

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 985 Transportation  
**SPONSOR(S):** Economic Expansion and Infrastructure Council and Glorioso  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>8 Y, 0 N</u>	<u>Creamer</u>	<u>Miller</u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Creamer</u>	<u>Tinker</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u>Martin</u>	<u>Hansen</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

CS/HB 985 is an omnibus bill that addresses a variety of transportation financing, planning, and administrative issues. Among its key provisions, the proposed legislation:

- Makes numerous administrative, organizational, membership and planning process changes to the metropolitan planning organizations;
- Revises the matching fund formula for fixed-guideway revenue bonds to allow for various matching scenarios up to a limit of 50 percent on the state's share of the eligible project cost;
- Increases penalties for motorists who speed through toll plazas without paying tolls and those who purposely obscure their vehicles' license plates;
- Allows the Department of Transportation (DOT) to fund up to 80 percent of the non-federal share of certain airport and aviation development projects;
- Deletes the once-a-year limit on local governments to issue bonds backed by local option fuel and infrastructure sales taxes;
- Allows DOT to waive the requirement for contractors to be pre-qualified to bid on jobs when the project is under \$500,000 and noncompliance will not endanger the public health, safety, or welfare;
- Increases, from \$150,000 to \$250,000, the maximum contract price threshold at which DOT may waive surety bond requirements;
- Allows DOT to waive surety bond requirement for contracts greater than \$250 million provided the contractor can provide alternate means of security for the balance of the contract amount;
- Allows DOT or any toll agency created by statute to contract with other public or private entities to provide additional uses for its electronic toll collection system;
- Raises the Turnpike Enterprise's revenue bond cap from \$4.5 billion in bonds issued to \$10 billion in bonds outstanding. This change gives the Turnpike Enterprise more immediate bond capacity and creates a revolving line of credit to issue more bonds as the Turnpike pays down its balance;
- Allows the Florida Department of Transportation's State Infrastructure Bank to issue short-term loans for emergency repairs to transportation infrastructure damaged by natural disasters;
- Clarifies that any expressway, transportation, bridge, or toll authority may enter into public-private partnerships.

The primary fiscal impact of the bill relates to increasing the Turnpike bond cap. An increase in the bond cap will not impact the State of Florida's debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

CS/HB 985 is effective July 1, 2007.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0985d.PBC.doc  
**DATE:** 4/10/2007

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **Florida Transportation Commission**

###### **Current Situation**

The four employees of the Florida Transportation Commission, which is the governor appointed board that provides oversight of DOT and makes transportation policy recommendations to the Governor and Legislature, are classified as Selected Exempt Service personnel for the purposes of salary and benefits.

###### **Proposed Changes**

CS/HB 985 specifies that the salary and benefits of the commission's executive director position shall be based on the Senior Management Service classification, and the other three commission's employees shall remain in the Selected Exempt Service classification.

##### **DOT District Secretaries**

###### **Current Situation**

The DOT has seven district offices, each headed by a district secretary and the turnpike enterprise, headed by an executive director. District secretaries and the turnpike executive director currently must be registered professional engineers in accordance with the provisions of ch. 471, Florida Statutes (F.S.). In lieu of professional engineer registration, a district secretary or turnpike executive director may hold an advanced degree in a related area, such as a Master of Business Administration.

###### **Proposed Changes**

CS/HB 985 changes the qualification requirements for District Secretaries and the Turnpike Director to allow a minimum of five years experience in senior level business management field to be substituted for the professional engineering registration or the masters degree requirements.

##### **Metropolitan Planning Organizations**

###### **Current Situation**

As established by Title 23, United States Code section 134, Metropolitan Planning Organizations (M.P.O.s) are directed to develop, in cooperation with state officials, transportation plans and programs for urbanized areas of more than 50,000 persons. The process for developing such plans and programs must provide for the consideration of all modes of transportation and "shall be continuing, cooperative, and comprehensive" to the degree appropriate based on the complexity of the transportation problems. The plans also must emphasize projects that serve an important national, state or regional transportation purpose.

Pursuant to s. 339.175, F.S., M.P.O.s, in cooperation with the state and public transit operators, develop multi-year "transportation improvement plans," or TIPs, that are the building blocks for DOT's statewide Five-Year Work Program. Besides the TIPs, the M.P.O.s also develop long-range transportation plans ranging over 20 years and an annual "unified planning work program" that lists all the planning tasks each M.P.O. will undertake that fiscal year. An M.P.O. must be designated for each urbanized area of the state. Such designation must be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the

population of the urbanized area. Each M.P.O. must be created and operated pursuant to an interlocal agreement entered into pursuant to s. 163.01, F.S. Currently, Florida has 26 M.P.O.s. These boards consist of local elected officials and appropriate state agencies, and may also include officials of public agencies that administer major modes of transportation within the metropolitan area.

In recent years, as the Legislature has instituted transportation policy directives focusing on regional planning and transportation infrastructure improvements, the section of law governing M.P.O.s responsibilities in Florida has been criticized as internally inconsistent and unclear as to the entities' precise responsibilities and their degree of independence.

### **Proposed Changes**

CS/HB 985 amends s. 339.175, F.S., and other sections of law to bring clarity and uniformity to M.P.O.s administrative structure, powers and duties, and general responsibilities. For example, one criticism has been that some M.P.O.s cannot fully embrace regional planning approaches because they, or their staff, are not as independent as they should be from county and city governments.

