available at: http://www.automatedfl.com/ (last visited Dec. 12, 2015).
[35] s. 316.303, F.S.

providing a stand-alone definition for the term "autonomous technology". The language used to define each term remains the same.

The bill amends s. 316.303(1), F.S., providing that television-type receiving equipment may be located so that the viewer or screen is visible from the driver's seat if the vehicle is equipped with autonomous technology and is being operated in autonomous mode.[36] The bill amends s. 316.303(3), F.S., providing that s. 316.303, F.S., does not prohibit the use of electronic display by the operator of a vehicle that is equipped with autonomous technology while the vehicle is being operated in autonomous mode.

Port District Roads (Section 6)

Current Situation

Current law provides that port vehicles and equipment[37] are exempt from requirements related to motor vehicle registration, the payment of license taxes, and the display of license plates when operated or used within the port facility of any deepwater port listed in s. 403.021(9)(b),F.S.,[38] for the purpose of transporting cargo, containers, or other equipment:

- between wharves and storage areas or terminals within the port;
- on designated port district roads connecting the port facilities of a single deepwater port.[39]

Proposed Changes

The bill amends s. 320.525(1), F.S., providing that the "port vehicles and equipment" exemption includes "motor vehicles being relocated within a port facility or via port district roads".

Aviation Development (Sections 7 and 8)

Current Situation

All publicly owned Florida airports that are open for public use and included in the Florida Aviation System Plan[40] are eligible for state funding.

The Florida Airport Development and Assistance Act[41] (Act) requires DOT to provide coordination and assistance for the development of a viable aviation system and to develop and update a statewide aviation system plan that summarizes the state's aviation needs.

Section 332.007, F.S., requires DOT to prepare and continuously update an aviation and airport work program that separately identifies development projects[42] and discretionary capacity improvement projects.[43] Subject to the availability of appropriated funds, DOT is authorized to participate in the capital cost of eligible public airport and aviation development projects and discretionary capacity improvement projects.

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[36] The operation of a vehicle in autonomous mode is provided for in s. 318.85(2), F.S.

[37] section 320.525(1), F.S., defines "port vehicles and equipment" as "trucks, tractors, trailers, truck cranes, top loaders, fork lifts, hostling tractors, chassis, or other vehicles or equipment used for transporting cargo, containers, or other equipment."

[38] The deepwater ports listed in s. 403.021(9)(b), F.S., are Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

[39] s. 320.525 (2), F.S.,

[40] The Florida Aviation System Plan (FASP) is DOT's strategic 20-year plan for developing the state's 129 public airports. Using traditional aviation planning techniques, it identifies future air traffic demands and the facilities that will be required to support the increase in demand. The plan also includes a strategic planning element that allows DOT to respond to changing aviation and economic trends, including emerging technologies, projected funding shortfalls, and shifting priorities. DEPARTMENT OF TRANSPORTATION, *Florida Aviation System Plan 2025* (updated February 2012) http://www.cfaspp.com/FASP/Documents/634763253312886250-Florida_2025_Revised_2012.pdf

[41] ss 332.003 to 332.007, F.S.

[42] section 332.004(4), F.S., defines "Development project" as "…any activity associated with the design, construction, purchase, improvement, or repair of a public-use airport or portion thereof…."

[43] section 332.004(5), F.S. defines "Discretionary capacity improvement projects" as "capacity improvements … which enhance intercontinental capacity at [specified] airports…."

State funding for commercial service and general aviation airports is available from a variety of sources. The Florida Aviation Grant Program was established to fund projects relating to airport planning, capital improvement, land acquisition, and economic development. The Strategic Intermodal System (SIS) was established to enhance Florida's mobility and economic competitiveness. Other funding mechanisms include the State Infrastructure Bank and the Transportation Regional Incentive Program.

The Aviation Grant Program provides financial assistance to Florida's airports in the areas of safety, security, preservation, capacity improvement, land acquisition, planning, and economic development. Program funds assist local governments and airport authorities in planning, designing, constructing, and maintaining public-use aviation facilities. The Aviation Grant Program is funded from the State Transportation Trust Fund, of which Florida's aviation industry is a major contributor via the state's aviation fuel tax.[44]

The amount of funding an airport can receive varies depending on the type of project and the type of airport.[45] The following table provides a breakdown of the amount of funding that can be provided by various sources, depending on the type of airport.

Type of development	If Federal funding is available	If Federal funding is not available
Commercial Service Airport	Department provides up to 50% of nonfederal share	Department provides up to 50% of total project costs
General Aviation Airport	Department provides up to 80% of nonfederal share	Department provides up to 80% of total project costs
Economic Development	Not applicable	Department provides up to 50% of total project costs

Section 332.007(10), F.S., authorizes DOT to fund up to 100 percent of strategic airport investment projects[46] that meet the following criteria:

- Provide important access and on-airport capacity improvements;
- Provide capital improvements to strategically position the state to maximize opportunities in international trade logistics, and the aviation industry;
- Achieve state goals of an integrated intermodal transportation system; and
- Demonstrate feasibility and availability of matching funds through federal, local, or private partners.

The Strategic Intermodal System (SIS) was developed in 2003 by the State of Florida to efficiently serve the mobility needs of Florida's citizens, businesses, and visitors as well as help Florida become a worldwide economic leader, enhance economic prosperity and competitiveness, enrich quality of life, and reflect responsible environmental stewardship. SIS facilities consist of transportation facilities that move people and freight throughout Florida, the United States, and internationally.[47]

SIS facilities include airports, spaceports, deepwater seaports, freight rail terminals, passenger rail and intercity bus terminals, rail corridors, waterways, and highways that are considered high-priority transportation facilities. SIS facilities carry more than 99 percent of all commercial air passengers and cargo, virtually all waterborne freight and cruise passengers, almost all rail freight, 89 percent of all interregional rail and bus passengers, 55 percent of total traffic, and more than 70 percent of all truck traffic on the State Highway System.

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[44] section 206.9825, FS, authorizes the application of an excise tax to aviation fuels. The current rate is 6.9 cents per gallon, and the tax is not tied to the inflation index

[45] DOT "The Florida Aviation Project Handbook: A Handbook of State Funding Information for Florida Airports" July 2014 http://www.florida-aviation-database.com/library/filedownload.aspx?guid=ef798054-8bdc-45a3-84ea-358359a2e89d (last accessed November 9, 2015).

[46] Like other projects in the aviation and airport work program, these projects are subject to the availability of appropriated funds.

[47] *Id.*

SIS facilities are designated through the use of objective criteria and thresholds based on quantitative measures of transportation and economic activity. SIS facilities are considered to move large numbers of people and goods, and contribute significantly to interstate, regional, and international transportation and economic activity. Facilities that do not meet the established criteria and thresholds for SIS designation, but are expected to meet them in the future, are referred to as Emerging SIS. Emerging SIS facilities have lower current service levels, but show potential for future growth and development. There are currently 19 airports that are designated as SIS or Emerging SIS facilities. Of these 19 airports, seven are SIS Airports and two are SIS General Aviation Reliever Airports. The remaining 10 are Emerging SIS airports.

For airport projects, SIS funds can be used for facilities that are in need of preservation, maintenance, or safety enhancements. Remaining funds are used for capacity projects. There are four categories of capacity projects that are eligible to receive SIS funding, these are: ground transportation, landside connections, airside connections, and terminal connections.

Determining the priority projects to receive SIS funding considers the need for the preservation, safety, and maintenance of transportation facilities. These priorities and their accompanying funding strategies lay the framework for transportation throughout the state.

The DOT provides SIS funding matches for eligible capacity projects on SIS airports. SIS funding for airports requires a 50/50 match between the state and the airport or local government. Airport funding through the SIS program utilizes the following disbursement, according to the current SIS Funding Strategy.

Proposed Changes

The bill creates s. 332.0012, F.S., establishing the Florida Aviation Transportation and Economic Development Program to finance airport transportation and facilities projects. The bill provides for a minimum of $15 million per year to be made available from the State Transportation Trust Fund to fund the program.

The bill provides that the airport facilities and airport transportation projects eligible for program funding are as follows:

- Transportation facilities within the jurisdiction of the airport.
- The construction, acquisition, improvement, enlargement, extension, or rehabilitation of airport facilities, storage facilities, terminals, or automated people mover systems or any related facilities that are necessary or useful.
- The acquisition of mechanized equipment used in the movement of cargo or passengers in international commerce.
- The acquisition of land to be used for airport purposes.
- Environmental protection projects that result from the funding of eligible projects or that are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval or for environmental mitigation required as a condition of a state, federal, or local environmental permit.
- Transportation facilities as defined in s. 334.03(30) which are not otherwise part of the Department of Transportation's adopted work program.
- Intermodal access projects.

The bill creates s. 332.0014, establishing the Florida Aviation Transportation and Economic Development Council within the Department of Transportation. The bill provides that the council be composed of the DOT Secretary or designee, the Department of Economic Opportunity Executive Director or designee, and the airport director or designee of the following airports:

- Fort Lauderdale International
- Jacksonville International
- Miami International
- Orlando International
- Palm Beach International
- Southwest Florida International

- Tampa International
- Miami Executive
- Kissimmee Gateway
- Daytona Beach International
- Gainesville Regional
- Melbourne International
- Northwest Florida Beaches International
- Destin-Fort Walton Beach
- Orlando Sanford International
- Pensacola International
- Sarasota-Bradenton International
- Saint Petersburg-Clearwater International
- Tallahassee International

The bill provides for the Council to review projects and allocate funds in a manner that would allow DOT to include approved projects in the tentative work program developed pursuant to s. 339.135, F.S.

The bill directs the Council to prepare a 5-year Florida Aviation Mission Plan outlining the Council's goals and objectives, including specific recommendations for construction projects that are consistent with the program and the Florida Transportation Plan, and to develop a prioritized list of projects based on these recommendations. The bill requires the Council to develop criteria for the evaluation of projects and to prioritize projects that are statewide in scope or qualify as strategic airport investment projects. The bill provides for the Council update the plan each year, and to submit the plan by a certain date.

Airport Leases (Section 9)

Current Situation

The National Plan of Integrated Airport Systems provides that airports should be operated efficiently both for aeronautical users and the government, relying primarily on user fees and placing minimal burden on the general revenues of the local, state, and federal governments.[48] Current law authorizes a municipality[49] to lease an airport or other air navigation facility to a private party or another governmental entity, so long as the term of the lease does not exceed 30 years.[50] Counties are authorized to extend their lease term up to an additional 25 years, if the improved value of the lease is appraised for greater than $20 million. [51] Although the Federal Aviation Administration (FAA) does not review all leases, they advise against lease terms that exceed 50 years.[52]

Proposed Changes

The bill amends s. 332.08(1)(c), F.S., increasing the maximum allowable municipal airport lease term to 50 years.

Airport Zoning (Sections 10 through 22)

In 2012, DOT created a stakeholder working group to address problems with the state's airport zoning law and to update it to reflect current federal requirements and industry standards. The group consisted of representatives from airports, local planning/zoning departments, the Florida Defense Alliance, the Florida League of Cities, the Florida Airports Council, the real estate development community, and DOT. The group met three times between June and September 2012.

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[48] National Plan of Integrated Airport Systems

[49] s. 332.01(1), F.S. defines "municipality" as any county, city, village, or town of this state.

[50] s. 332.08(1)(c), F.S.

[51] s. 125.35(1)(b), F.S.

[52] FAA Order 5190.6B *Airport Compliance Manual* 12.3(b)(3) provides the following guidance: "Most tenant ground leases of 30 to 35 years are sufficient to retire a tenant's initial financing and provide a reasonable return for the tenant's development of major facilities. Leases that exceed 50 years may be considered a disposal of the property in that the term of the lease will likely exceed the useful life of the structures erected on the property. FAA offices should not consent to proposed lease terms that exceed 50 years."

The working group determined that the law, which originally passed in 1945,[53] contains provisions that are outdated and inconsistent with federal regulations, has internal inconsistencies, and requires a local government airport protection zoning process that can be cumbersome and confusing.

Definitions (s. 333.01, F.S.)

Current Situation
Current law defines various terms as they relate to airport zoning.

Proposed Changes
The bill implements numerous changes to definitions related to airport zoning to reflect improved consistency with federal regulations and guidance. Specifically, the bill adds the following definitions to s. 333.01, F.S.:

- Aeronautical study - a Federal Aviation Administration (FAA) review conducted pursuant to 14 C.F.R. Part 77, concerning the effect of proposed construction or alteration on the use of air navigation facilities or navigable airspace by aircraft.

- Airport master plan - a comprehensive plan of an airport that describes the immediate and long-term development plans to meet future aviation demand.

- Airport protection zoning - airport zoning regulations governing airport hazards.

