HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB TR 06-04 Transportation
SPONSOR(S): Transportation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee		Pugh BJP	Miller P.M.
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

PCB TR 06-04 is an omnibus bill that addresses a variety of transportation financing, planning, and administrative issues. Briefly, the draft legislation:

- Raises the Turnpike Enterprise's revenue bond cap from $4.5 billion in bonds issued to $6 billion in bonds outstanding. This change not only gives the Turnpike Enterprise more immediate bond capacity, but creates a line of credit, so to speak, to issue more bonds as the Turnpike pays down its balance.
- Makes numerous administrative, organizational and technical changes to the metropolitan planning organizations (M.P.O.'s).
- Stiffens penalties for motorists who speed through toll plazas without paying tolls and those who purposely obscure or rearrange their vehicles' license plates.
- Gives express legislative approval to the Turnpike and the expressway authorities to market their electronic toll-collection transponders, and to allow transponder customers to tap into their accounts and pay for parking and potentially other expenditures.
- Creates the Osceola County Expressway Authority.
- Creates environmental permitting exemptions for certain small-scale transportation projects with minimal adverse impacts, and directs the Florida Department of Transportation (FDOT) and the environmental agencies to develop memoranda of understanding to address certain issues.
- Modifies the membership of the Miami-Dade County Expressway Authority (MDX) and imposes new noticing requirements before the authority can set new toll rates.
- Directs FDOT to study the impacts slot-machine gambling at pari-mutuel facilities and Indian reservations may have on nearby access roads and other transportation facilities, with the report due to the Governor and the Legislature by January 15, 2007.
- Modifies the Charter County Transit System Surtax to include all counties; allows the surtax to be levied upon a majority vote of the county commission; broadens the surtax's uses; and provides a formula for counties to share the surtax proceeds with their municipalities.
- Allows the Orlando-Orange County Expressway Authority (OOCEA) to set a performance bond waiver cap of $500,000 for public projects, up from the $200,000 contract cap currently in law, in order to promote its small-business contractor program.
- Appropriates $400 million in non-recurring general revenue in FY 06-07 to FDOT for use in its Other Arterial Highway projects.

PCB TR 06-04 does not raise any apparent constitutional or legal issues. It has an indeterminate fiscal impact. The draft legislation would take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: Several provisions in PCB TR 06-04 implicate this principle, in varying ways. Section 19 creates the Osceola County Expressway Authority, which has the power to issue revenue bonds and to impose tolls. Sections 20-23 reduce regulatory hurdles for certain transportation projects. Sections 24 and 25, respectively, reduce the membership of the Miami-Dade County Expressway Authority and impose new noticing requirements prior to the Authority raising toll fees.

B. EFFECT OF PROPOSED CHANGES:

Florida Turnpike Bond Cap

Current Situation

A part of FDOT, the Florida Turnpike Enterprise is a 450-mile system of limited-access toll highways. The turnpike's 2006-2010 Work Program is funded largely through revenue bonds, backed by toll revenues. According to FDOT staff, every $1 in recurring toll revenues from the Turnpike can be leveraged to generate $14 to pay for project costs.

Section 338.227, F.S., authorizes FDOT to issue bonds to pay all or a part of the legislatively approved turnpike projects, and section 338.2275, F.S., limits the total amount of bonds that may be issued to $4.5 billion. According to FDOT, nearly $2.336 billion in Turnpike bonds have been issued over the years, leaving $2.164 billion within the statutory cap to be authorized. However, the Turnpike's long-range project plan through FY 2010-2011 indicates that the estimated costs of the projects exceed the statutory bond cap by about $950 million.

Section 339.135(3), F.S., requires FDOT to base its Five-Year Work Program on a "complete, balanced financial plan." To comply with the law, the Turnpike will have to either eliminate or scale back proposed projects, adopt a "pay-as-you go" approach to financing future projects, or seek a change in law to raise the bond cap.

Current Turnpike projects include 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 four new interchanges and improving three other interchanges at a cost of $200 million to improve access to the Turnpike System; and converting the Sawgrass Expressway to a fully electronic, open-road tolling facility and adding SunPass Express lanes at other locations.

Projects proposed for the Turnpike's 2007-2011 Work Program – if the bond cap is increased – include nearly $370 million for additional lanes on various sections of the Homestead Extension-Florida Turnpike (HEFT) and $467 million for additional lanes along the Turnpike Mainline and the Veterans Expressway.