The bill amends chapters 112 and 121, F.S., to clarify that M.P.O.s are separate legal entities independent from the local governing body; allow M.P.O. staff to participate in the Florida Retirement System; designate each M.P.O.s executive director or staff director as a member of the Senior Management Service class; and allow M.P.O.s to establish per diem and travel reimbursement rates. It also amends s. 339.175(5), F.S., to clarify that an M.P.O.s executive director reports directly to his or her M.P.O. Governing Board, and that the executive director and staff are employed by the M.P.O., or through a staff services agreement between the M.P.O. and another governmental entity. In addition, the legislation makes it clear that M.P.O. staff work for the M.P.O., and not for any of the member cities or counties.

CS/HB 985 also amends s. 339.175, F.S., to address a number of membership issues and voting requirements. The bill:

- Directs each M.P.O., at a minimum, to select a chair, vice chair, and clerk; and specifies these officers' responsibilities;
- Clarifies that voting members shall exclude constitutional officers, including sheriffs, tax collectors, supervisors of elections, property appraisers, clerks of the court, and similar types of officials;
- Establishes a process by which alternate members are selected;
- Directs M.P.O.s to appoint nonvoting representatives of various multi-modal organizations, who are not otherwise represented by voting members;
- Directs M.P.O.'s to appoint representatives of major military installations as non-voting advisors if requested by the bases;
- Clarifies that M.P.O. appointed technical advisory committees serve at the pleasure of the M.P.O.;
- Requires each M.P.O. to provide training on the urbanized transportation planning process to all who serve as members; and
- Amends s. 339.175(12), F.S., to provide for a roll-call vote, or a hand-counted vote of a majority of the membership present to adopt each long range transportation plan amendment affecting projects in the first three years of such plans. This change is related to the provision in s. 339.135(4)(b)3., F.S., that the first three years of DOT's adopted work program is the state's commitment to undertake transportation projects that local governments may rely on for planning and concurrency purposes.

### **DOT Fixed-Guideway Funding**

#### **Current Situation**

A "fixed-guideway transportation system" is a public transit system for transporting people by a conveyance, or a series of interconnected conveyances, specifically designed for travel on a stationary rail or other guideway. Section 215.615, F.S., authorizes DOT or commuter rail authorities and regional

transportation authorities to issue revenue bonds to fund fixed guideway projects. Each party is contractually liable for an equal share of the bond debt service. Projects must comply with DOT's major capital investment policy guidelines, and must be included in the work program. The DOT's share of debt service is payable from, and is limited to, a maximum of 2 percent of all state revenues deposited into the STTF. These debt service payments are part of the 15-percent of transportation revenues committed to public transportation projects pursuant to s. 206.46, F.S. The local share is payable from any available revenues other than revenues from DOT.

To date, the fixed-guideway revenue bond financing option has not been used. However, DOT is negotiating with local governmental entities and a private railroad company in Central Florida to develop a fixed-guideway commuter or light rail system. Bond counsel assisting DOT with the financing component of the project has suggested changes to the existing s. 215.615, F.S.

### **Proposed Changes**

CS/HB 985 deletes the 50/50 state/local matching requirement for fixed guideway revenue bonds. The proposed changes allow for various matching scenarios and establish an upper limit on DOT's share of up to 50 percent of the eligible project cost. This would allow local authorities to contribute more local dollars when the state's available match is insufficient to finance 50 percent of the project.

### **Florida Turnpike/Expressway Authority Traffic Enforcement Issues**

#### **Current Situation**

Section 316.1001, F.S., specifies that persons who use a toll facility without paying a toll (unless otherwise exempted) are guilty of a non-criminal traffic infraction, punishable as a moving violation. Pursuant to chapter 318, F.S., if the citation is not paid in a timely fashion, then the matter is forwarded to the courts. Violators are subject to points being assessed on their driver's licenses.

Florida's uniform traffic code and motor vehicle registration laws also include requirements for proper placement and appearance of vehicle license plates, to make it easier for law enforcement officers to quickly identify tag numbers of vehicles involved in criminal activity.

Recently the Florida Turnpike and the expressway authorities have reported an upswing in the numbers of motorists, particularly repeat offenders, speeding through toll plazas without paying tolls or without transponders. These agencies also reported spending more money last fiscal year to contact and litigate toll-plaza violators than they collected.

While most of the toll plazas are equipped with cameras that photograph the license plates of motorists who speed through without paying tolls, more often these photographs are of little use to enforcement personnel because the plates are purposely obscured or mutilated, or are displayed upside down or out of the cameras' view range. The expressway authorities have learned of websites and retailers selling sprays and other materials that, when applied to license tags, obscure them just enough to prevent clear photographs by the toll cameras.

#### **Proposed Changes**

CS/HB 985 makes a number of changes to the traffic violation statutes to stiffen penalties and fines for toll-plaza violators and to address loopholes in the current law.