- Department - Department of Transportation as created under s. 20.23, F.S.

- Educational facility - any structure, land, or use thereof that includes a public or private kindergarten through twelfth grade school, charter school, magnet school, college campus, or university campus. For the purposes of Ch. 333, F.S. the term "educational facility" does not include space utilized for educational purposes within a multitenant building.

- Landfill - has the same meaning as in s. 403.703, F.S.[54]

- Public-use airport - an airport,[55] publicly or privately owned, licensed by the state, which is open for use by the public.

- Substantial modification - any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of repair, reconstruction, rehabilitation, or improvement of the structure equals or exceeds 50 percent of the market value of the structure.

The bill also amends the following definitions:

- Airport hazard
- Airport hazard area
- Airport land use compatibility zoning
- Airport layout plan
- Obstruction
- Political subdivision
- Runway protection zone
- Structure

[53] Ch. 23079, Laws of Fla.
[54] section 403.703(17), F.S., defines "landfill" as "any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707 and which receives solid waste for disposal in or upon land. The term does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris."
[55] The bill defines "airport" as "any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose."

The bill also deletes the definition of "aeronautics" since the term is not being used. It also deletes the definition of "tree" and replaces the term with "obstruction" throughout Ch. 333, F.S., as applicable.

Permit required for structures exceeding federal obstruction standards (s. 333.025, F.S.)

Current Situation

Current law provides that in order to prevent structures[56] dangerous to air navigation from being erected, each person[57] must secure permit from DOT to erect, alter, or modify a structure exceeding the federal obstruction standards.[58] However, permits are only required within an airport hazard area[59] where federal standards are exceeded and if the proposed construction is within a 10-nautical-mile radius of the geographical center of the airport.

Current law provides that affected airports are considered having those facilities which are shown on the airport master plan, or an airport layout plan,[60] or in comparable military documents, and those facilities will be protected. Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the FAA or to DOT will also be protected.

Current law provides that permit requirements do not apply if the project received construction permits from the Federal Communications Commission (FCC) prior to May 20, 1975;[61] nor do permit requirements apply to previously approved structures now existing, or any necessary replacement or repairs to existing structures, provided that there is no change to the height and location of the structure.

Current law provides that when political subdivisions[62] have adopted adequate airspace protections, which are on file with DOT, a DOT permit for the structure is not required.

Current law gives DOT 30 days from when it receives an application for a permit, to issue or deny a permit to erect, alter, or modify of any structure which would exceed federal obstruction standards.

Current law provides that in determining whether to issue or deny a permit, DOT considers the following:

- The nature of the terrain and height of existing structures.
- Public and private interests and investments.
- The character of flying operations and planned developments of airports.
- Federal airways as designated by the FAA.
- Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.
- Technological advances.
- The safety of persons on the ground and in the air.
- Land use density.
- The safe and efficient use of navigable airspace.
- The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.

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[56] The bill defines "structure" as "any object, constructed, erected, altered, or installed, including, but without limitation thereof, buildings, towers, smokestacks, utility poles, power generation equipment and overhead transmission lines."

[57] The bill defines "person" as "any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof."

[58] The federal obstruction standards are contained in 14 C.F.R. §§ 77.15, 77.17, 77.19, 77.21, and 77.23.

[59] The bill defines "airport hazard area" as "any area of land or water upon which an airport hazard might be established."

[60] The bill defines "airport layout plan" as "a scaled drawing, or set of drawings, in either paper or electronic form, of existing and planned airport facilities that provide a graphic representation of the existing and long-term development plan for the airport and demonstrates the preservation and continuity of safety, utility, and efficiency of the airport."

[61] This is provided that these structures now exist.

[62] The bill defines "political subdivision" as "the local government any county, city, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state."

Current law provides that when issuing a permit, DOT shall require the obstruction[63] marking and lighting of the permitted obstruction.

Current law prohibits DOT from approving a permit to erect a structure unless the applicant submits documentation showing compliance with both federal notification requirements and a valid aeronautical evaluation. DOT shall not approve a permit solely on the basis that such proposed structure will not exceed federal obstruction standards or any other federal aviation regulation.

Proposed Changes

The bill replaces the term "geographic center" with "airport reference point", which is defined as the approximate geometric center of all usable runways at a public airport. The bill also removes a redundant reference to FAA rules governing federal obstruction standards.

The bill provides that existing, planned, and proposed facilities at public-use airports contained in an airport master plan, on an airport layout plan, or in comparable military documents will be protected from airport hazards. The bill also removes the provision that certain planned or proposed public-use airports are also protected.

The bill replaces the term "project" with "existing structures" in s. 333.025(3), F S. and removes the conditional reference to the existence of certain structures that were permitted by the FCC prior to May 20, 1975.

The bill provides that a DOT permit is not required for a structure in a political subdivision that has adequate airport protection zoning regulations on file with DOT, and the political subdivision has established a permitting process. The bill creates a 15-day period, concurrent with the permitting process, for DOT to evaluate the permit for technical consistency. The bill exempts cranes, construction equipment, and other temporary structures, in use or in place for a period not exceeding 18 consecutive months, from DOT review, unless review is requested by DOT.

The bill provides that DOT has 30 days after receiving an application to issue or deny a permit for the construction or alteration of an obstruction. The bill requires DOT to review permit applications in conformity with s. 120.60, F.S.[64]

The bill adds the following criteria for DOT to consider when granting or denying a permit:

- The effect of the construction or alteration of an obstruction on the state licensing standards for a public-use airport.[65]

The bill modifies the following criteria for DOT to consider in granting or denying a permit:

- The character of existing and planned flight operations and developments at public-use airports.
- Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the FAA.
- The cumulative effects on navigable airspace of all existing obstructions and all other known proposed obstructions in the area.

The bill deletes the following criteria for DOT to consider in granting or denying a permit:

- Technological advances
- Land use density.

[63] The bill defines "obstruction" as any object of natural growth or terrain or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus, or alteration of any permanent or temporary existing structure by a change in its height, including appurtenances, or lateral dimensions, including equipment or material used therein, existing or proposed, which exceeds the standards contained in 14 C.F.R.§§ 77.15, 77.17, 11.19, 77.21, and 77.23.

[64] section 120.60, F.S., relates to licensing.

[65] The state licensing standards for a public-use airport are contained in Ch. 330, F.S., and Rule 14-60, F.A.C.

The bill provides that when issuing a permit, DOT must require the owner of the obstruction to install, operate, and maintain, at his or her own expense, marking and lighting in conformance with FAA standards.

The bill provides that DOT shall not approve the construction or alteration of an obstruction unless documentation is submitted that it is in compliance with certain standards. The bill changes the term "aeronautical evaluation" to "aeronautical study," which the bill defines.

The bill creates s. 333.025(9), F.S., providing that the denial of a permit is subject to the administrative review under the Florida Administrative Procedures Act.[66]

Power to adopt airport zoning regulations (s. 333.03, F.S.)

Current Situation
Current law provides that every political subdivision with an airport hazard[67] area has until October 1, 1977, to adopt, administer, and enforce airport zoning regulations for the airport hazard area.

Current law provides where an airport is owned or controlled by a political subdivision and any airport hazard area related to the airport is located in whole or in part outside of the political subdivision, the political subdivision owning or controlling the airport and the political subdivision where the airport hazard area is located, shall either:

- By interlocal agreement, adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area; or
- create a joint airport zoning board, with the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area.

Current law provides that airport zoning regulations shall, as a minimum, require:

- A variance for the erection, alteration, or modification of any structure which would cause the structure to exceed the federal obstruction standards;
- obstruction marking and lighting for structures;
- documentation showing compliance with the federal requirement for notification of proposed construction and a valid aeronautical evaluation submitted by each person applying for a variance;
- consideration of the criteria in s. 333.025(6), F.S., when determining whether to issue or deny a variance; and
- that no variance shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards or any other federal aviation regulation.

Current law requires DOT to issue copies of the federal obstruction standards to each political subdivision with an airport hazard area. Additionally, DOT must, in cooperation with political subdivisions, issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree.

Current law provides that interim airport land use compatibility zoning[68] regulations shall be adopted. When political subdivisions have land development regulations addressing land use consistent with Ch. 333, F.S, the political subdivision is not required to adopt airport land use compatibility regulations. Interim land use compatibility regulations are required to consider the following:

- Whether sanitary landfills are located within the following areas:
  - Within 10,000 feet from the nearest point of any runway used or planned to be used by turbojet or turboprop aircraft.
  - Within 5,000 feet from the nearest point of any runway used only by piston-type aircraft.

[66] Ch. 120, F.S.
[67] The bill defines "airport hazard" as "any obstruction to air navigation that affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities."
[68] The bill defines "airport land use compatibility zoning" as "airport zoning regulations governing the use of land on, adjacent to, or in the immediate vicinity of airports."

- Outside the perimeters defined above, but still within the lateral limits of the civil airport imaginary surfaces. Current law advises a case-by-case review of such landfills.
- Whether any landfill is located and constructed so that it attracts or sustains hazardous bird movements. The political subdivision shall request a report from the airport on such bird feeding or roosting areas that are known to the airport. In preparing its report, the airport, considers whether the landfill will incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. The airport has 30 days to respond to the request.
- Where an airport authority or other governing body has conducted a noise study[69] neither residential construction nor any educational facility[70] with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction.
- Where an airport authority or other governing body operating an airport has not conducted a noise study, neither residential construction nor any educational facility except for of aviation school facilities, shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

Current law requires airport zoning regulations restricting new incompatible uses, activities, or construction within runway clear zones, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. These regulations shall prohibit the construction of an educational facility at either end of a runway of an airport within an area which extends five miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns.

Current law requires DOT to provide technical assistance to any political subdivision requesting assistance in preparing an airport zoning code. A copy of all local airport zoning codes, rules, and regulations, and amendments and proposed and granted variances, must be filed with DOT.

Current law provides that nothing shall be construed to require the removal, change, or to interfere with the continued use or adjacent expansion of any educational structure or site in existence on July 1, 1993, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, F.S., as of July 1, 1993.

Proposed Changes

The bill amends the title of s. 333.03, F.S., to "Airport protection zoning regulations."

The bill amends s. 333.03(1)(a), F.S., removing the October 1, 1977 deadline, clarifying language, and specifying airport protection zoning regulations.

The bill amends s. 333.03(1)(b), F.S., removing antiquated legal phrasing, providing clarity and specificity, and deleting unnecessary statutory references.

The bill amends s. 333.03(1)(c), F.S., reflecting the conversion from a variance process to a permitting process. The bill also removes references to FAA rules.

The bill amends s. 333.03(1)(d), F.S., removing the requirement that DOT issue copies of the federal obstruction standards. The paragraph now provides that DOT is available to assist political subdivisions with regard to federal obstruction standards.

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[69] A noise study is conducted in accordance with 14 C.F.R. § 150.

[70] section 1013.01(6), F.S., defines "educational facilities" as "the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards."

The bill amends s. 333.03(2), F.S., modifying the text to require political subdivisions adopt, administer, and enforce airport land use compatibility zoning regulations.

The bill amends s. 333.03(2)(a), F.S., prohibiting any new and restricting any existing landfills in the areas above. The text is also modified to reflect current aviation terminology regarding the types of aircraft and to update a C.F.R. reference.

The bill amends s. 333.03(2)(b), F.S., eliminating statutory redundancy.

The bill amends s. 333.03(2)(c), F.S., allowing for alternative noise studies approved by the FAA in lieu of a noise study provided for in 14 C.F.R. Part 150.

The bill amend s. 333.03(2)(d), F.S., removing the term "publicly-owned" and a reference to a definition for educational facility in Ch. 1013, F.S.

The bill redesignates the previous s. 333.03(3), F.S., as s. 333.03(2)(e), F.S., and amends this provision to reflect revised statutory intent, removing redundancy and antiquated aviation terminology and reflecting the purpose of runway protection zones[71] as defined and described in FAA AC 15-5300-13A.[72]

The bill repeals s. 333.03(4), F.S., preventing redundancy due to changes to the permitting process.

The bill redesignates the previous s. 333.03(5), F.S., as s. 333.03(3), F.S., providing clarity and specificity and to reflect a conversion to a permitting process by requiring all updates and amendments to local airport zoning codes, rules, and regulations to be filed with DOT within 30 days after adoption.

The bill redesignates the previous s. 333.03(6), F.S., as s. 333.03(4), F.S., removing the provision prohibiting the construction of a new site as determined by the former s. 235.19, F.S., as of July 1, 1993.

The bill creates a new s. 333.03(5), F.S., providing that nothing precludes another governing body operating a public-use airport from establishing airport zoning regulations stricter than provided in state law in order to protect the health, safety and welfare of the public in the air and on the ground.