Potential future projects under review by Turnpike staff include another phase of the Suncoast Parkway; extensions of the Polk Parkway, State Road 417 in Volusia County, and the Sawgrass Expressway in Broward County to link with I-95; express lanes on the HEFT and the interstates; and the Port of Miami tunnel.

Effect of Program Changes

FDOT proposes raising the cap on Turnpike bonds from $4.5 billion to $6 billion, and changing the limitation to a maximum amount outstanding, thereby providing for a "line of credit" that the Turnpike can utilize for long-term planning.

FDOT staff have said this cap increase will allow the Turnpike to complete currently planned projects and to continue an aggressive approach to building tolled facilities to handle future transportation needs.

Any 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.

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) is guilty of a noncriminal 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.

The Florida Turnpike and the expressway authorities are reporting an upswing in the numbers of motorists – particularly repeat offenders -- speeding through toll plazas without paying tolls or without transponders. The Turnpike and the Tampa-Hillsborough County Expressway Authority reported at least $16 million in lost toll revenues in FY 2004-2005, while the Orlando-Orange County Expressway Authority (OOCEA) reported a $6 million loss.

These agencies also reported spending more money last fiscal year to contact and litigate toll-plaza violators than they collected. The Turnpike reported spending more than $2.5 million to collect $721,362 in unpaid toll collections, while the OOCEA spent $1.41 million to collect about $412,000.

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.

In December 2005, the Florida Transportation Commission passed a resolution supporting tougher penalties and fines for motorists who fail to pay tolls or obscure their license plates.

Effect of Proposed Changes

PCB TR 06-04 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. For example:

- The draft legislation amends ss. 316.650(3) & 318.14(12), F.S., to clarify that violators must pay the amount of the unpaid toll and a fine 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.
- The draft bill also amends s. 318.18(7), F.S., to specify that a violator found guilty by a judge must pay a $150 fine plus the amount of the unpaid toll to the court, which will forward $50 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.
- Where adjudication is withheld or the violator pleads out before the case goes to court, the fine is $100, plus the amount of the unpaid toll. The court will forward $50 and the

amount of the unpaid toll to the appropriate expressway authority, with the remaining $50 distributed as provided in s. 318.21, F.S.

- 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.

PCB TR 06-04 also 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 draft 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.

Finally, the draft legislation 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
- License plates 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.

Osceola Expressway Authority

Current Situation

Nine expressway authorities have been created in chapter 348, F.S., by the Florida Legislature. A tenth, the Miami-Dade County Expressway Authority, was created by the Miami-Dade County Commission pursuant to the process in Part I of Chapter 348, F.S. Their purpose is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include a combination of local-government officials or residents and Governor appointees who decide on projects and expenditure of funds.

There also are four regional transportation authorities created in chapter 343, F.S., and one local transportation authority, the Jacksonville Transportation Authority, created in chapter 349, F.S.

Osceola County is in one of the fastest-growing regions of the state, and local officials and developers have expressed interest the last two years in partnering to improve transportation infrastructure there. Supporters of creating the expressway authority have mentioned a 6.5-mile-long toll road in the western part of the county as one project. This toll road would link Marigold Avenue in the Poinciana community in Osceola with U.S. 17 and County Road 54 in Polk County.

Effect of Proposed Changes

PCB TR 06-04 proposes creating the "Osceola County Expressway Authority," modeled in many respects to existing authorities with standard "boiler-plate" language about the process to issue bonds, protection of bondholders, and relationships with FDOT.

Pursuant to the legislation:

- The expressway authority would have a six-member governing board, of which five would be voting members. The board's voting members would be comprised of three residents of Osceola County appointed by the Osceola County Commission and two Osceola County residents appointed by the Governor. The FDOT District 5 Secretary would serve as an ex-officio, non-voting member. No Authority member may be an officer or employee of Osceola County.