The bill:

- Amends ss. 316.650(3) and 318.14(12), F.S., to clarify that violators must pay the amount of the unpaid toll and a fine of \$25 or any other amount imposed by the expressway authority to the governmental entity that issued the citation within 30 days in order to avoid a court hearing and points assessed against their licenses. A motorist who fails to do this has an additional 45 days to request a court hearing or pay the civil penalty and other charges;

- Amends s. 318.18(7), F.S., to specify that a toll violator found guilty by a judge must pay a \$100 fine plus the amount of the unpaid toll to the court, which will forward \$25 and the amount of the unpaid toll to the appropriate expressway authority. The remaining \$100 would be distributed to the General Revenue Fund, local governments, and various trust funds, as provided in s. 318.21, F.S.;
- Provides that a violator who pleads out before the case goes to court must pay a mandatory fine of no less than \$50 and no more than \$100, plus the amount of the unpaid toll. The court will forward \$25 and the amount of the unpaid toll to the appropriate expressway authority, with the remaining funds distributed as provided in s. 318.21, F.S. The court has the authority to consolidate multiple citations for the same defendant for the purpose of sentencing and aggregate jurisdiction;
- Provides that the driver's license of any person who receives 10 convictions of s. 316.1001, F.S., within a 36-month period must be suspended for 60 days;
- Amends s. 320.061, F.S., to make it illegal to obscure license plates with any substance or coating that restricts their visibility or prevents a legible electronic image recording from being made. Under the legislation, the registration of plates so obscured would be revoked. Also, the Florida Attorney General may file suit against any individual or entity selling or marketing products advertised as being able to obscure license plates. These lawsuits may seek injunctive and monetary relief, punitive damages, and attorney's fees. Any lawsuit also must seek records of all sales of the product to Floridians or other entities within Florida; and
- Clarifies placement of license plates. Section 316.605(1), F.S., would be amended to specify that license plates must be secured to the main body of a vehicle no higher than 60 inches and no lower than 12 inches from the ground and no more than 24 inches left or right of the centerline of the vehicle, and must be affixed to a vehicle so that its letters and numerals shall be read from left to right, parallel to the ground. This means that license plates can't be attached upside down, vertically, or in reverse position.

## **Aviation Funding Issues**

### *General Aviation Airports*

#### **Current Situation**

Florida has at least 83 general aviation airports (GAA), or community airports that provide a number of aviation-related services to their communities, but do not offer scheduled commercial flights. State law allows DOT to provide half of the local share of general aviation airport (GAA) project costs when federal funding is available as a 50-percent federal/50-percent local match. However, many small GAAs and their local governments can't afford to pay the required 25-percent local match, according to DOT staff, so the federal grant is rejected. Those funds then are likely spent in another state. If the GAA project is a priority, DOT pays the majority of the cost from state aviation funds.

#### **Proposed Changes**

CS/HB 985 amends s. 332.007, F.S., to allow DOT to apply federal GAA grant funds to an eligible project, then split the remaining cost on an 80-percent state/20-percent local matching basis. This would enable the state to draw down more federal aviation grant funding, and free up state aviation funding for other projects.

### *State Aviation Capital Grants*

#### **Current Situation**

The majority of airport funding for infrastructure is provided by the federal and local governments that flow directly to the airports. The state aviation program provides matching grants to airports. Proceeds of the 6.7-cents-per-gallon state aviation fuel tax funds the state grants. Last year (Fiscal Year 2005-2006) the tax generated \$71.3 million, of which \$54.5 million was deposited in the State Transportation Trust Fund. After the September 11, 2001, terrorist attacks, the Legislature amended s. 332.007, F.S., to give Florida airports temporary flexibility, until June 30, 2007, and with DOT approval, to spend their

state capital grants for security improvements required by the federal government. Since that time, 35 airports have taken advantage of this flexibility, redirecting funds for security-related expenses such as fencing, security cameras, and other access controls, better communication equipment, baggage screening systems, and more security personnel.

### **Proposed Changes**

CS/HB 985 extends the current deadline to use the state grant funds for security projects from June 30, 2007, to June 30, 2012.

## **Local Government Bonding Restrictions**

### **Current Situation**

Section 336.025(1) F.S., allows counties to levy a maximum 6-cents-per-gallon local-option fuel tax, and for counties and cities to bond those revenues. In both cases, the local governmental entities are limited to issuing bonds backed by these revenues to once a year. Some local governments are concerned that they are missing opportunities to refinance existing bonds to obtain a lower interest rate, and thus save money that can be better spent on the infrastructure improvements.

### **Proposed Changes**

CS/HB 985 deletes the once-a year bonding limit on these local revenues.

## **Secure Airports for Florida's Economy Council**

### **Current Situation**

Secure Airports for Florida's Economy "SAFE" Act was created in 2003. The act directs the council to prepare and annually update a five- year "Master Plan" defining the goals and objectives of the Council regarding development of airport facilities in the state. The Master Plan is intended to recommend specific infrastructure projects for the purpose of protecting the safety and security of passengers and cargo, enhancing international trade, promoting cargo flow, increasing enplanements, increasing airport revenues, and providing economic benefit to the state.

The creation of the Council recognizes the crucial role of Florida's aviation industry and its impact on the state's economy. The economic activity of airports creates regional monetary and employment effects. Aviation in Florida accounts for 8.5 percent of the State's Gross State Product with more than half of Florida's visitors arriving by air. The goal of the SAFE Council is to keep this economic engine running flawlessly by advancing safe and reliable transportation of passengers and cargo.

The Council consists of 27 members representing Florida's 19 commercial airports, two general aviation airports appointed by the Florida Airports Council, four state agencies, and a representative each from the airline and general aviation industries in Florida appointed by the Air Transport Association and the Florida Aviation Trades Association, respectively. State agencies include the Department of Transportation (DOT), the Department of Community Affairs (DCA), the Department of Law Enforcement (FDLE), and the Governor's Office of Tourism, Trade and Economic Development (OTTED).

### **Proposed Changes**

CS/HB 985 makes the members of the Council representing the state agencies non-voting members. However, the these agencies still will have authority to approve projects.