Comprehensive zoning regulations; most stringent to prevail where conflicts occur (s. 333.04, F.S.)

Current Situation

Incorporation
Current law provides that if a political subdivision has a comprehensive zoning ordinance regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion of the area may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection with the comprehensive zoning regulations.

Conflict
Current law provides that if there is a conflict between any airport zoning regulations and any other regulations applicable to the same area, the more stringent limitation or requirement governs and prevails.

Proposed Changes

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[71] The bill defines "runway protection zone" as an area at ground level beyond the runway end to enhance the safety and protection of people and property on the ground.
[72] FAA AC 15-5300-13A is available at: http://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.current/documentNumber/150_5300-13 (last visited January 7, 2016).

The bill amends s. 333.04(1), F.S., changing zoning ordinance to "zoning plan or policy." The bill also adds "protection" to the phrase "airport zoning regulations."

The bill amends s. 333.04(2), F.S., providing that it refers to "airport protection zoning" and to change the word "trees" to "vegetation."

Procedure for adoption of zoning regulations (s. 333.05, F.S.)

Current Situation

Notice and Hearing
Current law provides that airport zoning regulations shall not be adopted, amended, or changed except by action of the legislative body of the political subdivision, or the joint board after a public hearing where interested parties and citizens may be heard.

Airport Zoning Commission
Current law provides that prior to the initial zoning of any airport area, the political subdivision or joint airport zoning board appoints an airport zoning commission. The airport zoning commission recommends the boundaries of the various zones to be established and the regulations to be adopted. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Proposed Changes
The bill amends s. 333.05, F.S., providing internal consistency with definitions and to reflect correct community planning terminology.

Airport zoning requirements (s. 333.06, F.S.)

Current Situation

Reasonableness
Current law provides that all airport zoning regulations shall be reasonable and not impose any requirement or restriction which is not reasonably necessary. In determining what regulations it may adopt, the following must be considered:

- The character of the flying operations expected to be conducted at the airport;
- the nature of the terrain within the airport hazard area and runway clear zones;
- the character of the neighborhood;
- the uses to which the property to be zoned is put and adaptable; and
- the impact of any new use, activity, or construction on the airport's operating capability and capacity.

Independent Justification
Current law provides that the purpose of all airport zoning regulations is to provide both airspace protection and land use compatible with airport operations. Each aspect requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway clear zone which does not exceed airspace height restrictions is not evidence per se that such use, activity, or construction is compatible with airport operations.

Nonconforming Uses
Current law prohibits airport zoning regulations from requiring the removal, lowering, or other change of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3), F.S.

Adoption of Airport Master Plan and Notice to Affected Local Governments
Current law requires that an each public airport licensed by DOT prepare an airport master plan.

Proposed Changes
The bill amends s. 333.06, F.S. deleting the term "runway clear zone" and replacing it with "runway protection zone."[73] The bill also modifies the statute for internal consistency with definitions.

Guidelines regarding land use near airports (s. 333.065, F.S.)

Current Situation
Current law provides that DOT, after consultation with the Department of Economic Opportunity, local governments, and other interested persons, is required to adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports.

Proposed Changes
The bill repeals s. 333.065, F.S. According to DOT, this is due to the completion of its Airport Compatibility Land Use Guidebook.[74]

Permits and variances (s. 333.07, F.S.)

Current Situation

Permits
Current law provides that any airport zoning regulations may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure is substantially changed or substantially altered or repaired. All such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations. A permit may not be granted that would allow the establishment or creation of an airport hazard or would permit a nonconforming structure or tree or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

Current law provides that whenever the administrative agency determines that a nonconforming use or nonconforming structure or tree has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, it may not grant a permit that would allow the structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Whether application is made for a permit or not, the agency may by appropriate action, compel the owner of the nonconforming structure or tree, at his or her own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or tree does not comply with the order within 10 days, the agency may report the violation to the political subdivision involved, who, through its appropriate agency, may proceed to have the object lowered, removed, reconstructed, or equipped, and assess its cost and expense thereof upon the object or the land where it is or was located, and, unless such an assessment is paid within 90 days from the service of notice on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest at an annual rate of six percent, and shall be collected in the same manner as the political subdivision collects property taxes, or, the political subdivision may enforce the lien in the manner provided for enforcement of liens.[75]

Current law provides that except as provided, applications for permits shall be granted, provided the matter applied for meets the provisions Ch. 333, F.S., and the regulations adopted and in force.

Variances
Current law provides that any person desiring use his or her property in violation of airport zoning regulations or any land development regulation adopted pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations. When filing the

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[73] According to DOT, this is consistent with FAA AC 150/5300-13A.
[74] A copy of DOT's Airport Compatibility Land Use Guidebook is available at: http://www.dot.state.fl.us/aviation/compland.shtm (last visited January 6, 2016).
[75] The enforcement of statutory liens is provided for in Ch. 85, F.S.

application, the applicant forwards a copy to DOT. DOT has 45 days to comment or waive the right to comment to the applicant and the board of adjustment. DOT must include in its comments its explanation for any objections. If DOT fails to comment within 45 days, it waives its right to comment. The board of adjustment may proceed with its consideration of the application only after it receives DOT's comments or DOT waives its right to comment. Noncompliance is grounds to appeal and to apply for judicial relief. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of airport zoning regulations and Ch. 333, F.S. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment deems necessary.

Current law allows DOT to appeal any variance granted and apply for judicial relief.

Current law provides that in granting any permit or variance the administrative agency or board of adjustment shall require the owner of the structure or tree to install, operate, and maintain, at his or her own expense, marking and lighting as may be necessary to indicate to aircraft pilots the presence of an obstruction.

Obstruction marking and lighting
Current law provides that marking and lighting shall conform to the specific standards established in DOT rule.

Current law provides that existing structures not in compliance on October 1, 1988, shall be required to comply the earliest of whenever the existing lighting requires replacement, or within 5 years of October 1, 1988.

<u>Proposed Changes</u>
The bill amends the title of s. 333.07, F.S., to "Local government permitting of airspace obstructions".

Permits
The bill amends ss. 333.07(1)(a) and (b), F.S., reflecting the conversion from a variance to a permitting process, for internal consistency with definitions, and removing antiquated legal phrasing.

The bill deletes s. 333.07(1)(c), F.S., removing statutory redundancy.

Variances
The bill deletes s. 333.07(2), F.S., reflecting the conversion from a variance process to a permitting process.

Considerations when issuing or denying permits
The bill creates s. 333.07(2), F.S. relating to considerations when issuing or denying a permit. In determining whether to issue or deny a permit, the political subdivision or its administrative agency considers the impact of the following, as applicable:

- The safety of persons on the ground and in the air.
- The safe and efficient use of navigable airspace.
- The nature of the terrain and height of existing structures.
- The effect of the construction or alteration on the state licensing standards for a public-use airport contained in Ch. 330, F.S., and rules adopted thereunder..
- The character of existing and planned flight operations and developments at public-use airports.
- Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the FAA.
- Effect of the construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.
- The cumulative effect on navigable airspace of all existing structures, and all other known proposed structures in the area.
- Additional requirements adopted by the political subdivision pertinent to evaluation and protection of airspace and airport operations.

Obstruction marking and lighting
The bill amends ss. 333.07(3)(a) and (b), F.S., for internal consistency with definitions and with FAA AC 70/7460-1K.[76] The bill removes s. 333.07(3)(b), F.S., requiring such marking and lighting to conform to DOT standards established by rule. The bill also removes s. 333.07(3)(c), F.S., which contains an obsolete date.

Appeals (s. 333.08, F.S.)

Current Situation
Current law provides that any person aggrieved, or taxpayer affected, by any decision of an administrative agency in the administration of airport zoning regulations; or any governing body of a political subdivision, or DOT, or any joint airport zoning board, which believes that an administrative agency's decision is an improper application of airport zoning regulations of concern to the governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

Current law provides that all appeals are to be taken within a reasonable time, by filing a notice of appeal with the agency from which appeal is taken and with the board. The notice of appeal must specify the grounds of the appeal.

Current law provides that an appeal stays all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed, that by reason of the facts stated in the certification that a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by an order of the board on notice to the agency from which the appeal is taken and on due cause shown.

Current law provides that the board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties, and make its decision within a reasonable time.

Current law provides that the board may reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

Proposed Changes
The bill repeals s. 333.08, F.S., and moves the text into a new s. 333.09(3), F.S.

Administration of airport zoning regulations (s. 333.09, F.S.)

Current Situation
Current law requires that all airport zoning regulations provide for their administration and enforcement by an administrative agency. The administrative agency may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board. Such administrative agency may not be or include any member of the board of adjustment. The duties of any administrative agency include hearing and deciding all permits, deciding all matters under s. 333.07(3), F.S., as they pertain to the agency, and all other matters under the state's airport zoning law, which applies to the agency, but the agency shall not have or exercise any of the powers delegated to the board of adjustment.

Proposed Changes

[76] A copy of FAA AC 70/7460-1K is available at:
http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.current/documentNumber/70_7460-1 (last visited January 6, 2016).

Administration
The bill provides that all airport zoning regulations shall provide for the administration and enforcement of those regulations by the political subdivision or its administrative agency. The duties of any administrative agency shall include that of hearing and deciding all permits, as they pertain to such agency, and all other matters under Ch. 333, F.S. applying to the agency.

Local Government Process
The bill creates s. 333.09(2), F S., providing for a local government permitting process. Any political subdivision required to adopt airport zoning regulations must provide a process to:

- Issue and deny permits.
- Provide DOT with a copy of a complete application.
- Enforce the issuance or denial a permit or other determination made by the administrative agency with respect to airport zoning regulations.

Where a political subdivision already has a zoning board or permitting body, the existing zoning board or permitting body may implement the permitting and appeals process.

Appeals
The bill moves the substance of s. 333.08, F.S. to a newly created s. 333.09(3), F.S., relating to appeals. The language is modified to reflect the conversion from the variance process to a permitting process and to clean-up and update various provisions.

Board of adjustment (s. 333.10, F.S.)

<u>Current Situation</u>
Current law provides that all airport zoning regulations must provide for a board of adjustment having and exercising the following powers:

- To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations.
- To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.
- To hear and decide specific variances.

An existing zoning board may be appointed as the board of adjustment.

The majority vote of the board's members is sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

The board of adjustment is required to adopt rules in accordance with the ordinance or resolution creating it.

<u>Proposed Changes</u>
The bill repeals s. 333.10, F.S., reflecting the conversion from the variance process to a permitting process.

Judicial review (s. 333.11, F.S.)

<u>Current Situation</u>
Current law provides that any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or DOT or any joint airport zoning board, or of any administrative agency, may apply for judicial relief. The appeal must be filed within 30 days after the board of adjustment renders its decision. Review shall be by petition for writ of certiorari, governed by the Florida Rules of Appellate Procedure.

Upon presentation of such petition to the court, the court may allow a writ of certiorari, directed to the board of adjustment, to review the board's decision. The allowance of the writ does not stay the proceedings upon the decision appealed from, but the court may, under certain circumstances, grant a restraining order.

The court has exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review and if need be, order further proceedings by the board of adjustment. The findings of fact by the board of adjustment, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a board of adjustment decision shall be considered by the court unless such objection shall have been urged before the board of adjustment, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

If airport zoning regulations, although generally reasonable, are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding does not affect the application of the regulations to other structures and parcels of land, or other regulations that are not involved in the particular decision.

Current law provides that no appeal is permitted to any courts, save and except an appeal from a decision of the board of adjustment, the appeal provided being from such final decision of the board of adjustment. The appellant is required to exhaust his or her remedies of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court.

<u>Proposed Changes</u>
The bill amends s. 333.11(1), F.S., removing references to the board of adjustment and DOT. The bill also changes one reference to the board of adjustment to political subdivision to reflect other changes being made to Ch. 333, F.S.

The bill repeals ss. 333.11(2) and (3), F.S., reflecting the conversion from a variance process to a permitting process.

The bill amends s. 333.011(4), F.S., modifying it for clarity and specificity and for consistency with Ch. 163, F.S.

The bill amends s. 333.011(5), F.S., removing the phrase "although generally reasonable."

The bill amends s. 311.11(6), F.S., providing that a judicial appeal may not be permitted to any courts, until the appellant has exhausted all of its remedies through the application for political subdivision permits, exceptions, and appeals.

Acquisition of air rights (s. 333.12, F.S.)