- The members shall serve 4-year terms, except that the Governor's initial appointees shall serve 2-year terms.
- The board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to 112.061, F.S.
- The board can hire an executive director and other staff.
- The Authority can issue revenue bonds, either on its own or through the state Division of Bond Finance. In both cases, the bonds and the issuance process must conform to State Bond Act requirements. These bonds' term may not exceed 40 years, and can not pledge the full faith and credit of the state of Florida.
- If approved by the Osceola County Commission, the Authority may pledge a portion of county gasoline tax revenues to repay the revenue bonds. The Authority must reimburse the county for any gas tax revenues it spends.
- The Authority is allowed to set and collect tolls, fees, and other charges; acquire land by purchase, donation, or eminent domain; borrow money; to sue and be sued; and enter into contracts, agreements, and partnerships with public and private entities.
- The Authority may construct, operate, and maintain roads, bridges, and other transportation facilities outside of Osceola County with the consent of the county within whose jurisdiction these projects are located.
- Likewise, the Authority may not acquire right-of-way for a project within unincorporated Osceola County until the County Commission has approved the project's route.
- The Authority may enter into lease-purchase agreements with FDOT to manage the system. FDOT also may be appointed by the Authority as its agent to oversee construction of the system's components.
- FDOT is authorized to spend up to $375,000 of its funding for the Authority's operating costs, and to conduct traffic surveys, preliminary engineering studies, and similar initial activities for the expressway system.

Other Turnpike/Expressway Issues

PCB TR 06-04 also proposes a number of changes to the sections of law related to the Miami-Dade County Expressway Authority (MDX); the Orlando-Orange County Expressway Authority (OOCEA); the expanded use of transponders; and the Florida Turnpike budget. The PCB makes the following changes:

MDX:

- Currently, an expressway authority in a county defined in s. 125.11(1), F.S., (which applies only to MDX) can have up to 13 voting members: seven appointed by the County Commission; five appointed by the Governor; and the final member being the FDOT District 6 secretary. MDX has powers similar to those of all the other expressway authorities created in law, including the power to levy tolls on its transportation facilities.

  PCB TR 06-04 would reduce the authority board to a maximum of seven voting members, with the chair of the Miami-Dade legislative delegation, or designee, and the FDOT District 6 secretary as non-voting members. (A scrivener's error omitted changing the district secretary from a voting to a non-voting member; see "III.C. DRAFTING ISSUES and OTHER COMMENTS" section below.) The new voting membership would be comprised of: two Miami-Dade county commissioners appointed by the commission chair; one member may be a mayor of a municipality within the county and appointed by the Miami-Dade County League of Cities; and four Governor appointees.

  The legislation also would require MDX, prior to raising tolls, to publish a notice of intent in a newspaper of general circulation, as defined in s. 97.021(16), F.S., specifying the amount of the increase. The notice shall be published twice, at least seven days apart, with the first notice published no more than 90 days from the effective date of the toll increase and the second

publication not less than 60 days prior to the effective date. These provisions do not apply to toll increases approved by the authority prior to this legislation becoming law.

OOCEA

- Currently, 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 so-called "micro-contract" program has attracted more than 100 small companies to perform such tasks as erecting guard rails, 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.

  The recent unprecedented increases in transportation construction materials and labor in Florida has increased the bids for these micro-contracts, according to OOCEA staff.
  As a way to save the popular program, the OOCEA is proposing amending s. 348.754, F.S., which specifies the OOCEA's purposes and powers, to raise to a maximum $500,000 the contract threshold for a performance-bond waiver for OOCEA contractors only.

  The proposal 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 businesses which has been the successful bidder on six micro-contracts is ineligible to continue participating in the program.

Toll Transponders

- Section 338.161, F.S., allows FDOT/the Turnpike to spend funds for marketing its Sun Pass transponders, and to receive funds from advertising placed on its transponders and promotional materials to defray costs. Expressway authorities, which also sell transponders to their customers, do not have similar statutory authority.

  Nor does current law address potential uses of transponders other than for toll collection – although the Turnpike and the OOCEA have been allowing their customers to pay for parking at the Orlando International Airport from their transponder accounts. About 28 percent of all airport parking lot users there pay with a SunPass or E-Pass transponder, according to an OOCEA spokesman.

  PCB TR 06-04 would amend s. 338.161, F.S., to extend to expressway authorities the ability to market their transponders. It also would specifically allow expressway authorities and FDOT/Turnpike to enter into agreements with private or public entities to expand the uses of their transponders. Attorneys for the Turnpike and expressway authorities have said such express statutory permission is necessary so that future contracts to expand the use of transponder accounts are on firm legal ground. For example, by the fall of 2006, parking fees at the Fort Lauderdale International Airport may be paid with SunPass or E-Pass transponder accounts.