## **DOT Contracting Issues**

### **Current Situation**

Pursuant to s. 337.18, F.S., for transportation contracts and s. 255.05, F.S., for all other state or local governmental projects, any person or entity entering into a contract for the construction or repair of a public building or public works, must execute, deliver to the owner, and record a payment and performance bond purchased from a surety company. A payment bond guarantees that the contractor will pay certain subcontractors, laborers, and material suppliers associated with the project. A performance bond protects the owner from financial loss should the contractor fail to perform the contract in accordance with its terms and conditions. A surety bond is equal to 100 percent of the contract price, to enable DOT to complete the project should the contractor fail to complete the project according to the terms of the contract.

Certain contracts may be exempted from the bond requirement, depending on the amount of the contract and whether the governmental entity agrees. For example, s. 337.18, F.S., allows DOT to waive all or a portion of surety bond requirements for contracts of no more than \$150,000 if the project is non-critical and if non-performance of the contract will not endanger the public health, safety, or property. Also, DOT may accept other types of financial guarantees (such as certified checks or postal money orders) for contracts valued at no more than \$25,000. Also, s. 337.11, F.S., requires DOT to advertise in a local newspaper of general circulation a solicitation for bids on all construction projects with a contract price of no more than \$250,000.

The rising material and labor costs of transportation projects are resulting in project bids coming in much higher than DOT has projected. Contractors for so-called "mega projects" costing more than \$500 million are discovering that few surety bond companies worldwide are writing coverage in excess of that amount. Also, DOT is awarding more multi-year contracts than it used to, but surety bonds typically are an up-front cost, not phased-in, and based on the entire amount of the contract.

### **Proposed Changes**

CS/HB 985 makes a number of changes to DOT's contracting procedures specified in ch. 337, F.S. The bill:

- Amends s. 337.11(3), F.S., to specify that the newspaper advertising requirement doesn't apply to construction contracts valued at less than \$500,000 for which DOT has waived prequalification requirements;
- Amends s. 337.14(1), F.S., to waive pre-qualification requirements for construction contracts of no more than \$500,000 if DOT determines the project is non-critical in nature and failure to complete the project as agreed does not endanger the public health, safety, or property; and
- Amends s. 337.18, F.S., to allow DOT to waive, at its discretion, incremental annual surety bonds for multi-year maintenance contracts. The bill also amends this section of law to increase the minimum contract amount threshold to require a surety bond from \$150,000 to \$250,000 and to give the agency the discretion to reduce surety bond requirements or require alternative financial security for contracts valued at a minimum of \$250 million. Alternative security in lieu of a surety bond could include a line-of-credit, parent company guarantees, or cash collateral.

### **Electronic Toll Collections**

#### **Current Situation**

Electronic Toll Collection (ETC) allows for electronic payment of highway tolls. ETC systems use vehicle-to-roadside communication technologies to perform an electronic monetary transaction between a vehicle passing through a toll station and the toll agency. ETC systems require onboard units (such as a transponder), vehicle detection and classification, as well as enforcement technologies. Essentially, ETC equipment substitutes for having a person (or coin machine) to manually collect tolls at toll booths. In addition, ETC allows such transactions to be performed while vehicles travel at almost highway cruising speed. SunPass is an ETC system used by DOT. Florida motorists may purchase a SunPass transponder which can be used electronically to pay tolls on Florida's toll roads and most toll bridges.

#### **Proposed Changes**

CS/HB 985 allows DOT or any statutorily-created toll authority to contract with public or private entities to promote an ETC system and provides specific authority to use ETC equipment to pay for parking. As an example, the revision could permit motorists to use their Sunpass transponder to pay airport parking fees should an airport parking vendor wish to contract with DOT for that purpose. The department or toll agency may also initiate other feasibility studies of additional uses of the ETC and make recommendations to the Legislature to authorize these uses.

### **Toll Payment Exemptions for Official Law Enforcement Vehicles**

#### **Current Situation**

Section 338.155, F.S., currently permits the use of toll facilities without payment for employees of the agency operating the toll project when using the toll facility on official state business, state military personnel while on official military business, handicapped persons as provided in this section, persons exempt from toll payment by the authorizing resolution for bonds issued to finance the facility, and persons exempt on a temporary basis where use of such toll facility is required as a detour route. Any law enforcement officer operating a marked official vehicle is exempt from toll payment when on official law enforcement business. Any person operating a fire vehicle when on official business or a rescue vehicle when on official business is exempt from toll payment. Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty is exempt from toll payment. The secretary, or the secretary's designee, may suspend the payment of tolls on a toll facility when necessary to assist in emergency evacuation.

#### **Proposed Changes**

CS/HB 985 is revised to include that unmarked official vehicles may be exempt from toll payment when on official law enforcement business at the discretion of the toll authority.

### **Florida Turnpike Bond Cap**

#### **Current Situation**

Florida's Turnpike Enterprise is a 450-mile system of limited-access toll highways. The Turnpike's mainline passes through 11 counties from North Miami to a junction with Interstate 75 in north central Florida. In addition to the 265-mile mainline, the Turnpike system includes: the 47-mile Homestead Extension, which takes motorists to the top of the Florida Keys; the 23-mile Sawgrass Expressway/Toll 869 in Broward County; the 19-mile Seminole Expressway/Toll 417 in Seminole County; the 15-mile Veterans Expressway/Toll 589 in Tampa; an eight-mile portion of the Bee Line Expressway/Toll 528 in Orlando; the six-mile Southern Connector Extension of the Central Florida GreeneWay/Toll 417 in Orlando; the 25-mile Polk Parkway; and the 42-mile Suncoast Parkway.