<u>Current Situation</u>
Current law provides that when it is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or the approach protection necessary cannot, due to constitutional limitations, be provided by airport regulations; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation such air right, navigation easement, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, tree, structure, or use, in question, as may be necessary to effectuate the purposes of Ch. 333, F.S., and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned. In the case of the purchase of any property or any easement or estate or interest therein or the acquisition by the power of eminent domain the political subdivision making such

purchase or exercising such power shall in addition to the damages for the taking, injury or destruction of property also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

Proposed Changes
The bill amends s. 333.12, F.S. for clarity, specificity, and internal consistency with definitions, including the replacement of "navigation easement" with the more accurate term "avigation easement."[77]

Enforcement and remedies (s. 333.13, F.S.)

Current Situation
Current law provides for the enforcement of Ch. 333, F.S., and appropriate remedies.

Proposed Changes
The bill amends s. 333.13(3), F S., changing a reference to the Department of Transportation to "the department" for internal consistency with the definitions provided in s. 333.01, F.S.

Transition Provisions (s. 333.135, F.S)

Current Situation
Currently Ch. 333, F.S., does not contain any transition provisions.

Proposed Changes
The bill creates s. 333.135, F.S., providing transition provisions regarding the changes made to Ch. 333, F.S. The bill provides that any airport zoning regulation in effect on July 1, 2016, which include provisions conflicting with Ch. 333, F.S., shall be amended to conform to the requirements of Ch. 333, F.S., by July 1, 2017.

Any political subdivisions having an airport within its territorial limits, which have not adopted airport zoning regulations, shall by July 1, 2017, adopt airport zoning regulations for such airport. The regulations must be consistent with Ch. 333, F.S.

For those political subdivisions that have not yet adopted airport protection zoning regulations, DOT will administer the permitting process as provided in s. 333.025, F.S.

Short title (s. 333.14, F.S.)

Current Situation
Current law provides the short title "Airport Zoning Law of 1945."

Proposed Changes
The bill repeals s. 333.14, F.S., eliminating a short title for Ch. 333., F.S.

Statute Reenactment (Section 23)
The bill reenacts s. 350.81(6), F.S., relating to communication services offered by local governments to incorporate the changes made by the bill to s. 333.01, F.S.

Surety Bonds (Section 24)

Current Situation
Section 337.18, F.S., requires the successful bidder for a DOT construction or maintenance contract to obtain a surety bond. A surety bond protects DOT against losses resulting from the contractor's failure to fulfill the terms of the contract. The law also provides DOT with discretion authority to waive the requirement for contracts less than $250,000 and greater than $250 million if certain conditions are met.

[77] An avigation easement is the conveyance of airspace over another property for use by the airport.

Proposed Changes
The bill amends s. 337.18(1), F.S., authorizing DOT to waive the surety bond requirements for a prime contractor that is a qualified nonprofit agency for the blind or other severely handicapped under s. 413.036(2), F.S.,[78] or for a prime contractor using a qualified subcontractor, up to the value of that subcontract.

Transfer of Pinellas Bayway System (Sections 25 and 26)

Current Situation
The Pinellas Bayway System, currently owned by the DOT, is a tolled system of bridges and causeways that provides an east-west link between St. Petersburg and St. Petersburg Beach via State Road 682. Tolls on the Pinellas Bayway System are collected by the Florida Turnpike Enterprise (FTE).[79] The system also serves Tierra Verde and Fort De Soto Park to the south via State Road 679. One of the bridges on State Road 679 over Boca Ciega Bay was classified as structurally deficient in 2013. "Structurally deficient," according to the DOT, "means that a bridge has to be repaired or replaced within six years." The term does not mean that a bridge is unsafe.[80]

DOT's policy is to replace a structurally deficient bridge within six years of the deficient classification.[81,] The scope of the work for the bridge over Boca Ciega Bay is to replace the existing movable bridge with a high-level fixed bridge through a design-build contract, at a proposed cost of $52.1 million.[82] However, no funds for replacement of the bridge are currently included in the DOT's District 7 work program. The DOT advises that the balance of an existing reserve construction account for Pinellas Bayway improvements as of December 31, 2015, was $7,326,346.13.[83]

Bayway System Construction and Tolls
In 1968, the predecessor of the DOT entered into a settlement agreement in *Leonard Lee Ratner, Esther Ratner, and LEECO Gas and Oil Co., vs. State Road Department of the State of Florida*. In the settlement agreement, the State Road Department agreed that owners and residents of real property in the Bayway Isles Development would have the right to purchase an annual pass through the toll gate at the easterly terminus of the Bayway system in St. Petersburg for $15 per vehicle. That agreement remains in place.

Chapter 85-364, Laws of Fla., required a toll of $.50 cents, following completion of widening to four lanes from the eastern toll booth to State Road 679, at the eastern and western toll plazas on State Road 682. The DOT was required, after payment of annual operating costs and discharge of bond indebtedness, to establish a reserve construction account to be used for widening to four lanes State Road 682 from State Road 679 west to Gulf Boulevard. Continued collection of tolls was required upon completion of the widening to reimburse the DOT for all accrued maintenance costs for the Pinellas Bayway. In addition, chapter 85-364, Laws of Fla., required the DOT to allow any person to purchase an annual pass for each motor vehicle they own at a cost of $50 per year which exempts the motor vehicle from any Pinellas Bayway System tolls during its term. Currently the $50 pass remains available.

Chapter 95-382, Laws of Fla., required tolls collected to first be placed in the construction reserve account, after payment of operating costs and bond indebtedness, to be used for construction of Blind Pass Road, State Road 699 improvements in Pinellas County, and then for Phase II of the Pinellas Bayway widening to four lanes of State Road 682 from State Road 679 west to Gulf Boulevard. Tolls continue to be collected to reimburse the DOT for all accrued maintenance costs.

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[78] section 413.036(2), F.S. provides that the provisions of Part I of Ch. 287, F.S. (relating to the procurement of commodities, insurance, and contractual services.
[79] *See* the Florida Transportation Commission's *Transportation Authority Monitoring and Oversight Fiscal year 2014 Report*: http://www.ftc.state.fl.us/reports/TAMO.shtm. Last visited January 21, 2016.
[80] Email from DOT, (January 21, 2016).
[81] Email from DOT, (January 5, 2016).
[82] *Id.*
[83] DOT email to committee staff dated January 21, 2016.

Section 48 of chapter 2014-223, Laws of Fla., repealed reference to the Blind Pass Road/State Road 699 improvements and provided that funds in the reserve construction account be used for the widening of State Road 682 from State Road 679 west to Gulf Boulevard. These improvements have been completed. As noted, however, the bridge on State Road 679 over Boca Ciega Bay has been declared structurally deficient.

Currently, for a two-axle vehicle, the toll, other than for those that hold the $15 or the $50 annual pass, is:

- $.53 cents for SunPass customers and $.75 cents for cash customers, both westbound at the East Plaza and eastbound at the West Plaza, plus $.53 cents and $.75 cents, respectively, for each additional axle.
- $.26 cents for SunPass customers and $.50 cents for cash customers southbound at the south plaza, plus an additional $.26 cents and $.50 cents, respectively, for each additional axle.[84]

Section 338.165(4), F.S., authorizes DOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on the Alligator Alley, the Sunshine Skyway Bridge, the Beeline-East Expressway, the Navarre Bridge, and the Pinellas Bayway to fund transportation projects located within the county or counties in which the project is located and contained in the DOT's adopted work program. The Beeline-East Expressway (renamed the Beachline East Expressway) became part of the FTE on July 1, 2012, pursuant to ch. 2012-128, Laws of Fla.[85] The Navarre Bridge is now county-owned and no longer used for toll revenue.

Proposed Changes

The bill amends s. 338.165(4), F.S., removing the reference to the Pinellas Bayway, as well as the obsolete references to the Beeline-East Expressway and the Navarre Bridge.

The bill creates s. 338.165(11), F.S., authorizing the transfer the Pinellas Bayway System from DOT to FTE. The bill also preserves the provisions of the settlement agreement and final judgment by retaining the ability to purchase a $15 annual pass. Additionally, the bill transfers the construction reserve account to FTE when ownership of the system is transferred to the FTE.

The DOT advises that the transfer of the system would allow replacement of the structurally deficient bridge over Boca Ciega Bay on SR 679 to be moved up from 2020 to 2017 in the DOT work program, and funded through a combination of the accrued reserve account revenues and other financing available to the Florida Turnpike.

The bill repeals Chapter 85-634, Laws of Florida, as amended by Ch. 95-382 and section 48 of Ch. 2014-223, Laws of Florida. The ability of the specified owners and residents to purchase the $15 annual passage through the easterly terminus of the Bayway System will remain in place, pursuant to the 1968 settlement agreement, but the $50 annual pass would no longer be available for purchase. Current holders of those passes would be required to pay tolls at all of the Bayway toll collection points.

Broward County Expressway Authority (Section 27)

Current Situation

Florida expressway authorities are formed either under the Florida Expressway Authority Act[86] or by special act of the Legislature. Most expressway authorities were created before the Florida Expressway Authority Act of 1990 and are not, therefore, subject to most of its provisions. The Miami-Dade Expressway Authority is the only authority created and governed by the Florida Expressway Authority Act in existence.

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[84] *See* the Florida Turnpike Toll Calculator, click on "Tampa Area," roll over hot buttons to select the Pinellas Toll Plazas: http://www.floridasturnpike.com/TollCalcV3/index.htm. Last visited January 21, 2016.

[85] s. 338.165(10), F.S.

[86] Part I of Ch. 348, F.S.

The purpose of Florida's expressway authorities is to construct, maintain, and operate tolled transportation facilities complementing the State Highway System and the Florida Turnpike Enterprise. The expressway authorities are governed by boards of directors which are typically made up of a combination of local-government officials and gubernatorial appointees.

The Broward County Expressway Authority was created in 1983.[87] The authority built the Sawgrass Expressway, which opened in 1986. In December 1990, the Sawgrass Expressway was acquired by DOT and became part of Florida's Turnpike System.[88] The Broward County Expressway Authority was repealed in 2011.[89]

While the Broward County Expressway Act was repealed in 2011, s. 338.231(5), F.S., continues to address issue related to series 1984 and series 1986 A bonds originally issued through the authority. Because the bonds have been retired and are no longer outstanding this subsection is now obsolete.

Proposed Changes
The bill repeals s. 338.231(5), F.S., relating to retired bonds issued through the abolished Broward County Expressway Authority.

TBARTA MPO Chairs Coordinating Committee (Sections 28, 34, and 35)

Current Situation
Based on census data, the U.S. Bureau of the Census designates urbanized areas throughout the state. Federal law and rule[90] require a metropolitan planning organization (MPO) to be designated for each urbanized area[91] or group of contiguous urbanized areas. In addition, federal law and rules specify the requirements for a MPO transportation planning and programming activities. These requirements are updated after each federal transportation reauthorization bill enacted by Congress. State law also includes provisions governing MPO activities. Section 339.175, F.S., paraphrases or restates some key federal requirements. In addition, state law includes provisions that go beyond the federal requirements. For example, federal requirements regarding MPO membership are very general, while state law is more specific.

Current law provides for a chair's coordinating committee, composed of the Metropolitan Planning Organizations (MPOs) serving Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota counties, which must[92]:

- Coordinate transportation projects deemed to be regionally significant by the committee.
- Review the impact of regionally significant land use decisions on the region.
- Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.
- Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

The Tampa Bay Area Regional Transportation Authority (TBARTA) was created by the Legislature in 2007[93] to develop and implement a Regional Transportation Master Plan for the seven-county West Central Florida region consisting of Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas and Sarasota Counties.

[87] Ch. 83-289, Laws of Fla.
[88] FLORIDA TURNPIKE ENTERPRISE, *System Description*, http://www.floridasturnpike.com/about_system.cfm (last visited January 6, 2016).
[89] Ch. 2011-64, Laws of Fla.
[90] *See* 23 U.S.C.§ 134 and 23 C.F.R § 450 Part C
[91] An urbanized area is defined by the U.S. Bureau of the Census and has a population of 50,000 or more.
[92] s. 339.175(6)(i), F.S.,
[93] Ch. 2007-254, Laws. of Fla.

Section 343.92, F.S. provides that the TBARTA governing board consist of 15 members, one of whom must be the Secretary of a DOT District whose jurisdiction overlaps with that of TBARTA, as a nonvoting, ex officio member appointed by the Secretary of DOT.

Proposed Changes
The bill amends s. 339.175(6)(i), F.S., providing that the "TBARTA Metropolitan Planning Organization Chairs Coordinating Committee," is created within the Tampa Bay Area Regional Transportation Authority. The bill directs the authority to provide administrative support and direction to the Chairs Coordinating Committee, the cost for which must be provided from DOT and the member MPOs. The bill adds Citrus County to the coordinating committee.

The bill amends s. 343.92, F.S., providing that the governing board of the authority will consist of 15 voting member, and requiring that the Secretary of DOT appoint, as advisors to the board, the DOT District Secretaries for District 1 and District 7, respectively.[94]

The bill amends s. 343.922(3)(d), F.S., providing that the master plan must be updated every five years before July 1. Current law provides that the plan must be updated every two years.