Turnpike Budget

- In 2005 the Legislature and the Governor's Office of Program and Budgeting revised several technical provisions in statute related to state budget requirements and deadlines. One of these revisions changed the roll-forward date of certified undisbursed funds in FDOT's accounts from December 31 of each year to September 30 of each year. Advancing the roll-forward date gives FDOT budget staff more information about these funds as they are preparing the agency's

Legislature Budget Request in the fall. However, the Turnpike's budget process is in a different section of law than is FDOT's, and was overlooked last year.

PCB TR 06-04 amends s. 338.2216, F.S., to correct the oversight and conform the Turnpike's roll-forward budget date to FDOT's budget process.

M.P.O. Issues

Current Situation

As established by 23 U.S.C. s. 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 project 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 FDOT'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. Rewrites of s. 339.175, F.S., have been unsuccessfully attempted the last two years.

Effect of Proposed Changes

PCB TR 06-04 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 staffs, are not as independent as they should be from county and city governments.

The draft legislation would amend 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 would amend 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 MPO, or through a staff services agreement between the MPO 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.

The draft legislation also would amend s. 339.175(1) and (2), F.S., to address a number of membership issues:

- Direct each M.P.O. to select a chair, vice chair, and clerk;
- Specify the officers' responsibilities;
- Require each M.P.O. to provide training on the urbanized transportation planning process to all who serve as members;
- Clarify that voting members shall exclude constitutional or charter officers;
- Establish a process by which alternate members are selected;
- Direct M.P.O.'s to appoint nonvoting representatives of various multi-modal organizations, who are not otherwise represented by voting members; and
- Appoint representatives of major military installations as non-voting advisors if requested by the bases.

Additionally, the draft legislation would give, or at least clarify, M.P.O. powers common to many other types of independent boards with budgets, such as the authority to: sell, donate, dedicate, or convey property; appropriate funds; receive grants-in-aid; enjoy sovereign immunity; incur debt; hire staff, including legal counsel; acquire buildings; and have all powers provided for under federal law.

Current law requires roll-call votes of all members present in order to adopt or update certain plans. The draft bill would amend s. 339.175(12), F.S., to provides for a supermajority roll call vote, or hand count vote of a majority-plus-one, of the membership present to adopt transportation plan amendments 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 FDOT's adopted work is the state's commitment to undertake transportation projects that local governments may rely on for planning and concurrency purposes.

Finally, PCB TR 06-04 would amend s. 339.175(5), F.S., to specify that contiguous M.P.O.'s must develop a report on regional planning actions and accomplishments. This report must be transmitted to each M.P.O.'s local legislative delegation by February of each even-numbered year. This is intended to document regional planning accomplishments, and to improve communication between M.P.O.'s and their local legislative delegations.

Local Transportation Funding Issues

Current Situation

Local governments have been receiving a share of gas tax revenues since 1971. Today, there are several local fuel taxes, some of them optional and requiring either voter approval or majority vote of the local governing board.

Over the years, the Legislature has created opportunities for county and city governments to levy additional sales taxes or surtaxes, upon voter approval, to pay for large or expensive infrastructure projects. One such funding mechanism is the Charter County Transit System Surtax, created in 1976 by the Legislature to finance development, construction, and operation of fixed guideway, rapid transit systems in charter counties. Imposition of the surtax under current law requires voter approval.

This section of law has been amended several times since it was created, so that currently only counties that adopted a charter prior to January 1, 1984, may seek to levy a maximum 1 percent sales surtax, after voter approval, to finance a variety of transportation infrastructure as well as operation and maintenance of public bus systems.

Seven counties are eligible to levy the surtax: Broward, Duval, Hillsborough, Miami-Dade, Pinellas, Sarasota and Volusia. Only two have levied the surtax: Duval since 1989 and Miami-Dade since 2003. Each county levies a one-half cent sales surtax. According to the state Department of Revenue, in FY 2004 the surtax in those two counties generated $194.3 million.