The 1990 Florida Legislature passed legislation implementing a financing plan for Florida's Turnpike system to use the bonding capacity of the Turnpike to finance new transportation projects on a statewide basis. The bonds are repaid through tolls collected over time. Section 338.2275, Florida Statutes, establishes a ceiling on the amount of Turnpike bonds that can be issued to fund Turnpike projects. In 1997, the Florida Legislature authorized the continued expansion of Florida's Turnpike System by increasing the Turnpike's bonding capability from \$1.5 billion to \$3 billion and by identifying additional statewide projects. In 2003, the bond cap was again increased to reach its current \$4.5 billion level.

The current Work Program includes planned bond issues which will exhaust the Turnpike's current legislative bond cap by Fiscal Year 2009-2010. The Work Program supports:

- The completion of the Western Beltway, Part C;
- Adding 150 lane miles through widening of the Turnpike System at a cost of nearly \$1 billion;
- Adding 4 new interchanges and improving 3 other interchanges at a cost of \$200 million to improve access to the Turnpike System;
- Converting the Sawgrass Expressway to a fully electronic, open road tolling project and adding SunPass Express lanes at other locations;

- Improving Toll and Intelligent Transportation System (ITS) to better manage the System and increase capacity and throughput at the toll plazas; and
- Continuing improvements for safety and preservation of the existing System.

In order to fund the significant capital program during the upcoming five-year period, the Turnpike is planning five bond issues totaling approximately \$2.2 billion, which will use all of the bonding authority under the current cap. Yet the long-range financial planning model for the Turnpike includes numerous additional system improvements providing increased access and capacity, as well as significant projects relating to preservation, safety, modernization, and replacement of toll equipment technology.

### **Proposed Changes**

CS/HB 985 raises the cap on Turnpike bonds from \$4.5 billion to \$10 billion, and changes the limitation to a maximum amount outstanding rather than the amount issued, thereby providing for a “line of credit” that the Turnpike can utilize for long-term planning. According to DOT staff, this cap increase will allow the Turnpike to complete currently planned projects and to continue a proactive approach to building tolled facilities to handle future transportation needs. This would give the Turnpike Enterprise financial capacity to bond at a higher level, and add more than \$1 billion in new transportation improvements over the next five to ten years.

An increase in the bond cap will not impact the State of Florida’s debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

### **TRIP Match Issue**

#### **Current Situation**

In 2005, the Legislature created, as part of the rewrite of the state’s Growth Management Act, the Transportation Regional Incentive Program (TRIP) in s. 339.2819, F.S., to encourage local governments to develop regional solutions to their transportation problems. Over the next 10 years, an estimated \$1.55 billion in new state funds are projected to be spent as the state match for eligible TRIP projects. The first year’s share of state money for TRIP was \$275 million. However, local governments and the M.P.O.s continue to express concerns that the 50 percent local-match requirement is too high when federal funds for public transportation projects are not included.

#### **Proposed Changes**

CS/HB 985 deletes the limitation that the state may match only up to 50 percent of the non-federal share of eligible project costs for regional public transportation projects, and provides that the state may match up to 50% of the total project cost. This will allow local governments to count certain federal transit funds as a “local match” for TRIP eligible projects.

### **Transportation Concurrency**

#### **Current Situation**

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

In 2005 the Florida Legislature enacted SB 360 to provide a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. This method, called proportionate fair-share, can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided:

- The proposed improvement satisfies the significant benefit test; or
- The local government plans for additional contributions or payments from other developers to fully mitigate transportation impacts in the area within 10 years.

### **Proposed Changes**

CS/HB 985 provides that private-sector entities that finance, construct, or improve public transportation facilities may apply the value of such contribution to any future transportation concurrency requirements under ch. 163, F.S., as long as the contribution or credit is established in a legally binding agreement.

### **Contracts for Public Construction Projects**

#### **Current Situation**

The basic process used by counties, municipalities, special districts and other political subdivisions of the state to award contracts for construction projects is described in s. 255.20, F.S. Typically, any construction project with a cost in excess of \$200,000, and any electrical project costing more than \$50,000, must be competitively awarded. Section 336.41, F.S., provides additional requirements specifically relating to county road contracting. Except in emergency situations, each county is required to competitively bid transportation projects exceeding \$250,000 or 5 percent of the county's share of the 2-cents-gallon constitutional fuel tax, whichever is greater.

#### **Proposed Changes**

CS/HB 985 increases the dollar threshold for public construction projects that do not need to be competitively bid. The \$200,000 threshold for construction and the \$50,000 threshold for electrical projects are doubled to \$400,000 and \$100,000, respectively. The change in the thresholds would effectively increase the number of projects that could be performed by outside contractors without competitive bid.

The bill also increases the dollar threshold for county road and bridge projects that do not need to be competitively bid. The \$250,000 threshold is raised to \$400,000 or up to 5 percent of the county's 80 percent portion of the constitutional gas tax, whichever is greater.

### **SIB Loans**

#### **Current Situation**

Section 339.55, F.S., creates the state-funded infrastructure bank (SIB), which provides loans to help fund transportation projects that otherwise might be delayed or not built. The loans are repaid from revenues generated by the project such as a toll road or other pledged resources. The repayments are then re-loaned to fund new transportation projects. The section authorizes the SIB to lend capital costs or provide credit enhancements for a transportation facility project on the State Highway System or for projects which provides increased mobility on the state's transportation system, or which provide intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals. Loans from the SIB may bear interest at or below market interest rates, as determined by DOT. 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.

In 2004, four hurricanes struck Florida, wreaking havoc to public and privately owned infrastructure. Just as some homeowners and business owners are still awaiting insurance payouts or other compensation, some airports and seaports in Florida have yet to receive funds from their insurers or from the Federal Emergency Management Administration (FEMA). In early 2005, DOT, through executive emergency order, made SIB loans totaling \$45 million to four airports and three seaports that suffered significant damage from the winds or storm surge that resulted from 2004 hurricanes, and whose insurance payouts or FEMA assistance were delayed. An attempt by DOT to make similar loans last year through the budget amendment process stalled when it was determined that the executive order had expired and the SIB statute did not authorize this type of loan.

### **Proposed Changes**

CS/HB 985 amends s. 339.55, F.S., to allow DOT to make emergency loans to repair or replace damaged infrastructure at public-use commercial seaports, airports, other public transportation facilities and intermodal facilities located within an area that is part of an official state declaration of emergency. Such loans shall be for periods no longer than 24 months typically, although the DOT Secretary can extend the term to up to 36 months. Applicants must provide documentation that they have filed claims with their insurer or FEMA, and agree to repay the loan upon receipt of such funds. The bill also requires documentation of the applicant's financial condition. These loans will be subject to approval by the Secretary of Transportation and the Legislative Budget Commission.

### **Northwest Florida Transportation Corridor Authority (NFTCA)**

#### **Current Situation**

The NFTCA consists of eight voting members, one from each of the following counties: Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla. Members are appointed by the Governor to a 4-year term. The district secretary of the Department of Transportation serving Northwest Florida serves as an ex officio, nonvoting member.

The NFTCA was created in s. 343.80, F.S., by the 2005 Florida Legislature. The primary purpose of the authority is to improve mobility on the U.S. 98 corridor in Northwest Florida to enhance traveler safety, identify and develop hurricane evacuation routes, promote economic development along the corridor, and implement transportation projects to alleviate current or anticipated traffic congestion. The authority is authorized to construct any feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities that are intended to improve mobility along the U.S. 98 corridor. The Authority is further authorized to plan, design, finance, and construct transportation improvement projects. The NFTCA may acquire and hold title to property that will accommodate the development of transportation facilities. Additionally, the Authority may seek financial assistance from local, State and the Federal government as well as private entities. The NFTCA is also authorized to implement toll facilities to aid in funding projects.

The NFTCA was directed by the Legislature to develop and adopt a corridor master plan no later than July 1, 2007. The goals and objectives of the master plan are to identify areas of the corridor where mobility, traffic safety, and efficient hurricane evacuation need to be improved; evaluate the economic development potential of the corridor and consider strategies to develop that potential; develop methods of building partnerships with local governments, other state and federal entities, the private-sector business community, and the public in support of corridor improvements; and to identify projects that will accomplish these goals and objectives. Presently, this is the only activity of the NFTCA.

### **Proposed Changes**

CS/HB 985 prohibits appointment to the NFTCA of any person who holds a position as an elected official. The bill does not prohibit any member appointed prior to the effective date of this act from completing his or her current term.

The bill also directs the NFTCA to study the feasibility of constructing, operating, and maintaining a bridge or bridges spanning Choctawhatchee Bay or Santa Rosa Sound, or both, and access roads to the bridge or bridges. This study will include the environmental and economic feasibility of the potential bridges and access roads, and other transportation facilities that could become part of the bridge system. The bill also authorizes the Authority to construct, operate, and maintain the bridge system if the studies determine that the bridge system project is feasible and consistent with the Authority's primary purpose and master plan.

### **Public-private partnerships**

#### **Current Situation**

Currently, s. 348.0004(9), F.S., allows any expressway authority to solicit proposals from private companies wishing to enter into partnership agreements for the purpose of building, financing, operating, or owning toll facilities.

#### **Proposed Changes**

CS/HB 985 clarifies that any expressway authority, and not just those created pursuant to Part I of chapter 348, F.S., can participate in the public-private partnerships. The bill amends s. 348.0004(9), F.S., to clarify that "notwithstanding any law to the contrary, any expressway authority, transportation authority, bridge authority, or toll authority established under this part or any other statute" may enter into these partnerships. The bill also amends s. 348.0012, F.S., to clarify that Part I of chapter 348, F.S., does not apply to expressway authorities created elsewhere in the chapter, "except where expressly provided."

The bill also allows expressway authorities to enter into Public-Private Partnership agreements that lease existing toll facilities. However, if the agreement for leasing an existing toll facility does not include provisions for additional capacity, the project and the provisions of the agreement must be approved by the Florida Transportation Commission.

### **Osceola-Orange County Expressway Authority (OOCEA)**

#### **Current Situation**

The OOCEA has a program that seeks to encourage Orlando-area small-business owners to bid on components of expressway authority projects. In its eight years of existence, the "micro-contract" program has attracted more than 100 small companies to perform such tasks as erecting guardrails, installing landscaping, and striping toll roads. One of the benefits of the program to small businesses has been the waiver of a performance bond for project contracts of \$200,000 or less. This waiver is available to all state agencies, pursuant to s. 255.05, F.S. Persons or entities awarded public contracts greater than \$200,000 must post a surety bond to guarantee the work will be performed to the state agency's specifications.

#### **Proposed Changes**

CS/HB 985 increases the contract threshold for a performance-bond waiver, for OOCEA contractors only, to \$500,000 for these micro-contracts. The recent unprecedented increases in transportation construction materials and labor in Florida has increased the bids for these micro-contracts, according to OOCEA staff.

The bill also limits participation in the program to independent businesses principally headquartered in the Orange County Standard Metropolitan Statistical Area and employing a maximum of 25 persons. Eligible businesses also must have gross annual construction sales averaging \$3 million or less over the previous three calendar years; be accepted into OOCEA's economic-development program; and

participate in OOCEA technical assistance or other educational programs. Any small business which has been the successful bidder on six micro-contracts is ineligible to continue participating in the program.

In addition, the bill's provisions require the OOCEA to prepare biennial reports for submission to the Orange County Legislative delegation. The initial report will be due on December 31, 2008.

### **Miami-Dade County Road**

#### **Current Situation**

Chapter 89-383, Laws of Florida, designated the portion of Red Road between S.W. 8th Street to S.W. 72nd Street in Miami as a state historic highway because it leads into Coral Gables Wayside Park and the Central Miami Subdivision, one of the earliest examples of a planned community noted for its Mediterranean revival architecture.

Development activities and major transportation improvements to Red Road are strictly prohibited, under the chapter law's provisions, in order to preserve its historic and cultural significance. The removal of any healthy tree which is not a safety hazard is prohibited, as is any alteration of the physical dimensions or location of Red Road, the adjacent property, and any part of the original entranceway to the park. The chapter law also specifically prohibits construction on or along Red Road of any new structure, "or any building, clearing, filling, or excavating on or along Red Road except for routine maintenance or work which is essential to the health, safety, or welfare of the environment."

Finally, the chapter law requires that, prior to performing any work claimed to be essential to the health, safety, or welfare of the environment, including the removal of any healthy tree, Miami-Dade County must hold an advertised public meeting to present the findings of fact necessitating such work.

In recent years certain sections of Red Road have deteriorated. Patching the potholes is ineffective and unattractive, and not in keeping with the neighborhood's character.

#### **Proposed Changes**

CS/HB 985 amends the chapter law to allow not only routine maintenance of Red Road, but also alterations, modifications, or improvements to it, and to the adjacent right-of-way for the purpose of enhancing motorists' safety and pedestrian use of the road. Increasing the number of traffic lanes is expressly prohibited.

### C. SECTION DIRECTORY:

Section 1. Amends s. 20.23, F.S., to include the Executive Director of the Florida Transportation Commission in the Senior Management Service classification.

Section 2. Amends s. 112.061, F.S., to allow M.P.O.s to establish per diem rates.

Section 3. Amends s. 121.021, F.S., to redefine "local agency employer" to include M.P.O.s.

Section 4. Amends s. 121.051, F.S., to allow M.P.O.s to participate in the Florida Retirement System (FRS).

Section 5. Amends s. 121.055, F.S., to allow that, for M.P.O.s that choose to become a part of the FRS, the Senior Management Service class participation will be required for the Executive Director or Staff Director of the M.P.O.

Section 6. Amends 121.061, F.S., to provide for alternate means of FRS and social security contributions, in the event the M.P.O. fails to make payment.

Section 7. Amends s. 121.081, F.S., to allow employees of an M.P.O. that has chosen to participate in the FRS claim and be credited in the FRS for past and prior year service.

Section 8. Amends s. 212.055, F.S., to delete once-a-year limit on local governments to bond their local-option discretionary sales tax revenues.

Section 9. Amends s. 215.615, F.S., to make technical changes to the fixed-guideway revenue bonding provisions.

Section 10. Amends s. 255.20, F.S., to increase the dollar threshold for public construction projects that do not need to be competitively bid. The \$200,000 threshold for construction and the \$50,000 threshold for electrical projects are doubled to \$400,000 and \$100,000, respectively. The change in the thresholds would effectively increase the number of projects that could be performed by outside contractors without competitive bid.

Section 11. Amends s. 316.2123, F.S., to provide for authorized daytime use of ATVs on designated roads.

Section 12. Amends s. 316.605, F.S., to establish placement and display requirements for vehicle license plates.

Section 13. Amends s. 316.650, F.S., to specify that motorists who use tolled highways without paying the required tolls have the option to pay the tolling authority's fine and the unpaid toll, and the traffic citation is dropped and no points are assessed.

Section 14. Amends s. 318.14, F.S., to specify that motorists who use tolled highways without paying the required tolls can elect to pay the unpaid toll and the tolling authority's fine, or if not, have 45 days to either request a court hearing or to pay the specified fines.

Section 15. Amends s. 318.18, F.S., to raise the fine for motorists who fail to pay required tolls from \$100 to \$125. Specifies distribution of fine proceeds. Specifies 60-day suspension of driver's license for motorists with 10 toll violations in a 36-month period.

Section 16. Amends s. 320.061, F.S., to specify illegality of obscuring license plates with certain substances or products. Prohibits advertising, selling, distributing, purchasing and using such substances or products. Specifies law enforcement officers may issue citations to drivers whose plates are obscured and can confiscate the plates. Specifies that the Florida Attorney General may file suit against an entity or person involved in the sale and marketing of obscuring substances and products. Provides for injunctive relief, fines, and other penalties.

Section 17. Amends s. 332.007, F.S., to give DOT more flexibility to match federal grants for general aviation airports and to extend July 1, 2007 deadline to July 1, 2012, for airports to use their state aviation capital grants for security improvements.

Section 18. Amends s. 332.14, F.S., making certain state agency members of the Secure Airports for Florida's Economy Council non-voting members.

Section 19. Amends s. 336.025, F.S., to delete the once-a-year limit on local governments bonding of their local-option fuel tax revenues.

Section 20. Amends s. 336.41, F.S., to increase the dollar threshold for county road and bridge projects that do not need to be competitively bid. The \$250,000 threshold is raised to \$400,000 or up to 5 percent of the county's 80-percent portion of the constitutional gas tax, whichever is greater.

Sections 21-23. Amends ss. 337.11, 337.14, and 337.18, F.S., to make various changes to DOT's requirements on performance and surety bonds. Raises the minimum contract amount needing a surety bond from \$150,000 to \$250,000. Allows multi-year maintenance contracts to obtain annual surety bonds. Allows DOT to waive surety bond requirement for projects in excess of \$250 million if other less-traditional financial guarantees are available.

Section 24. Amends s. 338.155, F.S., to allow any law enforcement officer operating an unmarked official vehicle may be exempt from toll payment.

Section 25. Amends s. 338.161, F.S., to allow the Florida Turnpike and other tolling agencies to market their electronic toll-collection devices and to enter into contracts with private or public entities to allow for parking fees to be deducted from the electronic accounts. Requires feasibility studies and legislative approval for additional transponder uses.

Section 26. Amends s. 338.2275, F.S., to change the Florida Turnpike's bond cap to \$10 billion of bonds outstanding.

Section 27. Amends s. 338.231, F.S., for conforming changes to statute references created by this bill.

Section 28. Amends s. 339.175, F.S., relating to M.P.O.s. Establishes officers; clarifies eligibility of certain elected officials to serve on M.P.O.s; directs M.P.O.s to appoint non-voting representatives of transportation modes not otherwise serving on their boards; lists M.P.O.s powers and duties; and makes numerous technical changes.

Section 29. Amends s. 339.2819, F.S., to delete provision that DOT will fund up to 50 percent of the nonfederal share of public transportation projects. In effect, this allows federal transit funds to be counted as the local match for eligible TRIP projects.

Section 30. Creates section 339.282, F.S., relating to transportation concurrency incentives.

Section 31. Amends s. 339.55, F.S., to allow DOT to issue short-term, emergency SIB loans under certain criteria to disaster-damaged transportation infrastructure.

Sections 32-34. Amends ss. 343.81 and 343.82, F.S., related to the Northwest Florida Transportation Corridor Authority. Provides that future appointees to the authority be non-elected citizens. Grandfathers-in current members who are elected officials. Grants certain responsibilities to the authority related to building a new bridge or bridges across Santa Rosa Sound or Choctawhatchee Bay.

Section 35. Amends s. 348.0004, F.S., to clarify that any expressway authority, transportation authority, bridge authority or toll authority may enter into public private partnerships.

Section 36. Amends s. 348.0012, F.S., to further clarify that Part I of chapter 348, F.S., the Florida Expressway Authority Act, does not apply to other expressway authorities except where expressly provided.

Section 37. Amends s. 348.243, F.S., to delete obsolete language related to the Sawgrass Expressway.

Section 38. Amends s. 348.754, F.S., to allow the Orlando-Orange County Expressway Authority to increase the bond-waiver amount for small businesses meeting certain eligibility requirements for its economic-development program. Requires the Authority to conduct bond-eligibility training for qualifying businesses. Requires the Authority to prepare a report on the program every two years and submit it to the Orange County legislative delegation, beginning December 31, 2008.

Section 39. Amends s. 163.3177, F.S., making conforming changes to statute references created by this bill.

Section 40. Amends s. 339.176, F.S., making conforming changes to statute references created by this bill.

Section 41. Amends s. 341.828, F.S., making conforming changes to statute references created by this bill.

Section 42. Amends chapter 89-383, Laws of Florida, to allow certain transportation improvements to Red Road that do not alter the road's historic and cultural character.

Section 43. Provides an effective date of July 1, 2007.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

Section 20 of the bill would raise the Florida Turnpike Enterprise's bond cap from an absolute \$4.5 billion in bonds issued to a limit of \$10 billion in bonds outstanding. Therefore, as the Turnpike retires outstanding bond issues, the Turnpike may issue more bonds, as long as it does not exceed \$10 billion of outstanding debt at any given time. This would give the Turnpike Enterprise financial capacity to bond at a higher level, and more than \$1 billion in new transportation improvements over the next five to ten years.

#### **2. Expenditures:**

Section 14 of the bill would give DOT the flexibility to provide a greater share of the local match required in order to obtain more federal general aviation grant funds.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

Deleting the once-a-year limit on local governments to bond their local-option fuel tax and infrastructure tax revenues could potentially generate additional funds for counties. This amount is indeterminate because no new issues or re-issuances of bonds have been identified and are contingent upon future bond interest rates and the counties' ability to impose additional local option taxes by voter referendum.

#### **2. Expenditures:**

Section 22 of the bill would allow DOT to fund up to 50 percent of the nonfederal share of public transportation projects. In effect, this allows federal transit funds to be counted as the local match for eligible TRIP projects, in turn not consuming local government revenues.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

### **D. FISCAL COMMENTS:**

An increase in the bond cap will not impact the State of Florida's debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

The Legislature last raised the Turnpike bond cap in 2003, from \$3 billion to \$4.5 billion.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

#### **B. RULE-MAKING AUTHORITY:**

None of the entities impacted by the bill appear to need additional rulemaking authority.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

#### **D. STATEMENT OF THE SPONSOR**

No statement submitted.

### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 19, 2007, a total of eight amendments were adopted by the Infrastructure Committee.

On April 4, 2007, a total of eight traveling amendments and five additional amendments were adopted by the Economic Expansion and Infrastructure Council. The Council adopted the bill as amended and reported it favorably as a Proposed Council Substitute.