The bill amends ss. 343.922(3)(e), and 343.922(3)(f), F.S., conforming cross-references to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee. The bill creates s. 343.922(3)(g), F.S., requiring the authority to provide administrative support and direction to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as provided in s. 339.175(6)(i), F.S.

Small County Outreach Program (Section 29)

Current Situation
The Small County Outreach Program (SCOP) is authorized in s. 339.2818, F.S. The purpose of the program is to assist small county governments in repairing or rehabilitating county bridges, paving unpaved roads, addressing road related drainage improvements, resurfacing or reconstructing of county roads, or constructing capacity or safety improvements to county roads. A small county is defined as any county that has a population of 150,000 or less as determined by the most recent official population estimate as determined by the Office of Economic and Demographic Research. The 150,000 population threshold has been in effect since SCOP was created in 2000.[95]

Small counties are eligible to compete for funds designated for projects on county roads. DOT provides 75 percent of the cost of the projects funded under this program. Funds paid into the State Transportation Trust Fund pursuant to s. 201.15, F.S., for the purposes of the SCOP are annually appropriated for expenditure to support the program.[96]

In 2014, the SCOP statute was amended to allow municipalities within a Rural Area of Opportunity or Rural Area of Opportunity community[97] to compete for project funding using the SCOP criteria at up to 100 percent of project costs, excluding capacity projects. The funding for municipalities would be subject to an additional appropriation in excess of those appropriated for SCOP.

Proposed Changes
The bill amends s. 339.2818(2), F.S., increasing the maximum population of counties eligible for SCOP from 150,000 to 170,000. With this change, Santa Rosa and Charlotte counties would again be eligible for SCOP funding.

State Infrastructure Bank (Section 30)

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[94] District 1 covers Charlotte, Collier, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Okeechobee, Polk, and Sarasota Counties. District 7 covers Citrus, Hernando, Hillsborough, Pasco, and Pinellas Counties.
[95] Ch. 2000-257, Laws of Fla.
[96] section 201.15(1)(c)1., F.S., provides for the distribution of 38.2 percent or $541.75 million (whichever is less) of documentary stamp tax revenues to the State Transportation Trust Fund in DOT, and allocates the revenues among various programs.
[97] Rural Areas of Opportunity are designated pursuant to s. 288.0656(7)(a), F.S.

Current Situation

The state-funded infrastructure bank (SIB) provides financial assistance, in the form of revolving loans and credit enhancements, for the construction or improvement of transportation projects. Public and private entities that are carrying out, or propose to carry out, an eligible project may apply to the SIB for a loan or other assistance.

The SIB is composed of two separate accounts, a federally-funded account that is capitalized by federal money and matching state money, and a state-funded account that is capitalized by state money and bond proceeds.

The federally-funded account is limited to projects which meet federal requirements. The state-funded account is authorized to lend capital costs or provide credit enhancements for:

- A transportation facility project that is on the State Highway System.
- A project that provides for increased mobility on the state's transportation system.
- A project that provides for intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals for the movement of people, cargo and freight.
- Transportation Regional Incentive Program[98] projects, provided the project receives at least a 25 percent match from non-SIB loan funds.
- Emergency loans for damages incurred to public-use commercial deepwater seaports, public-use airports, and other public-use transit and intermodal facilities that are within an area that is part of an official state declaration of emergency.[99]

Loans from the SIB may bear interest at or below market interest rates, as determined by the Department. Repayment of any SIB loan must begin no later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later, and must be repaid in 30 years.[100]

Proposed Changes

The bill amends s. 339.55, F.S., providing that, beginning July 1, 2017, SIB funds may also be used for the development and construction of natural gas or fuel production or distribution facilities used primarily to support the state's transportation system, including the refinancing of outstanding debt.

Statewide Transportation Corridors (Section 31)

Current Situation

In 2003, the Legislature created s. 341.0532, F.S., relating to statewide transportation corridors.[101] Section 341.0532, F.S., designates a number of "statewide transportation corridors" that include railways, highways connecting to transportation terminals, and intermodal service centers. The specified corridors are:

1. The Atlantic Coast Corridor, including I-95, and linking Jacksonville to Miami.
2. The Gulf Coast Corridor, from Pensacola to St. Petersburg and Tampa, including U.S. 98, U.S. 19 and S.R. 27.
3. The Central Florida North-South Corridor, from the Florida-Georgia border to Naples, and Fort Lauderdale/Miami, including I-75.
4. The Central Florida East-West Corridor, from St. Petersburg to Tampa and Titusville, including I-4 and the BeeLine Expressway.
5. The North Florida Corridor, from Pensacola to Jacksonville, including I-10 and U.S. 231, S.R. 77, and S.R. 79.
6. The Jacksonville to Tampa Corridor, including U.S. 301.
7. The Jacksonville to Orlando Corridor, including U.S. 17.

[98] *See* s. 339.2819, F.S.
[99] s. 339.55(2), F.S.
[100] s. 339.55(4), F.S.
[101] ch. 2003-286, Laws of Fla.

8. The Southeastern Everglades Corridor, linking Wildwood, Winter Garden, Orlando, West Palm Beach via the Florida Turnpike.

With very limited exception, these corridors are also in the Strategic Intermodal System (SIS) which is a statewide network of high-priority transportation facilities, including the state's largest and most significant commercial service airports, spaceports, deepwater seaports, freight rail terminals, passenger rail and intercity bus terminals, rail corridors, waterways and highways. The facilities on SIS are designated by the DOT based on criteria provided in ss. 339.61 through 339.64, F.S.

Section 341.0532, F.S., is not linked to any other section of statute nor is it linked to any transportation funding and is not being used for any purpose. DOT also now has a Future Corridors Program[102] and there may be confusion between the Statewide Transportation Corridors and Future Corridors.

Proposed Changes
The bill repeals s. 341.0532, F.S. which created the statewide transportation corridors. As mentioned above, most of the corridors are part of the SIS.

Rail Corridor Liability (Sections 32 and 33)

Current Situation

Florida's Rail System Plan
Section 341.302, F.S., prescribes DOT's duties and responsibilities relating to the rail program. The Department, in conjunction with other governmental units and the private sector, is directed to develop and implement a statewide rail program ensuring "the proper maintenance, safety, revitalization, and expansion of the rail system" necessary to respond to statewide mobility needs.[103]

Among other things, DOT is required to develop a rail system plan that is consistent with the Florida Transportation Plan.[104] The rail system plan must identify the priorities, programs, and funding levels required to meet statewide needs and assure the maximum use of existing facilities along with the integration and coordination of the various modes of transportation in the most cost-effective manner possible.[105] The department is required to update the rail system plan every two years and include plans for both passenger and freight rail service.[106]

Liability on Rail Corridors
Commuter rail has been defined as "a type of public transit that is characterized by passenger trains operating on railroad tracks and providing regional service."[107] Commuter rail operators often seek to use existing track or right-of-way, which is primarily owned by freight rail operators, because the cost of building new infrastructure is too expensive.[108] Consequently, commuter rail operators must enter into agreements with the freight rail operators regarding how they will access the right-of-way. The most common challenge that occurs during negotiations between the commuter rail operator and the freight rail operator is determining liability.[109]

The introduction of commuter trains on rail corridors that were previously used exclusively for freight operations inherently raises the freight operators' risk of liability due to the increased number of

[102] Information about the Future Corridors Program is available at: http://www.dot.state.fl.us/planning/policy/corridors/about.shtm (last visited January 5, 2016).
[103] Section 341.302, F.S.
[104] The Florida Transportation Plan is governed by s. 339.155, F.S. The purpose of the Florida Transportation Plan is to establish and define the state's transportation goals and objectives over the next 20 years within the context of the State Comprehensive Plan.
[105] Section 341.302(3), F.S.
[106] *Id.*
[107] U.S. General Accounting Office, *Commuter Rail: Information and Guidance Could Help Facilitate Commuter and Freight Rail Access Negotiations*, Report GAO-04-240, 5 (Jan. 2004), *available at* http://www.gao.gov/new.items/d04240.pdf (last visited March 5, 2009).
[108] *Id.* at 1.
[109] *Id.* at 17.

persons and trains present within the corridor. Accordingly, most freight rail operators want the commuter rail operator to assume all risks associated with the presence of the commuter rail service. Freight rail operators refer to this as the "but for" argument – "but for the presence of the commuter rail service, the freight railroad would not be exposed to certain risks; therefore, the freight railroads should be held harmless."[110] Recognizing the exposure of liability for both parties, Congress passed the Amtrak Reform and Accountability Act of 1997, which limited the aggregate overall damage liability to all passengers from a single accident to $200 million.[111]

When Amtrak was created by Congress in 1970,[112] Amtrak contracted with freight railroads to operate passenger rail service within freight corridors. These agreements were predicated on a no-fault allocation of liability. For example, a typical agreement indemnified the freight operators for "any injury, death or property damage to any Amtrak employees, Amtrak property or Amtrak passengers," and the freight operators would also indemnify and hold harmless Amtrak for "any injury, death or property damage" to freight employees and property.[113] According to one report, despite this language, some courts have held that the provisions do not apply in cases of gross negligence.[114]

The National Railroad Passenger Corporation (Amtrak) operates four trains in Florida,[115] and currently operates some of these trains within the SunRail corridor. In December 2010, DOT and Amtrak entered into an agreement to resolve issues associated with DOT's acquisition of the SunRail corridor.

Sovereign Immunity

Sovereign immunity is a doctrine that prohibits suits against the government without the government's consent. The Florida Constitution addresses sovereign immunity in Article X, section 13 as follows:

> Suits Against the State.—Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

In 1973, the Legislature enacted a limited waiver of sovereign immunity in s. 768.28, F.S. This section provides that the state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances. Sovereign immunity extends to all state agencies or subdivisions of the state, which by statutory definition includes the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.[116] Liability does not include punitive damages[117] or interest for the period before judgment.

The statute currently imposes a $200,000 limit per person, and a $300,000 limit per incident, on the collectability of any tort judgment based on the government's liability. These limits do not preclude plaintiffs from obtaining judgments in excess of the statutory cap; however, plaintiffs cannot force the government to pay damages that exceed the recovery cap. Florida law requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation from state funds to pay a

[110] *Id*. at 18.
[111] *Id*.; *see also* 49 U.S.C. s. 28103.
[112] Congress passed the Rail Passenger Service Act of 1970, creating Amtrak to take over passenger rail service and relieving freight railroads of the responsibility of providing passenger service. U.S. General Accounting Office, *supra* note 5, at 8.
[113] *CSX Liability Issues*, on file with the Senate Committee on Judiciary.
[114] Center for Transportation Research, The University of Texas at Austin, *Passenger Rail Sharing Freight Infrastructure: Creating Win-Win Agreements*, Project Summary Report 0-5022-S, 3 (March 2006), *available at* http://www.utexas.edu/research/ctr/pdf_reports/0_5022_S.pdf (last visited March 5, 2009).
[115] The Sunset Limited train is currently suspended east of New Orleans, Louisiana.
[116] Section 768.28(2), F.S.
[117] Punitive damages are distinguished from compensatory damages in that punitive damages are intended to punish the defendant for a wrong aggravated by violence, malice, fraud, or wanton or wicked conduct on the part of the defendant. Black's Law Dictionary (5th Edition 1979). In Florida, a non-government defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. Section 768.72, F.S.

judgment against the state or a state agency.[118] Subdivisions of the state, however, pay their claims out their own respective budgets and the provisions of s. 768.28, F.S., operate to require the Legislature's approval of the expenditure of the subdivision's own funds to pay their claims. In fact, the legislative appropriation (for state claims) or approval (for subdivision claims) is the sole method to compensate a tort claimant in an amount that exceeds the caps, and such act is considered a matter of legislative grace.[119] The means the Legislature has provided to seek such an appropriation is through the filing of claim bills.[120]

Section 768.28(9)(a), F.S., provides that the exclusive remedy for injury or damage suffered by an act, event, or omission of a government employee acting within the course and scope of their employment is by action against the governmental entity, unless such act was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Notwithstanding the limited waiver of sovereign immunity provided by statute, the government may agree, up to the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action of the Legislature, but the government shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of obtaining insurance coverage for tortuous acts in excess of the statutory caps.[121] In this respect, the current law treats the state's ability to pay and settle claims, and a state subdivision's ability to pay and settle claims, in an identical manner.