Some county and city officials in recent years have expressed an interest in having the surtax eligibility broadened beyond charter counties, commenting that a surtax on sales appears more palatable to taxpayers than raising fuel taxes. They also have cited rising costs of transportation construction materials and labor, the state's new emphasis on regional transportation solutions, and required local matches for new state transportation funding programs as reasons they support broadening the surtax.

Effect of Proposed Changes

PCB TR 06-04 amends 212.055(1), F.S., to rename the Charter County Transit System Surtax as the "County Transportation System Surtax." It deletes the requirement that only certain charter counties can levy the surtax. It also expands the surtax revenues' uses to include:

- Funding a regional transportation project identified in regional plans by M.P.O.'s, pursuant to s. 339.155(5), F.S.;
- As the local match for the new Transportation Regional Incentive Program, pursuant to s. 339.2819, F.S.;
- Certain capital improvement projects and concurrency projects identified in local comprehensive plans; and
- Funding bicycle and pedestrian paths.

The maximum 1-percent surtax could be levied either after passage of a referendum or by a majority vote of the total membership of a county's governing body. PCB TR 06-04 also includes a distribution formula, per interlocal agreement, so that counties can share the funds with their municipalities.

Other Transportation Issues

PCB TR 06-04 includes a number of other transportation-related issues. Briefly:

Florida Transportation Commission

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

The draft legislation would delete the reference to the commission employees as Selected Exempt Service. Commission staff said the intent of this change is to allow the commission's executive director position to be reclassified as Senior Management Service. (See "III. C. DRAFTING ISSUES OR OTHER COMMENTS" section below.)

Transportation Impacts of Slot Machine Gaming

During the 2005 regular and special sessions, legislation implementing a 2004 constitutional amendment allowing slot machine gambling in certain facilities in Broward and Miami-Dade counties included discussions on how to address transportation infrastructure impacts. Amendments proposing a study by FDOT of these impacts were unsuccessful.

PCB TR 06-04 includes a proposal for an FDOT study of slot-machine gaming impacts on public highways and other transportation facilities. The proposal directs FDOT to conduct a study and draft a report of the impacts that slot machine gaming at pari-mutuel facilities and on Indian reservation lands are having on public roads and other transportation facilities, traffic congestion and other mobility issues, facility maintenance and repair costs, emergency evacuation readiness, costs of potential future widening or other improvements, and other impacts on the motoring, non-gaming public.

Due January 15, 2007, the report must include the following information:

- a listing, description, and functional classification of access roads;
- identification of those access roads that are scheduled for improvements within FDOT's Five-Year Work Program or a long-range transportation plan;

- recent traffic counts on the access roads and projected future usage, as well as projections of impacts on secondary, feeder, or connector roads, interstate highway exit and entrance ramps;
- safety and maintenance ratings of each access road and impacts on local and state emergency or evacuation services;
- the estimated infrastructure costs to maintain, improve, or widen access roads, based on future projected needs; and
- the feasibility of implementing or raising tolls on access roads to offset and mitigate traffic impacts and to finance projected future improvements.

FDOT also can include proposed legislation in the report, which must be submitted to the Governor and the Legislature.

Environmental Permitting Process

Part IV of chapter 373, F.S., regulates the management and storage of surface waters and stormwater runoff. The Florida Department of Environmental Protection (FDEP) and the five water management districts (WMDs) representing the state's five major watersheds or basins issue permits regulating public- and private-sector projects that impact wetlands, lakes, and other water bodies. Section 373.406, F.S., lists a number of exemptions from the required permits; typically these exemptions are for activities that have minimal negative impacts to the environment, or whose impacts are being mitigated by best-management practices.

FDOT is not exempt from this permitting process. Currently, even small-scale transportation activities – such as shoring up highway shoulders, adding bike lanes to existing highways, replacing bridges in the same "foot-print," and other safety improvements -- are required to undergo the same environmental permitting requirements and meet many of the same standards as large-scale transportation projects.

PCB TR 06-04 amends several sections in Part IV, chapter 373, F.S., related to surface water permits. The bill creates exemptions for small-scale state transportation projects or activities, as defined in 373.4146, F.S. It also specifies that state transportation projects of less than 5 acres of wetlands impact may obtain general permits, rather than the more time-consuming individual permits.