Commuter Rail in Florida

In 1988, DOT and CSX Transportation, Inc., (CSX) entered into an agreement under which DOT bought approximately 81 miles of CSX track and right-of-way in order to operate commuter rail in south Florida. The commuter rail system (Tri-Rail) serves Miami-Dade, Broward, and Palm Beach counties.[122] Pursuant to the agreement between DOT and CSX, the parties agreed to a no-fault allocation of liability. Specifically, CSX pays 100 percent of all freight damages, DOT pays 100 percent of all commuter rail damages, and both parties equally share the liability for third-party damages outside the corridor when both parties are involved.[123] The agreement also required DOT to establish a $5 million self-insurance fund and to obtain $120 million of insurance, including punitive damage coverage.[124]

The Legislature authorized DOT to enter into the agreement through proviso language in the 1988 General Appropriations Act.[125] During the implementation of the agreement, DOT realized that procuring the requisite insurance coverage would be challenging. Chapter 287, F.S., requires the Department of Management Services to purchase insurance for state agencies. However, commuter rail liability insurance is a specialized offering available from relatively few insurance providers. Therefore, in 1990, due to difficulties in obtaining this insurance domestically, the Legislature exempted the purchase of insurance for Tri-Rail (now operated by the South Florida Regional Transportation Authority)[126] from the provisions of ch. 287, F.S.[127] This effectively granted Tri-Rail authority to obtain insurance from offshore companies, and coverage was purchased from a variety of providers primarily located in London and Bermuda.[128] Since then the annual premium costs have fluctuated between $1.8 million in 1992 and $738,795 in 2002. In 2008, Tri-Rail's liability premium was $1.35 million.[129]

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[118] Section 11.066, F.S.
[119] See, Gamble v. Wells, 450 So.2d 850 (Fla. 1984).
[120] A claim bill is a bill that seeks to compensates a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.
[121] Section 768.28(5) F.S.
[122] *See* Tri-Rail, *Destinations*, http://www.tri-rail.com/destinations/md_county.htm (last visited March 5, 2009).
[123] *CSX Liability Issues*, *supra* note 11.
[124] *Id*.
[125] See ch. 87-98, proviso accompanying Specific Appropriation 1700B, Laws of Fla.
[126] See ch. 2003-159, Laws of Fla.; *see also* South Florida Regional Transportation Authority, *Overview*, http://www.sfrta.fl.gov/overview.html (last visited March 5, 2009).
[127] Chapter 90-136, s. 88, Laws of Fla.
[128] *CSX Liability Issues*, *supra* note 11.
[129] E-mail from Jenny Robertson, Legislative Affairs Director, Dep't of Management Services to staff of the Senate Committee on Governmental Oversight and Accountability (Jan. 28, 2008) (on file with the Senate Committee on Judiciary).

In 2007, DOT entered into an agreement with CSX to purchase 61.5 miles of track or right-of-way in Central Florida for a project now known as SunRail. The agreement was contingent on the passage of legislation containing certain indemnification provisions.

In 2009, the Florida Legislature passed HB 1B,[130] which created a framework for passenger rail in Florida. In the bill, the Legislature addressed liability issues relating to the operation to CSX trains on the SunRail corridor. Under the SunRail arrangement, DOT operates a commuter rail service on the existing freight tracks, while CSX continues to operate freight trains in the corridor. The purchase of the SunRail Corridor was completed in November 2011, and construction began January 2012.

Tri-Rail[131]

In January 1989, the Tri-Rail was established to provide interim commuter rail service along a 67-mile corridor between the West Palm Beach Station in Palm Beach County and the Hialeah Market Station in Miami-Dade County, following the 1988 FDOT purchase of the South Florida Rail Corridor (SFRC) from CSX. Between 1997 and 1998, Tri-Rail service was extended to the Mangonia Park Station in Palm Beach County and to the Miami Airport Station in Miami-Dade County.

In 2003, the Legislature created the South Florida Regional Transportation Authority, a tri-county federal public transit authority, transforming Tri-Rail into SFRTA. The purpose for creating SFRTA was to expand cooperation between Tri-Rail commuter rail services and county transit operators and planning agencies within Miami-Dade, Broward, and Palm Beach counties,

Tri-Rail Station Service at the Miami Intermodal Center

On April 5, 2015, Tri-Rail opened its new Miami Airport Station at the Miami Intermodal Center, providing Tri-Rail passengers with a seamless connection to the Miami International Airport, which serves as a hub to a range of transit services, including direct access to airport terminals, Miami-Dade Transit's Metrorail and Metrobus service, a car-rental complex and taxi services; and in the future, to Amtrak, Greyhound and on-site bicycle lockers.

Tri-Rail Coastal Link (TRCL)

The TRCL project is planned to introduce new commuter rail service along 85 miles of the FEC rail corridor and provide new mobility, economic development and transportation choice to the traveling public. TRCL is planned to fully integrate its existing system with the FEC rail corridor to connect to and access the eastern FEC corridor and the region's most populous eastern cities between downtown Miami and Jupiter. Additional TRCL-related initiatives include:

- SFRTA and the South Florida and Treasure Coast Regional Planning Councils applied to the Federal Transit Administration for grant funds to implement the Seven50 regional prosperity plan and advance activities supporting the Tri-Rail Coastal Link commuter rail project including comprehensive station area planning for six potential Tri-Rail Coastal Link stations, corridor-wide infrastructure assessment, station area bicycle and pedestrian plan, an affordable housing analysis, and regional TOD Fund business plan.
- The Palm Beach MPO's 2015 Transportation Improvement Program included full funding for SFRTA's Northern Layover and Light Maintenance Facility. Critical for TRCL expansion, this facility will increase capacity and efficiency for the Tri-Rail system. This year, SFRTA completed a property purchase needed to advance the project.
- The Palm Beach Northwood and Miami-Dade Iris projects are budgeted in FY 16 for construction/upgrade of the two rail connections to link the South Florida Rail Corridor to the FEC.
- Requests and strong interest from some jurisdictions have resulted in updated costs for some project segments, (such as Jupiter extension and Miami-Aventura). Further coordination with AAF and continued refinements during the Project Development phase may result in additional changes in the coming years.

[130] Ch 2009-271, Laws of Fla.

[131] SFRTA, *SFRTA Forward Plan-Transit Development Plan*, FY 2016-2025 (2015 Update)

- Extensive technical coordination continues between the AAF and TRCL project teams, with detailed analysis performed for train operations (AAF, FEC freight, and TRCL) and shared downtown stations in Miami, Fort Lauderdale, and West Palm Beach.[132]

Tri-Rail Downtown Miami Link
SFRTA is pursuing a public-private opportunity that would bring Tri-Rail service to downtown Miami at the All Aboard Florida (AAF) Miami Central Station on the FEC. A $68.9 million capital cost estimate was identified for all public sector infrastructure needed to implement the Tri-Rail Downtown Miami Link project. SFRTA has coordinated with a variety of partners, and has secured formal funding commitments with various public agencies, including the Citizens Independent Transportation Trust, City of Miami, DOT, Miami Downtown Development Authority, Miami-Dade County, and local community redevelopment agencies.

Proposed Changes
The bill amends s. 341.301, F.S., specifying that an "Ancillary development" includes any lessee or licensee of the department, including other governmental entities, vendors, retailers, restaurateurs, or contract service providers, within a rail corridor owned by the department or in which the department has an easement interest, a right to operate, or a right of access. The term does not include providers of commuter rail service, intercity rail passenger service by an intercity rail passenger operator or by National Railroad Passenger Corporation, or freight rail service.

The bill amends s. 341.301, F.S., specifying that "Commuter rail passenger" or "passengers" means all persons, ticketed or unticketed, using the commuter rail service on a rail corridor owned by the department or in which the department has an easement interest, a right to operate, or a right of access.

The bill amends s. 341.301, F.S., creating a definition for "Department train" as a train operating in the rail corridor pursuant to an easement interest, a right to operate, or a right to access granted to the department, or an assignee of the department, or an "other train" as defined in s. 341.302(17), F.S.

The bill amends s. 341.301, F.S., creating a definition for "Intercity rail passenger operator" as a private rail operator of passenger rail service in a minimum of three counties, other than National Railroad Passenger Corporation, whose ridership consists of passengers traveling between two or more metropolitan areas.

The bill amends s. 341.301, F.S., specifying that "Limited covered accident" also includes a collision directly between the trains, locomotives, rail cars, or rail equipment of the department and the intercity rail passenger operator only, where the collision is caused by or arising from the willful misconduct of the intercity rail passenger operator or its subsidiaries, agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of the intercity rail passenger operator or its subsidiaries, agents, licensees, employees, officers, or directors.

The bill amends s. 341.301, F.S., specifying that "Rail corridor invitee" includes a rail corridor owned by the department or in which the department has an easement interest, a right to operate, or a right of access.

The bill amends s. 341.301, F.S., specifying that "Railroad operations" means the use of the rail corridor to conduct commuter rail service by an intercity rail passenger operator or by National Railroad Passenger Corporation, intercity rail passenger service, or freight rail service.

The bill amends s. 341.302, F.S., authorizing DOT to contractually assume the same liability and indemnification obligations and offer the same insurance coverage to certain private rail operators as the Legislature authorized between DOT and CSX in 2009, and between DOT and Amtrak in 2012.

[132] SFRTA, *SFRTA Forward Plan-Transit Development Plan*, FY 2016-2025 (2015 Update)

With regard to the apportionment of liability, the bill provides that certain circumstances may require DOT to be responsible for its own property and/or indemnify an intercity rail passenger operator with regard to losses, costs and/or expenses depending on the type of accident and the number of trains involved.

In the event of a limited covered accident, the bill provides that DOT and an intercity rail passenger operator must meet their respective deductibles and protect, defend, and/or indemnify the other for all liability, costs and/or expenses in excess of whatever deductible or self-insurance retention fund that is actually in force at the time of the accident.

When only one train is involved in an incident, the Department may be solely responsible for any loss, injury, or damage if the train is a department train or “other train”, but only if, when an incident occurs with only an intercity rail passenger train involved, including incidents with trespassers or at grade crossings, the intercity rail passenger operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees

When an incident occurs involving a third-party train, the third-party train will be treated as a DOT train for the purpose of allocating liability, but only if DOT and the intercity rail passenger operator share responsibility equally as to the loss, injury, or damage to third parties outside the rail corridor as a result of any incident involving both a DOT and an intercity rail passenger operator train.

For accidents involving multiple trains, the bill provides that DOT and the intercity rail passenger operator are responsible for their own property, with DOT being responsible for passengers inside the corridor. DOT and the intercity rail passenger operator will share one-half responsibility for passengers outside of the corridor. Any payment received from a third-party train involved in an accident with both a DOT train and intercity rail passenger operator train will not alter the one-half split of liability between DOT and the intercity rail passenger operator.

The bill amends 341.302(17)(a)6., F.S., providing that any such contractual duty to protect, defend, indemnify, and hold harmless such a freight rail operator, intercity rail passenger operator, or National Railroad Passenger Corporation shall expressly include a specific cap on the amount of the contractual duty, which amount shall not exceed $200 million without prior legislative approval, and the Department to purchase liability insurance and establish a self-insurance retention fund in the amount of the specific cap established under this subparagraph, provided that the intercity rail passenger operator's compensation to the Department for future use of the Department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of the intercity rail passenger operator.

The bill amends 341.302(17)(b), F.S., adding intercity rail passenger operators to the list of insureds for who the Department must purchase liability insurance, which amount shall not exceed $200 million, and establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies it may obtain, including coverage for the department, any intercity rail passenger operator, any freight rail operator as described in paragraph (a), National Railroad Passenger Corporation, commuter rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible shall not exceed $10 million. The insureds shall pay a reasonable monetary contribution to the cost of such liability coverage for the sole benefit of the insured. Such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of a rail corridor.

The bill amends 341.302(17)(c), F.S., specifying that a publicly owned right-of-way includes a public easement on private right-of-way.

Tampa-Hillsborough County Expressway Authority (Section 36)

Current Situation

The Tampa-Hillsborough County Expressway Authority (THCEA) was established in 1963 to build, operate, and maintain toll-financed expressways in Hillsborough County.[133] The Lee Roy Selmon Crosstown Expressway (including the elevated reversible lanes) is currently the only expressway operated by the THCEA. The THCEA originally planned the neighboring Veterans Expressway which was transferred to, and is operated by DOT.

Under the State Bond Act[134] the Division of Bond Finance (DBF) issues revenue bonds for THCEA's projects on behalf of the authority. The State Bond Act includes a number of requirements to ensure the integrity and fiscal sufficiency of bonds issued on behalf of the state. Pursuant to its statutory authority, the DBF independently reviews the recommendations of a paid financial adviser retained by the THCEA. The DBF's review does not focus solely upon the current transaction; it also reviews the issuance in light of the entire bonded indebtedness of the state. The DBF also maintains its own independent in-house legal staff to assist with issues which may arise during the financing. All financings issued through the DBF must be approved by the Governor and Cabinet. Additional state oversight is currently provided by DOT, which may participate through financial contributions to the construction, operation and maintenance of THCEA's expressways. The revenue bonds issued by the DBF, on behalf of THCEA, pledge the toll revenues generated by THCEA's expressway system as repayment. These revenue bonds are not backed by the full faith and credit of the state. In addition to existing facilities, the authority is authorized to issue bonds to finance:

- Brandon area feeder roads,
- Capital improvements to the expressway system including the toll collection equipment,
- Lee Roy Selmon Crosstown Expressway System widening.
- The connector highway linking the Lee Roy Selmon Crosstown Connector to Interstate 4.

Proposed Changes

The bill amends s. 348.565(3), F.S., providing that THCEA is approved to issue bonds for any extension of the Lee Roy Selmon Crosstown Expressway System widening project.

The bill creates s. 348.565(5), F.S., providing that THCEA is approved to issue bonds for capital projects that the authority is authorized to acquire, construct, reconstruct, equip, operate, and maintain pursuant to this part, provided that any such capital project financed by the issuance of bonds or other evidence of indebtedness does not pledge the full faith and credit of the state..

Central Florida Expressway (Sections 37)

Current Situation

The Orlando Orange County Expressway Authority (OOCEA), was created in part III of Ch. 348, F.S.,[135] and served Orange County. It was authorized to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards in the county, as well as outside the jurisdictional boundaries of Orange County with the consent of the county within whose jurisdiction the activities occur.[136]

In 2014, CS/CS/SB 230 changed OOCEA to the Central Florida Expressway Authority (CFX).[137] In summary, the bill:

- Created CFX and provides for the transfer of governance and control, legal rights and powers, responsibilities, terms and obligations of OOCEA to CFX.
- Provided for the composition of the governing body of CFX and the appointment of its officers.
- Provided ethics and accountability requirements of CFX board members and employees.
- Provided that the area served by CFX is within the geographical boundaries of Orange, Seminole, Lake, and Osceola Counties.

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[133] It is created pursuant to Part IV of ch. 348, F.S.
[134] *See* chs. 215 and 348, F.S.,
[135] Part III of Ch. 348, F.S., consists of ss. 348.751 through 348.765, F.S.
[136] s. 348.754(2)(n), F.S.
[137] Ch, 2014-171, Laws of Fla.

- Removed the existing OOCEA requirement that the route of a project be approved by a municipality before the right-of-way can be acquired.
- Required that CFX encourage the inclusion of local-, small-, minority-, and women-owned businesses in its procurement and contracting opportunities.
- Removed the existing OOCEA authority to waive payment and performance bonds for certain public works projects awarded pursuant to an economic development program.
- Provided that upon termination of the lease-purchase agreement of the Central Florida Expressway System, title will be retained by the state, and extends the terms of lease-purchase agreements from 40 to 99 years.
- Provided for the transfer of the Osceola County Expressway System to CFX and provides for the repeal of the Osceola County Expressway Authority Act[138] when the Osceola County Expressway System is transferred to CFX.

CFX currently owns and operates 105 centerline miles of roadway in Orange County, which includes:
- 22 miles of the Spessard L. Holland East-West Expressway (SR 408);
- 23 miles of the Martin Andersen Beachline Expressway (SR 528);
- 33 miles of the Central Florida GreeneWay (SR 417);
- 22 miles of the Daniel Webster Western Beltway (SR 429); and
- 5 miles of the John Land Apopka Expressway (SR 414).

Proposed Changes
The bill addresses several issues relating to the make-up of the CFX governing body. The bill amends s. 348.753(3), F.S., providing that the chairs of the boards of county commission from Seminole, Lake, and Osceola Counties appoint one member of the board from their respective counties, who must be a county commission member, chair, or county mayor. The bill also provides that members appointed by the Governor have their terms end on December 31 of his or her last year of service. The bill also removes an obsolete provisions regarding the terms of standing board members from when the make-up of the board changed in the 2014 law.

The bill amends s. 348.753(4)(a), F.S., removing the requirement that one of the members of the board serve as the authority's secretary.

Trespass on Airport Property (Section 39)

Current Situation

Trespass
Florida law currently prohibits a variety of acts relating to trespassing in or on the property of others. For example:
- Section 810.08, F.S, makes it a second degree misdemeanor[139] to willfully enter or remain in any structure[140] or conveyance,[141] without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.[142]
- Section 810.09, F.S., makes it a first degree misdemeanor[143] to willfully enter upon or remain in any property other than a structure or conveyance, without being authorized, licensed, or invited:
    - Where notice against entering or remaining is given either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.; or

[138] Part V of Ch. 348, F.S.
[139] A second degree misdemeanor is punishable by up to 60 days in jail and a $500 fine. ss. 775.082 and 775.083, F.S.
[140] Section 810.011(1), F.S., defines "structure" as a building of any kind.
[141] Section 810.011(3), F.S., defines "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.
[142] This section increases the penalties to a first degree misdemeanor or a third degree felony in specified circumstances.
[143] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. ss. 775.082 and 775.083, F.S.

- If the property is the unenclosed curtilage of a dwelling[144] and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Generally, trespass offenses are misdemeanors. However, the penalties relating to trespass offenses are often increased when the offense involves specified types of property. For example, it is a third degree felony[145] to trespass on designated construction sites, commercial horticulture properties, and agricultural chemicals manufacturing facilities.[146] These properties must have posted warnings that contain specific language identifying the property as a protected type.[147]

Airport Security
Air travel security first gained national attention in the 1960s because of a rash of airplane hijackings.[148] In response to this new threat, Congress made aircraft piracy and carrying a "concealed deadly or dangerous weapon" on an aircraft without authorization a federal crime.[149] This law did little to slow the rate of hijacking attempts, and in 1970, the first federal airport screening and security program was put in place at airports nationwide to fight increasing security hazards.[150] Airport security measures have been added over the years as new threats arise.[151]

Federal law currently prohibits any person from knowingly and willfully entering any aircraft or airport area in violation of specified security requirements.[152] An offender who acts with the intent to evade security procedures or with the intent to commit a felony in the aircraft or airport area may face up to twenty years in federal prison.[153]

Currently, Florida law does not specifically prohibit trespassing in any portion of an airport. Therefore, trespassing on airport property is a first degree misdemeanor.[154]

<u>Proposed Changes</u>
The bill amends s. 810.09, F.S., making it a third degree felony for a person to trespass on the operational area of an airport with the intent to injure another person; damage property; or impede the operation or use of an aircraft, runway, taxiway, ramp or apron area.

The bill defines "operational area of an airport" as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The bill requires that a sign with language similar to the following be posted in order for a trespasser to be prosecuted: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

<u>Return on Investment</u> (Section 40)

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[144] Section 810.011(2), F.S., defines "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.
[145] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. ss. 775.082 and 775.083, F.S.
[146] s. 810.09(2)(d)(1), (e), and (i), F.S.
[147] s. 810.09(2), F.S.
[148] Daniel S. Harawa, *The Post-TSA Airport: A Constitution Free Zone?*, 41 PEPP. L. REV. 1, 4 (2013).
[149] Act of Jan. 3, 1961, Pub. L. No. 87-197, 75 Stat. 466-68.
[150] Statement Announcing a Program to Deal with Airport Hijacking, 1 PUB. PAPERS 742 (Sept. 11, 1970), http:// www.presidency.ucsb.edu/ws/index.php?pid=2659 (last visited March 10, 2015); *see also* Harawa, *supra* note 9, at 4.
[151] *See* Exec. Order No. 13,228, 66 Fed. Reg. 51,812 (Oct. 10, 2001).
[152] 49 U.S.C. § 46314
[153] Id.
[154] While Florida law does not specifically prohibit trespassing in any portion of an airport, s. 901.15, F.S., allows a law enforcement officer to arrest a person for misdemeanor trespass without a warrant when there is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas.

Current Situation

Current law provides that DOT must adopt goals and principles supporting economic competitiveness and ensure that the state has a clear understanding of the economic consequences of transportation investments. Additionally, DOT is directed to develop a macroeconomic analysis of the linkages between transportation investment and economic performance, as well as a method to quantifiably measure the economic benefit of the Work Program investments.[155]

DOT has developed a model to evaluate the long-term economic benefits of its Work Program. The model quantifies the benefits of investments in highway, transit, seaport, and rail projects. Similarly, DOT is developing tools and resources to enable its managers to estimate and evaluate the return on investment for individual transportation projects.

Macroeconomic Analysis

DOT has developed a macroeconomic analysis methodology to evaluate the long-term economic benefits of its Work Program.[156] These benefits are based on an understanding of how transportation investments save time, reduce costs, and enhance economic competitiveness and opportunity. For purposes of the model, the economic benefits of the Work Program consist of:

- Personal user benefits, which arise from personal travel via highways or transit, including commuting, recreational and social trips; and
- Increased personal income, which stems from business travel including person trips for business purposes and freight trips via truck, rail, and water.

In 2014, DOT completed a report entitled A Macroeconomic Analysis of Florida's Transportation Investment,[157] and evaluated the impacts of the Fiscal Year 2013-2014 through 2017-2018 Work Program. The study determined that "[t]he ratio of total benefits to costs is 4.4. This means, on average, every dollar invested in the Work Program will yield about $4.40 in economic benefits for Florida from the beginning of the Work Program to FY 2043."[158]

Proposed Changes

The bill requires the Office of Economic and Demographic Research (EDR) to evaluate and determine the economic benefits[159] of the state's investment in DOT's adopted work program for Fiscal Year 2016-2017, including the following four fiscal years. At a minimum, a separate return in investment shall be projected for each of the following areas:

- Roads and highways.
- Rails.
- Public transit.
- Aviation.
- Seaports.

The analysis is limited to the funding anticipated by the adopted work program, but may address the continuing economic impact of those transportation projects in the five years beyond the conclusion of the adopted work program. The analysis must evaluate the number of jobs created, the increase or decrease in personal income, and the impact on gross domestic product from the direct, indirect, and induced effects of the state's investment in each area.

The bill requires DOT and each of its district offices to provide EDR full access to all data necessary to complete the analysis, including confidential data. EDR is required to submit the analysis to the President of the Senate and the Speaker of the House of Representatives by January 1, 2017.

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[155] s. 334.046, F.S.

[156] This is pursuant to s. 333.046, F.S.

[157] DOT, *A Macroeconomic Analysis of Florida's Transportation Investment",* January 2015, *available at* http://www.dot.state.fl.us/planning/weeklybriefs/2015/011915.shtm

[158] *Id.* at 1

[159] section 288.005(1), F.S., defines "economic benefits" as "the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives."

B. SECTION DIRECTORY:

Section 1 Amends s. 311.12, F.S., relating to seaport security.

Section 2 Amends s. 316.003, F.S., relating to definitions.

Section 3 Creates s. 316.2069, F.S., relating to commercial megacycles.

Section 4 Amends s. 316.235, F.S., relating to additional lighting equipment.

Section 5 Amends s. 316.303, F.S., relating to television receivers.

Section 6 Amends s. 320.525, F.S., relating to port vehicles and equipment; definition; exemption.

Section 7 Creates s. 332.0012, F.S., relating to the Florida aviation transportation and economic development funding.

Section 8 Creates s. 332.0014, F.S., relating to the Florida Aviation Transportation and Economic Development Council.

Section 9 Amends s. 332.08, F.S., relating to additional powers.

Section 10 Amends s. 333.01, F.S., relating to definitions.

Section 11 Amends s. 333.025, F.S., relating to permit required for structures exceeding federal obstruction standards.

Section 12 Amends s. 333.03, F.S., relating to power to adopt airport zoning regulations.

Section 13 Amends s. 333.04, F.S., relating to comprehensive zoning regulations; most stringent to prevail where conflicts occurs.

Section 14 Amends s. 333.05, F.S., relating to procedure for adoption of zoning regulations.

Section 15 Amends s. 333.06, F.S., relating to airport zoning requirements.

Section 16 Amends s. 333.07, F.S., relating to permits and variances.

Section 17 Amends s. 333.09, F.S., relating to administration of airport zoning regulations.

Section 18 Amends s. 333.11, F.S., relating to judicial review.

Section 19 Amends s. 333.12, F.S., relating to acquisition of air rights.

Section 20 Amends s. 333.13, F.S., relating to enforcement and remedies.

Section 21 Creates s. 333.135, F.S., relating to transition provisions.

Section 22 Repeals s. 333.065, F.S., relating to guidelines regarding land use near airports; repeals s. 333.08, F.S., relating to appeals; repeals s. 333.10, F.S., relating to board of adjustment; and repeals s. 333.14, F.S., providing a short title.

Section 23 Reenacts s. 350.81, F.S., relating to communications services offered by governmental entities.

Section 24 Amends s. 337.18, F.S., relating to surety bonds for construction or maintenance contracts.

Section 25 Amends s. 338.165, F.S., relating to continuation of tolls.

Section 26 Repeals ch. 85-364, Laws of Fla., as amended by ch.s 95-382 and 2014-223, Laws of Fla..

Section 27 Amends s. 338.231, F.S., relating to turnpike tolls, fixing; pledge of tolls and other revenues.

Section 28 Amends s. 339.175, F.S., relating metropolitan planning organization.

Section 29 Amends s. 339.2818, F.S., relating to the Small County Outreach Program.

Section 30 Amends s. 339.55, F.S., relating to state-funded infrastructure bank.

Section 31 Repeals s. 341.0532, F.S., relating to statewide transportation corridors.

Section 32 Amends s. 341.301, F.S., relating to definitions.

Section 33 Amends s. 341.302, F.S., relating to rail program; duties and responsibilities of the department.

Section 34 Amends s. 343.92, F.S., relating to Tampa Bay Area Regional Transportation Authority.

Section 35 Amends s. 343.922, F.S., relating to powers and duties.

Section 36 Amends s. 348.565, F.S., relating to revenue bond for specified projects.

Section 37 Amends s. 348.753, F.S., relating to the Central Florida Expressway Authority.

Section 38 Amends s. 565.02, F.S., relating to license fees; vendors; clubs; caterers; and others.

Section 39 Amends s. 810.09, F.S., relating to trespass on property other than structure or conveyance.

Section 40 Requires the Office of Economic and Demographic Research to evaluate and determine the economic benefits of DOT's work program.

Section 41 Requires the Department of Transportation and the Department of Highway Safety and Motor Vehicles, to study driver-assistive truck platooning and authorizes a pilot project.

Section 42 Amends s. 212.05, F.S., relating to sales, storage, use tax.

Section 43 Amends s. 316.1303, F.S., relating to traffic regulations to assist mobility-impaired persons.

Section 44 Amends s. 316.545, F.S., relating to weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.

Section 45 Amends s. 316.605, F.S., relating to licensing of vehicles.

Section 46 Amends s. 316.6105, F.S., relating to violations involving operation of motor vehicle in unsafe condition or without required equipment; procedure for disposition.

Section 47 Amends s. 316.613, F.S., relating to child restraint requirements.

Section 48 Amends s. 316.622, F.S., relating to farm labor vehicles.

Section 49	Amends s. 316.650, F.S., relating to traffic citations.
Section 50	Amends s. 316.70, F.S., relating to nonpublic sector buses; safety rules.
Section 51	Amends s. 320.01, F.S., relating to definitions.
Section 52	Amends s. 320.08, F.S., relating to license taxes.
Section 53	Amends s. 320.0801, F.S., relating to additional license tax on certain vehicles.
Section 54	Amends s. 320.38, F.S., relating to when nonresident exemption not allowed.
Section 55	Amends s. 322.031, F.S., relating to nonresident; when license required.
Section 56	Amends s. 450.181, F.S., relating to definitions.
Section 57	Amends s. 559.903, F.S., relating to definitions.
Section 58	Amends s. 655.960, F.S., relating to definitions; ss. 655.960 - 655.965.
Section 59	Amends s. 732.402, F.S., relating to exempt property.
Section 60	Amends s. 860.065, F.S., relating to commercial transportation; penalty for use in commission of a felony.
Section 61	Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Seaport Security-The bill provides for the establishment of a Seaport Security Grant Program. The bill specifies that the grant funds will be appropriated by the Legislature and must be used to assist in the implementation of seaport security projects and measures. This program is not currently in the FY 2016-17 Transportation Work Program submitted by DOT for legislative approval and the bill does not provide an appropriation. Future funding would come from the State Transportation Trust Fund and be a reallocation of funding from within the confines of the Work Program. Such funding is not specified and its impact is indeterminate.

   Florida Airport Transportation and Economic Development Funding-The bill provides for $15 million per year for program funding. This funding will come from the State Transportation Trust Fund and is a reallocation of funding from within the confines of the work program, meaning $15 million less available for other projects in the work program. Existing resources within DOT and DEO are sufficient to meet the workload increase associated with reviewing applicants that apply for program funding. Existing resources within DOT are sufficient to meet the workload increase associated with reviewing structural permits.

   Trespass On Airport Property-On March 11, 2015, the Criminal Justice Impact Conference discussed HB 967, which provided for a similar amendment to s. 810.09, F.S. The conference determined that the bill would have an insignificant impact on state prison beds, meaning that the

bill was estimated to increase the Department of Corrections prison bed population by fewer than 10 inmates annually.

Return on Investment-The bill requires the Office of Economic and Demographic Research (EDR) to evaluate and determine the economic benefits of the state's investment in DOT's adopted work program for Fiscal Year 2016-2017, including the following four fiscal years. This will create an additional workload for EDR which will be absorbed within existing resources and staffing.

Pinellas Bayway System-The transfer of the Pinellas Bayway System does not appear to have any immediate fiscal impact, as the transfer occurs without the expenditure of any funds. Aside from the project cost information on replacing the structurally deficient bridge over Boca Ciega Bay on SR 679 provided by the FDOT, the method by which replacement will be funded or financed is unknown. The impact of the repeal of the $50 annual pass for use of the Pinellas Bayway System is unknown, but will be offset by the payment of the tolls for using the system by persons who formerly could purchase that pass.

Driver-Assistive Truck Platooning-The Department of Transportation will likely incur some additional workload associated with the truck platooning study. However, the Department indicates it will absorb this impact within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Commercial Megacycles-Local governments that elect to permit the operation of commercial megacycles will see an indeterminate positive fiscal impact.

2. Expenditures:

   Florida Aviation Transportation and Economic Development Program-Political subdivisions that receive funds from the Florida Aviation Transportation and Development Program must fund a portion of the Florida Aviation Transportation and Economic Development Council's administrative staffing costs. The cost allocated to each political subdivision will be pro-rated based on each recipient's share of funds compared to the total funds distributed to all program participants during the fiscal year.

   Administration of Airport Zoning Regulations-Political subdivisions that have an airport but no airport zoning regulations will see an indeterminate increase to expenditures related to structural permitting and enforcement.

   Trespass On Property -To the extent persons who trespass on the operational area of an airport are charged with a felony rather than a misdemeanor, the bill may have a negative jail bed impact (i.e., it will decrease the need for jail beds).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The waiver of certain surety bond requirements may create contractual opportunities for qualifying businesses.

D. FISCAL COMMENTS:

Surety Bonds-DOT may see a reduction in its cost of some contracts by waiving some of the surety bond requirements with certain nonprofit agencies.

Rail Program-DOT is authorized to purchase $200 million in liability insurance and establish a self-insurance retention fund to pay the deductible for any insurance policy that is obtained. Under current law, authorized insureds include: DOT, any freight rail operator from whom DOT has acquired a real property interest, Amtrak, commuter rail service providers, governmental entities, or any ancillary development. The bill authorizes DOT to provide coverage to intercity rail passenger

operators and any freight rail operator. The annual premium for such policy or policies is not known. Likewise, what effect, if any, that the addition of intercity rail passenger operators or additional freight rail operators will have on DOT's annual policy premium is also unknown. Furthermore, it is unclear if the coverage for the intercity rail passenger operators authorized in the bill differs from the indemnification and liability terms authorized for the insureds under current law.

However, if the insurance coverage includes entities such as freight rail operators and ancillary development, any party covered by the policy is required to provide a reasonable monetary contribution for the insurance. These additional insureds may offset part of DOT's cost for liability insurance coverage.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities of counties.

2. Other:

Rail Program-The most common challenge in negotiating agreements for commuter rail operations to occur on freight rail right-of-way is determining liability. The issue of liability was addressed by Congress when it enacted the Amtrak Reform and Accountability Act of 1997 (Reform Act). Specifically, 49 U.S.C. § 28103(b), provides that "[a] provider of rail passenger transportation may enter into contracts that allocate financial responsibility for claims." This language not only protects Amtrak, but any commuter rail operator,[160] and some courts have found that the language also preempts certain state laws.[161]

In 2009, one court held that the Reform Act preempts the Pennsylvania sovereign immunity statute to the extent the statute is raised as a defense to enforcement of an indemnification contract.[162] In that case, a state-created rail authority argued that it did not have to comply with its indemnification contract with Amtrak because of the state's sovereign immunity statute. The court relied on the legislative history of the Reform Act, finding that the act "was intended to ensure the enforceability of indemnification agreements" and that such contractual agreements are consistent with Federal law and public policy.[163] The court found that "the Pennsylvania sovereign immunity statute [is] an obstacle to the accomplishment of Congress' full objectives under the Reform Act" and, therefore, the Southeastern Pennsylvania Transportation Authority's contractual obligation to indemnify Amtrak "is not subject to, nor limited by, the Pennsylvania sovereign immunity statute."[164]

This bill provides that the assumption by contract to indemnify a freight rail operator shall not be a waiver of any defense of sovereign immunity for torts as provided in s. 768.28, F.S.[165] To the extent that the bill's preservation of the defense of sovereign immunity is viewed as a basis for invalidating or limiting the contractual obligation to indemnify a freight rail operator, this provision may raise preemption questions under federal law. However, the provision appears to preserve the ability of the state or any other governmental entity to continue to assert a defense of sovereign immunity and

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[160] U.S. General Accounting Office, *supra* note 5, at 43.
[161] See *Deweese v. Nat'l R.R. Passenger Corp.*, 2009 WL 222986 (E.D. Pa. 2009); *O&G Indus., Inc. v. Nat'l R.R. Passenger Corp.*, 537 F.3d 153 (2d Cir. 2008).
[162] *Deweese v. Nat'l R.R. Passenger Corp.*, 2009 WL 222986 (E.D. Pa. 2009).
[163] *Id*. at *7, 8.
[164] *Id*. at *8, 9
[165] Section 768.28, F.S., limits the state's liability, or that of any of its agencies or subdivisions, for tort claims to $200,000 per person or $300,000 per incident.

the limits on liability prescribed in s. 768.28, F.S., in a tort action claiming that the government was negligent.

B. RULE-MAKING AUTHORITY:

Seaport Security – The bill directs the Florida Seaport Transportation and Economic Development Council to adopt, by rule, criteria to implement the Seaport Security Grant Program.

Florida aviation transportation and economic development funding - The bill authorizes DOT to audit funding recipients, and to adopt rules to ensure that final audits are conducted and that any findings are resolved.

Florida Aviation Transportation and Economic Development Council - The bill requires the Council to adopt rules for evaluating projects that may be funded through the Florida Aviation Transportation and Economic Development Program. The rules must provide criteria for evaluating a potential project, including, but not limited to, consistency with appropriate plans, economic benefit, readiness for construction, noncompetition with other airports in this state, and capacity within the airport system.

Airport Zoning - Chapter 14-60, F.A.C., implements portions of Ch. 333, F.S., relating to airport zoning as well as other statutes relating to aviation. DOT advises that it is in the process of reviewing and revising its aviation related rules; however, DOT will defer its final revisions, pending the revisions to Ch. 333, F.S., contained in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Transportation and Economic Development Appropriations Subcommittee adopted one amendment, clarifying that funding for the seaport security grant program authorized by the bill is subject to legislative appropriation.

On January 28, 2016, the Economic Affairs Committee adopted a strike-all amendment. The strike-all amendment incorporated the following provisions:

- Defines “commercial megacycle” and authorizes local governments to issue permits for operation of commercial megacycles, including the sale of beer and wine.
- Provides certain specifications for deceleration lighting systems equipped on buses.
- Allows municipalities to lease certain airport-related real estate for up to 50 years.
- Transfers ownership of the Pinellas Bayway System from DOT to the Florida Turnpike Enterprise in order to expedite bridge replacement.
- Increases the maximum population for counties eligible for the Small County Outreach Program from 150,000 to 170,000.
- Provides that natural gas fueling facilities used to support the state’s transportation network are eligible for State Infrastructure Bank loans.
- Authorizes DOT to contractually assume certain liability and indemnification obligations for private rail operators in specified situations.
- Revises the membership and structure of the Tampa Bay Area Regional Transportation Authority.
- Provides the Tampa Hillsborough Expressway Authority with additional authority to undertake certain projects that do not pledge the full faith and credit of the state.
- Increases criminal penalties from a first degree misdemeanor to a third degree felony where an offender trespasses on operational areas of an airport with the intent to take certain actions.
- Requires DOT to study driver-assistive truck platooning and authorizes a pilot program to test the operation and use of driver-assistive truck platooning technologies.

The analysis is drafted to the committee substitute, as reported favorably by the Economic Affairs Committee.