The legislation also directs FDOT, FDEP, and the WMDs to develop three memoranda of understanding (MOU) within the next 30 months to address specific environmental issues. By January 1, 2007, an MOU governing the use of sovereign submerged and other state-owned lands for state transportation projects must be developed, as well as an MOU directing FDOT, FDEP, and the WMDs to develop a method for determining seasonal high-groundwater table elevation for state transportation projects. By July 1, 2008, the agencies must develop an MOU containing best management practices (BMPs) to handle roadway stormwater runoff.

Use of Recycled Materials

Section 336.044, F.S., created in 1988, directs FDOT to expand its usage of rubber tires, ash residue, recycled plastic, construction steel, and glass in construction projects, and to revise its rules and contract and bid specifications to eliminate any barriers to the use of recycled materials in transportation projects, where appropriate. FDOT is complying with the statute.

Under the bill, the existing section of law is moved to s. 334.70, F.S., without substantive change. Chapter 334, F.S., deals with FDOT administration issues, and is a more appropriate location for this section than Chapter 336, F.S., which deals with the County Road System.

General Aviation Airport Funding Match

Florida has at least 83 general aviation, or community, airports that provide a number of aviation-related services to their communities, but do not offer scheduled commercial flights.

State law allows FDOT 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. But many small GAAs and their local governments can't afford to pay the required 25-percent local match, according to FDOT staff, so the federal grant is rejected. Those funds then are likely spent in another state. If the GAA project is a priority, FDOT pays the majority of the cost from state aviation funds.

PCB TR 06-04 amends s. 332.007, F.S., to allow FDOT 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.

Other Arterial Road Funding

The share of funding for Other Arterial Roads – which are state roads used mostly by local motorists and aren't part of the Strategic Intermodal System (SIS) – is being reduced by FDOT in future years as SIS spending increases. In 2004, the Legislature specified that at least 50 percent of new flexible highway capacity funds must be allocated to the SIS/Emerging SIS and $100 million per year was provided to fund SIS/Emerging SIS projects. Eventually, FDOT plans to program as much as 72 percent of its new flexible highway capacity funds to SIS, meaning facilities not part of that network will compete for a smaller percentage of funds. Local governments and the M.P.O.'s have expressed concerns that local taxpayers may, by necessity, be forced to pay for improvements to the state-owned Arterial Roads.

PCB TR 06-04 appropriates $400 million in non-recurring general revenue in FY 06-07 to FDOT specifically for use to improve the Other Arterial Roads system.

Effective date

PCB TR 06-04 takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 112.061, F.S., to allow MPO's to set travel, per diem, subsistence, and mileage rates in excess of statutory maximums for non-state travelers.

Section 2: Amends s. 121.021, F.S., to add MPO's to the definitions of "local agency employer" and "regularly established position" for the purpose of ensuring that MPO employees are considered public employees eligible for participation in the Florida Retirement System.

Section 3: Amends s. 121.051, F.S., to add MPO's to the list of local governmental entities that may choose to have its employees participate in the Florida Retirement System.

Section 4: Amends s. 121.055, F.S., to add the executive director or staff director of each MPO to the list of public employees included in the "Senior Management Service Class."

Section 5: Amends s. 121.061, F.S., to add MPO's to the list of governmental entities that may deduct from public funds due a non-state employer any unpaid retirement system contributions. Allows MPO's to file suit to require any employer to remit the required retirement and Social Security contributions.

Section 6: Amends s. 121.081, F.S., to allow MPO employees to claim past service credits for the purposes of participating in the Florida Retirement System.

Section 7: Amends s. 316.605, F.S., to establish placement and display requirements for vehicle license plates.

Section 8: 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 9: 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 10: Amends s. 318.18, F.S., to raise the fine for motorists who fail to pay required tolls from $100 to $150. Specifies that if adjudication is withheld or a plea is entered prior to a court hearing, the fine is $100. Specifies distribution of fine proceeds. Specifies 60-day suspension of driver's license for motorists with 10 toll violations.

Section 11: Amends s. 320.061, F.S., to specify illegality of obscuring license plates with certain substances or products. Prohibits advertising, sale, distribution, purchase and use of such substances or products. Specifies law enforcement officer can 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 12: Renumbers s. 336.044, F.S., as s. 334.70, F.S., related to FDOT's use of recycled materials in transportation construction projects.

Section 13: 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 provide for additional uses of those devices on- or off-system.

Section 14: Amends s. 338.2216, F.S., to change the certified roll-forward date of unexpended Florida Turnpike funds from December 31 to September 30 of each year.

Section 15: Amends s. 338.2275, F.S., to change the Florida Turnpike's bond cap to $6 billion of bonds outstanding.

Section 16: Amends s. 339.175, F.S., related 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 members representatives of transportation modes not otherwise serving on their boards; lists M.P.O.'s powers and duties; requires M.P.O.'s to submit progress report to their local legislative delegations; makes numerous technical changes.

Section 17: Amends s. 20.23, F.S., to delete the reference to Florida Transportation Commission employees as part of the Selected Exempt Service class.

Section 18: Amends s. 332.007, F.S., to give FDOT more flexibility to match federal grants for general aviation airports.

Section 19: Creates the Osceola Expressway Authority with specific powers and duties, membership requirements, and bonding authority.

Sections 20-23: Amends various sections in Part IV of chapter 373, F.S., to exempt certain small-scale transportation projects meeting certain criteria from environmental resource permits or dredge-and-fill permits. Directs FDOT, the Florida Department of Environmental Protection, and the WMDs to

enter into memoranda of understanding on the issues of: use of state-owned lands, determination of seasonal high groundwater table elevation; and highway stormwater runoff.

Section 24: Amends s. 348.0003, F.S., to reduce membership of the Miami-Dade Expressway Authority from 13 to seven members. Specifies composition of the authority.

Section 25: Amends s. 348.0004, F.S., to create new noticing requirements for the Miami-Dade Expressway Authority for proposed toll increases.

Section 26: 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 27: Amends s. 212.055, F.S., to rename the Charter County Transit System Surtax as the "County Transportation System Surtax." Specifies the surtax may be approved by a referendum or a majority vote of the entire membership of a county governing board. Specifies distribution formula of surtax proceeds to a county and its municipalities. Specifies uses of surtax proceeds. Makes technical corrections.

Section 28: Directs FDOT to conduct a study of the impacts of slot-machine gaming at pari-mutuel facilities and Indian reservations on public transportation facilities. Specifies topics to be studied. Requires FDOT to submit its findings and recommendations in a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 15, 2007.

Section 29: Appropriates $400 million in non-recurring General Revenue in FY 2006-2007 to FDOT for construction projects on the state's Other Arterial Highways.

Section 30: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Section 15 of the bill would raise the Florida Turnpike Enterprise's bond cap from an absolute $4.5 billion in bonds to a limit of $6 billion in bonds outstanding. That means as the Turnpike retires bond issues, it can issue more, as long as it doesn't exceed $6 billion owed at any time.

   Section 18 of the bill would give FDOT the flexibility to provide a greater share of the local match required in order to obtain more federal general aviation grant funds.

2. Expenditures:

   Section 29 of the bill directs the Legislature to appropriate $400 million in non-recurring General Revenue in FY 2006-2007 to FDOT for Other Arterial highway construction projects. This special appropriation earmarks general revenue funds for transportation that the Legislature could otherwise spend on education, health, or other statewide needs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Section 27 of the bill gives all 67 counties the opportunity to levy up to 1 percent sales surtax to pay for transportation infrastructure. Additionally, the surtax revenues would be shared with the municipalities within those counties that levied the surtax. The fiscal impact is indeterminate at this time, because it is unknown how many local governments would levy in the surtax.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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:

PCB TR 06-04 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDOT, FDEP, and the WMDs appear to have sufficient existing rulemaking authority to implement the various provisions in PCB TR 06-04, should they become law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Management Services' Division of Retirement has expressed some concerns about the wording of Section 17, which deletes the reference to the Florida Transportation Commission staff being classified as Selected Exempt Service, in order to make the commission's executive director position eligible for Senior Management Service class. Division staff also offered suggestions on redrafting the provisions adding the M.P.O. executive directors and staff directors to the Senior Management Service class. Amendments will be offered to more accurately address these issues.

Part X of chapter 348, F.S., already exists, so House Bill Drafting will be directed to renumber the Osceola Expressway Authority provisions, in section 19 of PCB TR 06-04, as Part XI and renumber its individual sections as a technical correction.

Section 24 of the bill, relating to the MDX membership, needs to be amended to reflect the drafter's intent that the FDOT District 6 secretary is a non-voting member of the authority.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES