

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7005 PCB THSS 14-01 Department of Transportation

SPONSOR(S): Transportation & Highway Safety Subcommittee, Articles

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| Orig. Comm.: Transportation & Highway Safety Subcommittee | 10 Y, 3 N | Johnson | Miller |
| 1) Transportation & Economic Development Appropriations Subcommittee | | Davis | Davis |
| 2) Economic Affairs Committee | | | |

SUMMARY ANALYSIS

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

- Extends the Florida Transportation Commission's (FTC) oversight of expressway and bridge authorities to the Mid-Bay Bridge Authority.
- Repeals the Florida Statewide Passenger Rail Commission.
- Removes the local government authorization to further install and enforce additional traffic infraction detectors, better known as red light cameras.
- Reduces the red light camera penalties by the amount local governments are allocated and revises the distribution of the remaining penalty amount.
- Authorizes local governments to impose a surcharge for red light camera infractions at intersections with existing cameras to fund existing contractual agreements.
- Prohibits charges from being imposed on public parking within the right-of-way limits of the State Highway System.
- Modifies the terms and conditions under which the Department of Transportation (DOT) may sell or lease properties acquired for rights-of-way.
- Clarifies DOT's authority and responsibilities when DOT receives an unsolicited proposal to enter into a lease of DOT property for joint public-private development or commercial development by aligning the process for unsolicited proposals for such uses with the process for unsolicited proposals for public-private transportation projects.
- Clarifies DOT's authority to enter into agreements with public or private transportation facility owners for the use of DOT systems to collect and enforce tolls, fares, administrative fees, and other applicable charges due in connection with the use of the owner's facility.
- Revises provisions related to environmental mitigation for transportation projects.
- Allows toll revenues on the Pinellas Bayway to be used for maintenance.

The Revenue Estimating Conference (REC) projects a significant negative impact on General Revenue funds in FY 2014-15 related to the red light camera provisions of the legislation. This first-year impact is negative \$23.1 million, with a recurring negative impact of \$13.8 million. The REC also projects a first-year negative impact of \$4.5 million to state trust funds, with a recurring negative impact of \$2.7 million. The remainder of the bill has an indeterminate fiscal impact on both state and local government revenues and expenditures. See the Fiscal Analysis & Economic Impact statement of this analysis for specific details.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

Florida Transportation Commission (Section 1)

Current Situation

The Florida Transportation Commission (FTC) has long been charged with periodically reviewing the status of the state transportation system, including rail and other component modes, and with recommending system improvements to the Governor and the Legislature. Beginning in 2007, the Legislature also directed the FTC to:

Monitor the efficiency, productivity, and management of the authorities created under chapters 348 and 349, F.S.,¹ including any authority formed using the provisions of part I of ch. 348, F.S., and any authority formed under ch. 343, F.S., which is not monitored under subsection (3). The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles.²

There is no state entity currently charged with monitoring the Mid-Bay Bridge Authority, which was created by special law.³

Proposed Changes

The bill amends s. 20.23(2)(b)8., F.S., giving the FTC oversight authority over the Mid-Bay Bridge Authority.

Florida Statewide Passenger Rail Commission (Section 1)

Current Situation

In 2009, the Legislature provided a statutory framework for enhancing the consideration of passenger rail as a modal choice in the development and operation of Florida's transportation network.⁴ The Legislature created the Florida Rail Enterprise,⁵ modeled after the Florida Turnpike Enterprise, to coordinate the development and operation of passenger rail services statewide, and established the Florida Statewide Passenger Rail Commission (FSPRC) to monitor, advise, and review publicly-funded passenger rail systems.⁶

Specifically, and similar to the duty of the FTC, the Legislature charged the FSPRC with the function of:

Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under

¹ Chapter 343, F.S., entities include the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Area Regional Transportation Authority. Chapter 348, F.S., entities include the Miami-Dade Expressway Authority, the Tampa-Hillsborough County Expressway Authority, the Orlando-Orange County Expressway Authority, the Santa Rosa Bay Bridge Authority, and the Osceola County Expressway Authority. Chapter 349, F.S., establishes the Jacksonville Transportation Authority.

² S. 20.23(2)(b)8., F.S.

³ Ch. 2000-411, L.O.F.

⁴ Ch. 2009-271, L.O.F.

⁵ The Florida Rail Enterprise is created in ss. 341.8201 through 341.842, F.S.

⁶ The first phase (31 miles) of a commuter rail project, SunRail, -- an eventual 61-mile stretch of existing rail freight tracks through Orange, Seminole, Volusia and Osceola counties and the City of Orlando -- is under construction, and service could begin as early as 2014.

chapters 343, 349, or 163, F.S., if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.⁷

The only publicly-funded passenger rail system in the state (Tri-Rail) then and now existing is operated by the South Florida Regional Transportation Authority, which is established in part II of ch. 343, F.S. No publicly-funded statewide passenger rail service has been built since the creation of the FSPRC nor is any type of service planned.⁸ In addition, the FTC provides most of the same roles as the FSPRC for all areas of transportation in the state.

DOT provides administrative support and service to the FSPRC. The commission last met in July 2012. Six of the nine seats on the FSPRC are currently vacant and the three seats expire in August 2014.⁹

Proposed Changes

The bill repeals s. 20.23(3), F.S., eliminating the Florida Statewide Passenger Rail Commission.

Red Light Cameras (Sections 2 through 5)

Current Situation

Red Light Cameras Generally

Traffic infraction detectors¹⁰ or red light cameras enforce traffic laws by automatically photographing vehicles running red lights. The cameras are connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system photographs vehicles that enter the intersection above a pre-set minimum speed after the signal has turned red; a second photograph typically shows the driver in the intersection. In some cases, video cameras are used. Red light cameras also record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle's speed.

Red Light Cameras in Florida

In 2010, the Florida Legislature enacted ch. 2010-80, L.O.F.¹¹ The law expressly preempted to the state regulation of the use of cameras for enforcing the provisions of Ch. 316, F.S.¹² The law also authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to employ red light camera programs.¹³

Jurisdiction, Installation, and Awareness

⁷ S. 20.23(3)(b)1., F.S.

⁸ All Aboard Florida is privately funded.

⁹ October 8, 2013, and February 24, 2014 e-mails from DOT to House Transportation & Highway Safety Subcommittee Staff. Copies on file with subcommittee staff.

¹⁰ Section 316.003(87), F.S., defines "traffic infraction detector" as "[a] vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated."

¹¹ House Bill 325 (2010).

¹² S. 316.0076, F.S.

¹³ S. 316.0083, F.S.

Every red light camera must meet requirements established by DOT and must be tested at regular intervals according to procedures prescribed by DOT.¹⁴ If DHSMV, a county, or a municipality installs a red light camera at an intersection, the respective governmental entity must notify the public that a camera is in use at that intersection, including specific notification of enforcement of right-on-red violations.¹⁵ Such signage must meet specifications adopted by DOT pursuant to s. 316.0745, F.S.¹⁶

Notifications and Citations

If a red light camera captures an image of a driver running a red light, the visual information is reviewed by a traffic infraction enforcement officer. A notice of violation must be issued to the registered owner of the vehicle within 30 days of the alleged violation.¹⁷ The notice must be accompanied by a photograph or other recorded image of the violation, and must include a statement of the vehicle owner's right to review images or video of the violation, and the time, place, and Internet location where the evidence may be reviewed.¹⁸ Violations may not be issued if the driver is making a right-hand turn in a "careful and prudent manner."¹⁹

A person who has been issued a notice of violation for a red light camera violation is authorized to elect to receive a hearing within 60 days following the date of the notice of violation. No payment or fee may be required in order to receive the hearing. Further, if a person elects to receive a hearing, the person waives his or her right to challenge delivery of the notice of violation.²⁰ If the notice of violation is upheld, the local hearing officer must require the petitioner to pay the \$158 penalty and may also require the petitioner to pay county or municipal costs, not to exceed \$250.²¹

If the registered owner of the vehicle does not pay the violation within 60 days of the notification described above, the traffic infraction enforcement officer must issue a uniform traffic citation (UTC) to the owner.²² The UTC must be mailed by certified mail, and must be issued no later than 60 days after the violation.²³ The UTC must also include the photograph and statements described above regarding review of the photographic or video evidence.²⁴ The report of an officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used to commit the violation.²⁵

A traffic infraction enforcement officer must provide by electronic transmission a replica of the citation data when issued under s. 316.0083, F.S., to the court having jurisdiction over the alleged offense or its traffic violations bureau within five days after the issuance date of a UTC to the violator.²⁶

Exemptions

The registered owner of the motor vehicle is responsible for payment of the penalty unless the owner can establish that the:

- Vehicle passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Vehicle passed through the intersection at the direction of a law enforcement officer;
- Vehicle was, at the time of the violation, in the care, custody, or control of another person;
- Driver received a UTC for the alleged violation issued by a law enforcement officer; or
- Vehicle owner was deceased on or before the date that the UTC was issued.²⁷

¹⁴ S. 316.0776, F.S.

¹⁵ S. 316.0776(2), F.S.

¹⁶ Id.

¹⁷ S. 316.0083(1)(b), F.S.

¹⁸ Id.

¹⁹ S. 316.0083(2), F.S.

²⁰ Id.

²¹ SS. 316.0083(5)(e), and 318.18(22), F.S.

²² S. 316.0083(1)(c), F.S.

²³ Id.

²⁴ Id.

²⁵ S. 316.0083(1)(e), F.S.

²⁶ S. 316.650(3)(c), F.S.

To establish any of these exemptions, the registered owner of the vehicle must furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued.²⁸ If the registered owner submits an affidavit that another driver was behind the wheel, the affidavit must contain the name, address, date of birth, and if known, the driver's license number of the driver.²⁹ A UTC may be issued to the driver, and the affidavit from the registered owner may be used as evidence in a further proceeding regarding the driver's alleged violation of ss. 316.074(1) or 316.075(1)(c)1., F.S.³⁰ Submission of a false affidavit is a second degree misdemeanor.

If the vehicle is leased, the owner of the leased vehicle is not responsible for paying the UTC, nor required to submit an affidavit, if the motor vehicle is registered in the name of the lessee.³¹ If a person presents documentation from the appropriate governmental entity that a UTC was issued in error, the clerk of court may dismiss the UTC and may not charge for such service.³²

Penalties

Red light camera citations carry a \$158 penalty. When the \$158 penalty is the result of local government enforcement, \$75 is retained by the local government and \$83 is deposited with the Department of Revenue (DOR).³³ DOR subsequently distributes the penalty by depositing \$70 in the General Revenue Fund, \$10 in the Department of Health (DOH) Administrative Trust Fund, and \$3 in the Brain and Spinal Cord Injury Trust Fund.³⁴

When the \$158 penalty is the result of enforcement by DHSMV, \$45 is retained by the local government and \$113 is deposited with DOR.³⁵ DOR subsequently distributes the penalty by depositing \$100 in the General Revenue Fund, \$10 in the DOH Administrative Trust Fund, and \$3 in the Brain and Spinal Cord Injury Trust Fund.³⁶ DHSMV does not currently operate any red light cameras.³⁷

If a law enforcement officer cites a motorist for the same offense, the penalty is still \$158, but the revenue is distributed from the local clerk of court to DOR, where \$30 is distributed to the General Revenue Fund, \$65 is distributed to the Department of Health Administrative Trust Fund, and \$3 is distributed to the Brain and Spinal Cord Injury Trust Fund. The remaining \$60 is distributed in small percentages to a number of funds pursuant to s. 318.21, F.S.³⁸

Red light camera citations may not result in points assessed against the driver's driver license and may not be used for the purpose of setting motor vehicle insurance rates.³⁹

Actual Revenue

In FY 2012 – 2013, there were 77 jurisdictions operating red light camera programs throughout the state. The following chart details the state portion of the penalties remitted from participating local governments to DOR as a result of red light camera programs in place for FY 2012 – 2013:⁴⁰

²⁷ S. 316.0083(1)(d), F.S.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² S. 318.18(15), F.S.

³³ S. 318.18(15), F.S., s. 316.0083(1)(b)3., F.S.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ December 6, 2013 e-mail from DHSMV to Transportation & Highway Safety Subcommittee Staff. Copy on file with the subcommittee.

³⁸ S. 318.18(15), F.S.

³⁹ S. 322.27(3)(d)6., F.S.

⁴⁰ The Department of Revenue makes its most-recent data available online at <http://dor.myflorida.com/dor/taxes/distributions.html> (Last visited on November 25, 2013).

| JURISDICTION | COUNTY | Total |
|---|--------------|-------------|
| COCOA BEACH | Brevard | \$273,485 |
| PALM BAY | Brevard | \$167,743 |
| CORAL SPRINGS | Broward | \$206,919 |
| DAVIE | Broward | \$422,350 |
| FORT LAUDERDALE | Broward | \$1,347,417 |
| HALLANDALE BEACH | Broward | \$122,840 |
| HOLLYWOOD | Broward | \$1,756,529 |
| MARGATE | Broward | \$444,299 |
| PEMBROKE PINES | Broward | \$926,280 |
| SUNRISE | Broward | \$747,041 |
| WEST PARK | Broward | \$153,467 |
| GREEN COVE SPRINGS | Clay | \$695,042 |
| COLLIER COUNTY BOCC | Collier | \$471,268 |
| PALM COAST | Flagler | \$590,047 |
| CLEWISTON | Hendry | \$157,285 |
| BROOKSVILLE | Hernando | \$1,233,546 |
| HILLSBOROUGH COUNTY BOCC | Hillsborough | \$1,458,376 |
| TAMPA | Hillsborough | \$3,083,943 |
| TEMPLE TERRACE | Hillsborough | \$479,740 |
| CAMPBELLTON | Jackson | \$36,668 |
| GROVELAND | Lake | \$129,406 |
| TALLAHASSEE | Leon | \$863,532 |
| BRADENTON | Manatee | \$455,172 |
| COUNTY OF MANATEE BOARD OF COUNTY COMMISSIONERS | Manatee | \$253,399 |
| DUNNELLON | Marion | \$443,801 |
| AVENTURA | Miami-Dade | \$1,574,925 |
| BAL HARBOUR VILLAGE | Miami-Dade | \$1,056,731 |
| CORAL GABLES | Miami-Dade | \$392,451 |
| CUTLER BAY | Miami-Dade | \$222,855 |
| DORAL | Miami-Dade | \$763,015 |
| EL PORTAL | Miami-Dade | \$54,614 |
| FLORIDA CITY | Miami-Dade | \$924,108 |
| HIALEAH GARDENS | Miami-Dade | \$225,922 |
| HOMESTEAD | Miami-Dade | \$419,482 |
| KEY BISCAYNE | Miami-Dade | \$58,847 |
| MEDLEY | Miami-Dade | \$450,690 |
| MIAMI | Miami-Dade | \$6,464,870 |
| MIAMI BEACH | Miami-Dade | \$227,088 |
| MIAMI GARDENS | Miami-Dade | \$3,198,239 |
| MIAMI SPRINGS | Miami-Dade | \$586,477 |
| NORTH BAY VILLAGE | Miami-Dade | \$534,105 |
| NORTH MIAMI FLORIDA | Miami-Dade | \$2,016,729 |
| OPA LOCKA | Miami-Dade | \$509,699 |
| SURFSIDE | Miami-Dade | \$366,362 |
| SWEETWATER | Miami-Dade | \$1,388,081 |
| WEST MIAMI | Miami-Dade | \$750,113 |
| APOPKA | Orange | \$2,031,425 |
| EDGEWOOD | Orange | \$662,547 |
| MAITLAND | Orange | \$1,116,516 |
| OCOE | Orange | \$487,542 |
| ORANGE COUNTY BOCC | Orange | \$699,524 |
| ORLANDO | Orange | \$1,909,332 |
| WINTER PARK | Orange | \$1,055,511 |

| | | |
|-----------------------------------|------------|--------------|
| KISSIMMEE | Osceola | \$1,450,591 |
| BOCA RATON | Palm Beach | \$1,588,258 |
| BOYNTON BEACH | Palm Beach | \$936,616 |
| JUNO BEACH | Palm Beach | \$401,068 |
| PALM BEACH COUNTY BOARD OF C | Palm Beach | \$299,213 |
| PALM SPRINGS | Palm Beach | \$413,838 |
| WEST PALM BEACH | Palm Beach | \$438,113 |
| NEW PORT RICHEY | Pasco | \$931,924 |
| PORT RICHEY | Pasco | \$542,943 |
| CLEARWATER | Pinellas | \$542,737 |
| GULFPORT | Pinellas | \$164,423 |
| KENNETH CITY | Pinellas | \$486,712 |
| OLDSMAR | Pinellas | \$440,082 |
| SOUTH PASADENA | Pinellas | \$621,982 |
| ST PETERSBURG | Pinellas | \$1,585,901 |
| HAINES CITY | Polk | \$1,156,190 |
| LAKELAND | Polk | \$511,730 |
| PALATKA | Putnam | \$181,688 |
| GULF BREEZE | Santa Rosa | \$388,523 |
| MILTON | Santa Rosa | \$151,807 |
| SARASOTA | Sarasota | \$1,135,108 |
| WINTER SPRINGS | Seminole | \$0 |
| DAYTONA BEACH | Volusia | \$797,464 |
| HOLLY HILL | Volusia | \$220,614 |
| | | |
| Grand Total | | \$62,454,920 |
| \$70 General Revenue portion | | \$52,663,609 |
| \$10 Health Admin. Trust Fund | | \$7,510,916 |
| \$3 Brain & Spinal Cord Injury TF | | \$2,257,262 |

Litigation

Preemption

Prior to passage of Ch. 2010-80, L.O.F., some cities in Florida implemented red light camera programs of their own through local ordinances, notwithstanding concerns stated by the Florida Attorney General's office. A 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., but "a photographic record of a vehicle violating traffic control laws may not be used as the [sole] basis for issuing a citation for such violations."⁴¹ A 2005 Attorney General opinion reached the same conclusion, stating that, "legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices" as collected from a photographic record from unmanned cameras monitoring intersections.⁴²

In at least some cases, lawsuits were successful in attacking pre-2010 red light camera ordinances on the grounds that a camera cannot "observe" a driver's commission of a traffic infraction to the extent necessary to issue a citation. Other lawsuits were unsuccessful, on the grounds that the violation was merely a violation of a municipal ordinance, not a uniform traffic citation. The legality of the use of red light cameras prior to the 2010 legislative preemption is currently pending before the Florida Supreme Court.⁴³

Due Process

⁴¹ Attorney General Opinion AGO 97-06.

⁴² Attorney General Opinion AGO 2005-41.

⁴³ *City of Orlando v. Udowychenko*, 98 So. 3d 589 (Fla. Dist. Ct. App. 2011), review granted, 2012 WL 5991338 (Fla. Nov. 6, 2012) (No. SC12-1471).

Courts have rejected claims that red light camera ordinances and statutes violate due process. A lawsuit filed in the 15th Judicial Circuit argues that as a result of ch. 2010-80 L.O.F., the “burden of proof” has been unconstitutionally shifted from the state to the motorist, because the statute provides that “if the state is able to prove that a vehicle registered to the Petitioner was involved in the commission of a red light camera violation, [the owner] is presumed to be guilty.”⁴⁴ The suit further asserts that “the State is not required to prove the identity of the driver who committed the red light camera violation.”⁴⁵ In a Motion for Summary Judgment (Motion), the state and city of West Palm Beach, among other defenses, argued that the law affords adequate due process to violators by creating a ‘rebuttable presumption’ that the owner was also the operator. The burden-shifting created by this rebuttable presumption, the state argued, is appropriate in “noncriminal situations... [that] contemplate reasonable notice and an opportunity to hear and be heard.”⁴⁶ The Motion was granted, and the Florida Fourth District Court of Appeal affirmed the circuit court’s decision.⁴⁷

Impacts

Insurance Institute for Highway Safety (IIHS) Analysis

In February 2011, the IIHS published an analysis titled, ‘Effects of Red Light Camera Enforcement on Fatal Crashes in Large US Cities.’⁴⁸ For the analysis, IIHS researchers studied 14 cities with red light camera programs (RLCs) and forty-eight cities without RLCs. The IIHS analysis concluded that the “average annual rate of fatal red light running crashes declined for both groups, but the decline was larger for cities with red light camera enforcement programs,” than those without, 35 percent versus 14 percent, respectively.⁴⁹ Further, “[a]fter controlling for population density and land area, the rate of fatal red light running crashes during 2004-2008 for RLC cities was an estimated 24 percent lower than what would have been expected without cameras.”⁵⁰

Florida Public Health Review Report

In a January 2012 report, University of South Florida (USF) researchers argued that the IIHS analysis (mentioned above) was “logically flawed” and violated “basic scientific methods.”⁵¹ Specifically, the USF report argued that the IIHS analysis actually found that RLCs had a 25 percent higher red light running fatality rate during the ‘after’ period than non-RLCs.⁵² In addition, USF researchers pointed out, but did not limit their concerns to the following, regarding the IIHS analysis:

- It analyzed city-wide data, not specific to camera sites.
- It excluded variables known to be associated with traffic fatalities, such as changes in public policy or engineering improvements made during or between the periods.
- It expressed its findings as a “percentage change in the rate of red light running fatalities,” instead of a “change in the number of fatalities.” In other words, USF researchers argued the results of the IIHS analysis are misleading because certain variables – namely those relating to population – are reported multiple times. For example, population is a denominator, “fatalities per 100,000,” as well as a numerator, “population per square mile.”

⁴⁴ Action for Declaratory Judgment, *Salvatore Altamari vs. State of Florida; City of West Palm Beach*, 2010 CA 022083, (15th Cir.)

⁴⁵ *Id.* at 2.

⁴⁶ Defendant State of Florida’s Motion to Dismiss, *Salvatore Altamari vs. State of Florida; City of West Palm Beach*, 2010 CA 022083, (15th Cir.)

⁴⁷ *Altamari v. State of Florida; City of West Palm Beach*, 107 So.3d 552 (Fla. 4th DCA 2013).

⁴⁸ “Effects of Red Light Camera Enforcement on Fatal Crashes in Large US Cities.” Wen Hu, Anne T. McCartt and Eric R. Teoh. Insurance Institute for Highway Safety, February 2011. The IIHS press release on this analysis may be viewed at <http://www.iihs.org/news/rss/pr020111.html> (Last visited November 26, 2013). The IIHS study is on file with the Transportation and Highway Safety Subcommittee.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ “Counterpoint: The Insurance Institute for Highway Safety Study Actually Found Cities Using Red Light Cameras Had Higher Red Light Running Fatality Rates.” Barbara Langland-Orban, PhD, Etienne E. Pracht, PhD, and John T. Large, PhD. *Florida Public Health Review*, 2012, Volume 9. This study may be viewed at <http://health.usf.edu/publichealth/fphr/current.htm> (Last visited November 26, 2013).

⁵² *Id.*

- It was biased in its selection of both RLCs and non-RLCs. Specifically, USF researchers argued “the authors of the IIHS study ignored the fact that the non-RLCs had substantially fewer red light running related fatalities in the ‘before’ period . . . [o]f even greater impact, 23 [percent] of the non-RLCs had two or fewer (including zero) red light running related accidents.” Essentially, USF researchers argued that the non-RLCs had very little room to reduce the total number – or percentage rate – of accidents during the ‘after’ period.
- It alleges the IIHS data is incorrect and the research suspect because IIHS is supported by insurers.⁵³

IIHS Response to Florida Public Health Review Report

In response to the USF study, IIHS provided that, generally, regarding the validity of its research, IIHS “...examined fatal crashes before and after the cities implemented red light camera programs, and then compared the results... The idea was to see how the rate of fatal crashes changed after the introduction of photo enforcement. The independent, peer-reviewed *Journal of Safety Research* published the study in August 2011.”⁵⁴

Regarding USF’s finding that RLCs had a 25 percent higher red light running fatality rate during the ‘after’ period than non-RLCs, IIHS rebuts that, “[i]t is true that crash rates were 25 percent higher, but...” the USF report, “...ignores the fact that they were 65 percent higher in the “before” period.”⁵⁵

Furthermore, IIHS provides that, “[t]he measure that matters is what happened to fatal crashes after photo enforcement was implemented, compared with what would have been expected without it.” The IIHS study stands by its claims that, “camera cities experienced a bigger drop in fatal crash rates. In the 14 cities that had cameras in 2004-08 but didn’t have them in an earlier comparison period, automated red light enforcement saved 159 lives.”⁵⁶

Regarding the USF claim that IIHS is biased because insurers benefit from photo enforcement by raising rates on ticketed drivers, IIHS rebuts, “in most jurisdictions, including Florida, there is no insurance consequence from photo enforcement. Florida law prohibits insurers from using the violations to set rates, and in most other states tickets from cameras don’t go on driver records, and no points are assessed. Many studies have concluded that red light cameras are effective, and most of them were conducted by government agencies and other traffic safety experts not connected to the insurance industry.”^{57, 58}

DHSMV – 2013 Red Light Camera Program Analysis

Florida law requires each county or municipality operating a red light camera program to annually self-report data to DHSMV containing:

- Red light camera program results over the preceding fiscal year;
- The procedures for enforcement; and
- Other statistical data and information required by DHSMV.⁵⁹

Based on this data covering the period between July 1, 2012 and June 30, 2013 (survey period), DHSMV submitted a summary report to the Governor and Legislature containing the following findings:

⁵³ Id.

⁵⁴ “Institute responds to criticism of red light camera research.” Status Report, Vol. 47, No. 3; April 12, 2012. Insurance Institute for Highway Safety, February 2011. The IIHS status report on this analysis may be viewed at <http://www.iihs.org/iihs/sr/statusreport/article/47/3/4> (Last visited November 26, 2013).

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Section 322.27(3)(d)6., F.S., provides, “... no points shall be imposed for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer may not be used for purposes of setting motor vehicle insurance rates.”

⁵⁹ S. 316.0083(4), F.S. DHSMV uses an on-line questionnaire to facilitate data collection.

- Seventy-five agencies reported that there are 922 approaches to intersections across the state with red light cameras installed.
- Historical traffic crash data was the most important factor considered when selecting red light camera locations (roughly 61 percent); however, roughly 39 percent did not consider historical traffic crash data as the most important factor. The next most important factors were law enforcement officer observations, and video evidence of red light violations. In addition to the choices provided, the agencies considered overall traffic volume.
- During the survey period, the agencies issued a total of 1,094,106 Notices of Violation.⁶⁰
- The number of Notices of Violation challenged was 36,063. Of those violations challenged, 24,285 were dismissed (nearly 70 percent).
- In calendar year 2012, 342,308 Uniform Traffic Citations (UTC) were issued to owners who failed to pay the red light camera fine or contest the Notice of Violation within 60 days.⁶¹
- Florida law states that “a notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible.” Of the 75 agencies, 44 issue Notices of Violation and UTCs for right-on-red violations, but only 15 agencies have a policy defining ‘careful and prudent.’
- Effect on Crashes – According to DHSMV, At least one-fourth of the agencies are not tracking crash data at red light camera intersections and an additional 15 percent that do track overall crash data are not collecting data related to specific collision types (side impact, front to rear impact, etc.). Respondents who reported crash data indicated an overall decrease in crashes at intersections with red light cameras. However, crash data maintained by DHSMV indicates that crashes at all red light intersections typically increased, both statewide and in the surveyed jurisdictions.
- Agencies also reported that traffic safety improved throughout their jurisdictions. The most common improvements were reductions in drivers running red lights at intersections using cameras, increased driver and public awareness, and a jurisdiction-wide increase in cautious driving.⁶²

Since its inception, Florida’s red light camera program has been the topic of much debate – particularly with regard to the impact that red light cameras have on accidents. As stated in the report, surveyed jurisdictions reported an overall decrease in crashes in most cases; however, it must be noted that 25 percent of the agencies did not submit crash data. Further, 39 percent of the agencies did not consider historical traffic crash data as the most important factor when deciding on camera placement. Instead, these agencies may have considered video evidence of red light violations, law enforcement officer observations, citizen complaints, or historical traffic citation data as the most important factor.

To be clear, however, while there was a requirement that agencies self-report the details of the results of using red light cameras to DHSMV, there is no clear statutory requirement that this data include crash statistics.

Proposed Changes

The bill removes the local government authorization to further install and enforce additional red light camera systems. In addition, the bill reduces red light camera penalties by the amount that local governments are allocated, revises the distribution of the remaining penalty amounts, and allows local governments to impose a surcharge for violations in order to fund existing red light camera contractual agreements. To accomplish the installation and enforcement prohibition, the bill:

- Amends s. 316.0076, F.S., (the section of law that expressly preempts to the state regulation and use of red light cameras) expressly prohibiting counties and municipalities from using

⁶⁰ According to DHSMV, 72,465 citations were issued to drivers who ran red lights by law enforcement officers in calendar year 2012.

⁶¹ While the reporting period for the DHMSV report was from July 1, 2012 through June 30, 2013, information regarding the number of UTCs issued was reported for calendar year 2012.

⁶² See the Department of Highway Safety and Motor Vehicles’ “Red Light Camera Summary Report” December 17, 2013 (Revised January 8, 2014). Available at: <http://www.flhsmv.gov/html/safety.html> (Last visited January 10, 2013).

cameras for enforcing ch. 316, F.S., at any traffic control signal device location that did not have an active traffic infraction detector installed prior to July 1, 2014;

- Amends s. 316.0083(1)(a), F.S., (the section of law that provides criteria for when a notice of violation and citation can be sent) restricting counties and municipalities to only issue the notice and citation at intersections that had an active red light camera system installed prior to July 1, 2014;
- Amends s. 316.0776(1), F.S., (the section of law that provides engineering specifications for installation of red light cameras) including the requirement that county and municipal red light cameras are only allowed when installed and active prior to July 1, 2014; and
- Amends s. 316.0776(2)(b), F.S., removing the county and municipal requirement to make a public announcement and conduct a public awareness campaign before commencing a new red light camera enforcement program.

To reduce red light camera penalties by the amount that local governments are allocated and revise the distribution of the penalties, the bill:

- Amends s. 316.0083(1)(b)1.a., F.S., correcting a cross reference relating to the penalty amount specified in the notification to the registered owner of a motor vehicle involved in a violation;
- Amends s. 316.0083(1)(b)2., F.S., removing county and municipal authority to retain penalties from red light camera violations; and
- Amends s. 316.0083(1)(b)3., F.S., making the following changes:
 - When enforcement is by DHSMV, the bill:
 - Reduces the penalty from \$158 to \$83;
 - Removes the \$45 amount of the penalty that is distributed to counties and municipalities; and;
 - Reduces from \$100 to \$70 the amount of the penalty that the Department of Revenue (DOR) deposits in the General Revenue Fund.
 - When enforcement is by a county or municipality, the bill:
 - Reduces the penalty from \$158 to \$83; and
 - Removes the \$75 amount of the penalty that is distributed to counties and municipalities.

The bill also amends s. 318.18(15), F.S., making conforming changes regarding the amount of red light camera penalties and distributions required for noncriminal dispositions⁶³ and criminal offenses.⁶⁴

The bill amends ss. 316.0083(5)(e), and 318.18(22), F.S., reducing the amount of county and municipal costs that may be assessed and collected when a notice of violation is upheld by a local hearing officer, from \$250 to the current amount of the penalty, which will be \$83 if the bill becomes law.

The bill does not remove all authority for local governments to receive funds from red light camera penalties. The bill allows counties and municipalities to impose a surcharge for red light camera violations to fund existing camera systems. Specifically, a county or municipality may impose by ordinance at a public hearing and by majority vote, a surcharge for violations of s. 316.074(1), F.S., or s. 316.075(1)(c)1., F.S. The surcharge is:

- Only valid for such violations that occur at intersections that had an active traffic infraction detector installed prior to July 1, 2014; and
- Solely purposed to fund administrative costs and contractual agreements with manufacturers and vendors of traffic infraction detectors.

The bill requires surcharge revenue to be distributed quarterly to the manufacturer or vendor in accordance with each respective contractual agreement. Surplus revenue must be sent to DOR for deposit in the General Revenue Fund.

⁶³ S. 318.14, F.S.

⁶⁴ S. 318.17, F.S.

The bill also provides a reporting requirement for local governments that enact a surcharge ordinance. No later than 30 days after the end of each quarter, each county or municipality is required to report in an electronic format to DOR the amount of surcharge funds collected during each quarter of the fiscal year. The bill also requires DOR to submit the report in an electronic format to the Governor, President of the Senate, and Speaker of the House of Representatives.

Parking Meters (Section 6)

Current Situation

Existing throughout the state today within the right-of-way limits of state roads under DOT's jurisdiction are parking meters or other parking time-limit devices whose revenue is collected and used by the local jurisdictions that installed the devices. Parking meters and other parking time-limit devices facilitate commerce by ensuring that parking spaces turn over at regular intervals, and provide convenient customer access to abutting businesses.

There is no statute authorizing parking time-limit devices on DOT right-of-way. DOT has no rule or statewide procedure for issuance of permits for parking time-limit devices installed within the right-of-way limits of state roads under the DOT's jurisdiction. DOT does not receive any portion of this revenue and reports the number and location of these existing devices is unknown. Costs incurred by the local jurisdictions to purchase, install, and maintain the existing devices are unknown, as are costs incurred to enforce time limits reflected on the devices.

Proposed Changes

The bill creates s. 335.10(4), F.S., providing that no charge may be imposed for public parking within designated parking spaces located within the right-of-way limits of a road on the State Highway System.

Surplus Property (Section 7)

Current Situation

Section 337.25, F.S., authorizes DOT to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings or other improvements necessary for rights-of-way for existing or anticipated transportation facilities on the State Highway System, on the State Park Road System, or in a DOT designated rail or transportation corridor. DOT may also accept donations of land, building, or other improvements for transportation rights-of-way and may compensate an entity by providing replacement facilities when the land, building, or other improvements are needed for transportation purposes but are held by a federal, state, or local governmental entity and used for public purposes other than transportation.

DOT is required to conduct a complete inventory of all real or personal property immediately upon acquisition, including an itemized listing of all appliances, fixtures, and other severable items, a statement of the location or site of each piece of realty, structure, or severable item, and the serial number assigned to each. DOT must evaluate the inventory of real property which has been owned for at least 10 years and which is not within a transportation corridor or the right-of-way of a transportation facility.⁶⁵ If the property is not located within a transportation corridor or is not needed for a transportation facility, DOT is authorized to dispose of the property. According to the DOT, approximately 79 percent of its currently-owned surplus property is valued at under \$50,000.

Sale of Property

DOT is authorized to sell any land, building, or other real or personal property it acquired if the DOT determines the property is not needed for a transportation facility. DOT is required to first offer the

⁶⁵ Section 334.03(30), F.S., defines "transportation facility" as "any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place."

property ("first right of refusal") to the local government in whose jurisdiction the property is located, with the following exceptions:

- DOT may negotiate the sale of property at no less than fair market value as determined by an independent appraisal, to the owner holding title to abutting property, if in DOT's discretion public sale would be inequitable.
- DOT may sell property acquired for use as a borrow pit, at no less than fair market value, to the owner of abutting land from which the pit was originally acquired, if the pit is no longer needed.
- DOT may convey to a county without consideration any property acquired by a county or by DOT using constitutional gas tax funds for a right-of-way or borrow pit for a road on the State Highway System, State Park Road System, or county road system if the property is no longer used or needed by DOT; and the county may sell the property on receipt of competitive bids.
- A governmental entity may authorize re-conveyance to the original donor of property donated to the state for transportation purposes if the facility has not been constructed for at least five years, no plans have been prepared for construction of the facility, and the property is not located within a transportation corridor.
- DOT may negotiate the sale of property as replacement housing if the property was originally acquired for persons displaced by transportation projects and if the state receives no less than its investment in such properties or fair market value, whichever is lower. This benefit extends only to persons actually displaced by a project, and dispositions to any other person must be for fair market value.

Once DOT determines the property is not needed for a transportation facility and has extended and received rejection of required first rights of refusal, DOT is also authorized to:

- Negotiate the sale of property if its value is \$10,000 or less as determined by DOT estimate;
- Sell the property to the highest bidder through "due advertisement" of receipt of sealed competitive bids or by public auction if its value exceeds \$10,000 as determined by the DOT estimate;
- Determine the fair market value of property through appraisal conducted by an DOT appraiser, if the DOT begins the process for disposing of property on its own initiative, either by authorized negotiation or by authorized receipt of sealed competitive bids or public auction;
- Convey the property without consideration to a governmental entity if the property is to be used for a public purpose; and
- Use the projected maintenance costs of the property over the next five years to offset the market value in establishing a value for disposal of the property, even if that value is zero, if the DOT determines that the property will require significant costs to be incurred or that continued ownership of the property exposes the DOT to significant liability risks.

Lease of Property

DOT is further authorized to convey a leasehold interest for commercial or other purposes to any acquired land, building, or other property, real or personal, subject to the following:

- DOT may negotiate a lease at the prevailing market value with the owner from whom the property was acquired, with the holders of leasehold estates existing at the time of DOT's acquisition, or, if public bidding would be inequitable, with the owner of privately owned abutting property, after reasonable notice to all other abutting property owners.
- All other leases must be by competitive bid, and limited to five years; however the DOT may renegotiate a lease for an additional five year term without rebidding.
- Each lease must require that any improvements made to the property during the lease term be removed at the lessee's expense.
- Property that is to be used for a public purpose, including a fair, art show, or other educational, cultural, or fundraising activity may be leased at no cost to a governmental entity or school board.
- DOT may enter into a long-term lease agreement without compensation with certain public ports for rail corridors used in the operation of a short-line railroad to the port.

The appraisals currently required under ss. 337.25(4)(c) and (d), F.S., must be prepared in accordance with DOT guidelines and rules by an independent appraiser certified by DOT. When “due advertisement” is required, an advertisement in a newspaper of general circulation in the area of the improvements of not less than 14 calendar days prior to the date of the receipt of bids or the date on which a public auction is to be held satisfies the requirement.

Proposed Changes

The bill amends s. 337.25, F.S., revising the terms and conditions under which DOT may sell or lease properties acquired for transportation rights-of-way and authorizing DOT to contract for auction services used in the conveyance of real or personal property or leasehold interest⁶⁶ and authorizing such contracts to allow the contractor to retain a portion of the proceeds as compensation.

DOT is authorized to “convey” rather than “sell” land, buildings, or other real or personal property after determining the property isn’t needed for a transportation facility and to dispose of property through negotiations, sealed competitive bids, auctions, or any other means deemed to be in DOT’s best interest. Due advertisement is required for property valued at more than \$10,000, and no property may be sold at less than fair market value except as specified. DOT is authorized, rather than required, to afford the right of first refusal to a political subdivision, or local government in which the parcel is located, except in conveyances when the property has been donated to the state for transportation purposes and a facility has not been constructed for at least five years, the property was originally required for replacement housing for persons displaced by transportation projects, or property which DOT has determined a sale to anyone other than the abutting land owner would be inequitable.

DOT is prohibited from conveying a leasehold interest at a price less than DOT’s current estimate of value and specifies that a lease may be created through negotiations, sealed competitive bids, auctions, or any other means deemed to be in the best interest by DOT. A lease shall not be for a period of more than five years; however, DOT may extend the lease for an additional five years without rebidding.

DOT’s estimate of value must be prepared in accordance with DOT procedures, guidelines, and rules of valuation of real property, if the value of the property exceeds \$50,000; the sale will be negotiated at a price not less than fair market value as determined by an independent appraisal. If the estimate of value is \$50,000 or less, DOT may use a staff appraiser or obtain an independent appraisal.

The bill provides that s. 337.25, F.S., does not modify the requirements of s. 73.013, F.S.⁶⁷

Unsolicited Lease Proposals (Section 8)

Current Situation

Section 337.251, F.S., authorizes DOT to request proposals for the lease of DOT property for joint public-private development or commercial development. DOT may also receive and consider unsolicited proposals for such uses. If DOT receives an unsolicited proposal to negotiate a lease, the DOT must publish a notice in a newspaper of general circulation at least once a week for two weeks, stating that it has received the proposal and will accept, for 60 days after the date of publication, other proposals for use of the space. DOT must also mail a copy of the notice to each local government in the affected area.

Any unsolicited lease proposal must be selected based on competitive bidding, and DOT is authorized to consider such factors as the value of property exchanges, the cost of construction, and other recurring costs for the benefit of DOT by the lessee in lieu of direct revenue to DOT if such other factors are of equal value including innovative proposals to involve minority businesses. Before entering into any lease, DOT must determine that the property subject to the lease has a permanent transportation

⁶⁶ This is pursuant to s. 287.055, F.S.

⁶⁷ Chapter 73.013, F.S., relates to conveyance of property taken by eminent domain; preservation of government entity communications services eminent domain limitation; exception to restrictions on power of eminent domain.

use related to DOT responsibilities, has the potential for such future transportation uses, or constitutes airspace or subsurface rights attached to property having such uses, and is therefore not available for sale as surplus property.

Section 334.30, F.S., authorizes DOT to lease certain toll facilities through public-private partnerships and also authorizes DOT to receive unsolicited proposals. That section directs DOT to establish by rule an application fee sufficient to pay the costs of evaluating a proposal. DOT is further authorized to engage the services of private consultants to assist in the evaluation.

Unlike s. 337.251, F.S., before approving a proposal, DOT must determine that the proposed project is in the public's best interest; would not require state funds to be used unless the project is on the State Highway System; would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default or cancellation of the agreement by DOT; would have adequate safeguards in place to ensure that DOT or the private entity has the opportunity to add capacity to the proposed project and other transportation facilities serving similar origins and destinations; and would be owned by the DOT upon completion or termination of the agreement.⁶⁸ In addition, before awarding a contract for lease of an existing toll facility through a public-private partnership, DOT is required to provide an independent analysis of the proposed lease that demonstrates the cost-effectiveness and overall public benefit.

If DOT receives an unsolicited proposal for a lease through a public-private partnership, DOT must publish a notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the DOT has received the proposal and will accept, for 120 days after the initial date of publication, other proposals for the same project purpose. DOT must also mail a copy of the notice to each local government in the affected area.

Proposed Changes

The bill amends s. 337.251(2), F.S., providing statutory guidance regarding unsolicited lease proposals. It changes the time period in which DOT will accept other proposals for the lease of a particular property from 60 days to 120 days. It requires DOT to establish an application fee for the submission of proposals by rule. The fee must be limited to the amount needed to pay for the anticipated costs of evaluating the proposals. DOT may engage the services of private consultants to assist in the evaluation. Before approval, DOT must determine that the proposed lease:

- Is in the public's best interest;
- Would not require state funds to be used;
- Would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized by the traveling public and residents of the state in the event of default by the private lessee or upon termination or expiration of the lease.

Toll Interoperability (Section 9)

Current Situation

HB 599⁶⁹ and SB 1998⁷⁰ both passed in 2012 and both contained language relating to DOT's authority to enter into agreements with public or private transportation facility owners (whose systems become interoperable with DOT's systems) for the use of DOT systems to collect and enforce tolls, fares, administrative fees, and other applicable charges due in connection with use of the owner's facility. However, the bills were not identical. Language contained in the last passed bill, HB 599, is potentially ambiguous as to whether DOT is collecting tolls, fares, and fees on behalf of the facility owner or whether the facility owner would be collecting them on behalf of DOT, leading to more than one possible interpretation.

Proposed Changes

⁶⁸ The ownership requirement in s. 334.30, F.S., would not, of course, apply to a lease arrangement under s. 337.251, F.S.

⁶⁹ Ch. 2012-174, L.O.F.

⁷⁰ Ch. 2012-128, L.O.F.

The bill amends s. 338.161(5), F.S., clarifying that DOT may collect and enforce tolls, fares, administrative fees, and other applicable charges due in connection with use of the public or private transportation facility.

Environmental Mitigation (Section 10)

Current Situation

Under existing law, DOT and participating transportation authorities offset adverse environmental impacts of transportation projects through the use of mitigation banks and other mitigation options, including the payment of funds to water management districts (WMDs) to develop and implement mitigation plans. The mitigation plan is developed by the WMDs and is ultimately approved by the Department of Environmental Protection (DEP). The ability to exclude a project from the mitigation plan is provided to DOT, a participating transportation authority, or a WMD.

More specifically s. 373.4137, F.S., enacted in 1996,⁷¹ created mitigation requirements for specified transportation projects. Historically, the statute directed DOT and transportation authorities⁷² to fund, and the WMD to develop and implement, mitigation plans to mitigate these impacts. In 2012, HB 599⁷³ modified the statute to reflect that adverse impacts be offset by the use of mitigation banks and any other option that satisfies state and federal requirements. “Other” mitigation options include DOT’s payment of funds to develop and implement mitigation plans. The mitigation plan is based on an environmental impact inventory created by DOT reflecting habitats that would be adversely impacted by transportation projects listed in the next three years of DOT’s tentative work program. DOT provides funding in its work program to DEP or WMDs for its mitigation requirements. To fund the programs, the statute directs DOT and the authorities to pay \$75,000, as adjusted by a calculation using the CPI, per impacted acre.⁷⁴

The statute provides that WMD developed mitigation plans should use sound ecosystem management to address significant water resource needs and focus on activities of DEP and WMDs in wetlands and surface waters, including preservation, restoration and enhancement, as well as control of invasive and exotic vegetation. WMDs must also consider the purchase of credits from public and private mitigation banks when such purchase provides equal benefit to water resources and is the most cost effective option. Before each transportation project is added to the WMD mitigation plan, DOT must investigate the use of mitigation bank credits considering cost-effectiveness, time saved, transfer of liability and long-term maintenance. Final approval of the mitigation plan rests with DEP.

DOT and participating expressway authorities are required to transfer funds to pay for mitigation of that year’s projected impact acreage resulting from projects identified in the inventory. Quarterly, the projected impact acreage and costs are reconciled with the actual impact acreage, and costs and the balances are adjusted.

Under existing law, the statute provides for exclusion of specific transportation projects from the mitigation plan at the discretion of DOT, participating transportation authorities and the WMDs.

Proposed Changes

The bill amends s. 373.4137, F.S., providing that mitigation take place in a manner that promotes efficiency, timeliness in project delivery, and cost-effectiveness. The bill requires the following for the development of environmental impact inventories for transportation projects proposed by DOT or a transportation authority.⁷⁵

⁷¹ Ch. 96-238, L.O.F.

⁷² The statute applies to transportation authorities created in ch. 348 or 349, F.S.

⁷³ Ch. 2012-174, L.O.F.

⁷⁴ The fiscal year 2014-2015 cost per acre is \$111,426.

⁷⁵ The statute applies to transportation authorities established pursuant to ch. 348 or ch. 349, F.S.

- DOT must submit an environmental impact inventory of habitat impacts⁷⁶ and the anticipated amount of mitigation needed to offset the impacts to the WMDs by July 1, and may include in the inventory the habitat impacts and the anticipated amount of mitigation needed for future projects; and
- The environmental impact inventory must include the proposed amount of mitigation needed based on the Uniform Mitigation Assessment Method (UMAM)^{77, 78} and identification of the proposed mitigation option.

The bill requires DOT to consider using credits from a permitted mitigation bank before projects are identified for inclusion in a WMD plan, taking into account state and federal requirements, maintenance, and liability.

The bill allows DOT to implement the mitigation option identified in the environmental impact inventory by:

- Purchasing credits for current and future use directly from a mitigation bank;
- Purchasing mitigation services through the WMDs or the DEP;
- Conducting its own mitigation; or
- Using other mitigation options that meet state and federal requirements.

The bill requires funding for the identified mitigation option in the inventory to be included in DOT's work program,⁷⁹ and requires the amount programmed each year to correspond to an estimated cost of \$150,000 per mitigation credit, multiplied by the projected number of credits identified in the inventory. The estimated cost per credit will be adjusted every two years by DOT based on the average cost per UMAM credit.

The bill specifies that for mitigation implemented by the WMDs or the DEP, the amount paid each year must be based on mitigation services provided by the WMD or the DEP pursuant to an approved WMD mitigation plan. The WMDs or the DEP may request payment no sooner than 30 days before the date the funds are needed.

The bill requires that each quarter, the projected amount of mitigation must be reconciled with the actual amount of mitigation needed for projects as permitted. The programming of funds must be adjusted to reflect the mitigation as permitted.

DOT may use the associated funds for the purchase of mitigation bank credits or any other mitigation option that satisfies the requirements, if the:

- WMD excludes a project from an approved WMD mitigation plan;
- WMD cannot timely permit a mitigation site to offset the impacts of a DOT project identified in the inventory; or
- Proposed mitigation does not meet state and federal requirements.

The bill specifies that the WMD or the DEP, as appropriate, has continuing responsibility for the mitigation project upon final payment for mitigation and DOT's or the participating transportation authority's obligation is satisfied.

⁷⁶ The environmental impact inventory is based on the rules adopted pursuant to part IV of ch. 373, F.S., relating to the management of storage and surface waters and s. 404 of the Clean Water Act (33 U.S.C. s. 1344).

⁷⁷ UMAM is adopted in ch. 62-345, F.A.C. Information on UMAM is available at: <http://www.dep.state.fl.us/water/wetlands/mitigation/umam/index.htm> (Last visited November 7, 2013).

⁷⁸ Rule 62-345.100(1), F.A.C., implements s. 373.414(18), F.S. requiring "the establishment of an uniform mitigation assessment method to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits." Rule 62-345.100(2), F.A.C., recites that the assessment method is "a standardized procedure for assessing the functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss."

⁷⁹ DOT's work program is developed pursuant to s. 339.135, F.S.

The bill requires each WMD or the DEP to invoice DOT for mitigation services to offset only the impacts of a DOT project identified in the inventory, beginning with the March 2015 WMD plans. If the WMD identifies the use of mitigation bank credits to offset a DOT impact, the WMD must exclude that purchase from the mitigation plan and DOT must purchase the bank credits.

The bill requires that for mitigation activities occurring on existing WMD or DEP mitigation sites initiated with DOT mitigation funds prior to July 1, 2013, the WMD or the DEP is required to invoice DOT at \$75,000 per acre multiplied by the projected acres of impact. The cost per acre must be adjusted by a calculation using the CPI.

The WMD must maintain records of the costs incurred including:

- Planning;
- Land acquisition;
- Design and construction;
- Staff support, long-term maintenance and monitoring of the mitigation site; and
- Other costs necessary to meet federal requirements.⁸⁰

The bill requires the funds identified in DOT's work program or participating transportation authorities' escrow accounts, for preparing and implementing the mitigation plans, adopted by the WMDs on or before March 1, 2014, to correspond to \$75,000 per acre multiplied by the projected acres of impact, adjusted by the CPI. The WMD must maintain records of the costs incurred in implementing the mitigation. If monies paid to a WMD exceed the amount spent by the WMD to implement the mitigation, the funds must be refunded to FDOT or the participating transportation authority. This provision expires June 30, 2015.

The bill requires each WMD to develop a plan to offset only the impacts of transportation projects in the inventory for which a WMD is implementing mitigation. The WMD plan must identify the site where the WMD will mitigate, the scope of the mitigation activities at each mitigation site, and the functional gain at each mitigation site as determined using UMAM. The mitigation plan must be submitted to the WMD's governing board for review and approval. The bill requires that the WMD provide a copy of the draft mitigation plan to the DEP at least 14 days before governing board approval. The plan may not be implemented until it is subsequently approved by the DEP. The bill also requires the plan to describe how the mitigation offsets the impacts of each transportation project and provide a schedule for the mitigation services.

Pinellas Bayway (Section 11)

Current Situation

Opened in 1962, the Pinellas Bayway is a series of toll bridges on State Roads 682 and 679 in Pinellas County, which are owned and operated by DOT. All tolls collected on the Pinellas Bayway shall first be used for the payment of annual operating costs and second to discharge the current bond indebtedness. Thereafter, tolls collected shall be used, together with the interest earned, by DOT for the construction of Blind Pass Road, State Road 699 improvements, and for Phase II of the Pinellas Bayway improvements.⁸¹

Proposed Changes

The bill amends section 2 of ch. 85-364, L.O.F., as amended by ch. 95-382, L.O.F., providing that payment of maintenance costs will become an eligible use of Pinellas Bayway toll revenue before it is deposited into the toll construction account. Additionally, the bill removes references to Blind Pass Road and State Road 699 improvements which have been completed.

Conforming Changes (Section 12)

The bill amends ss. 110.205(2)(j) and (m)3., F.S., conforming cross-references.

⁸⁰ The federal requirements are pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. s. 332

⁸¹ Ch. 95-382, L.O.F., amending section 2 of ch. 85-364, L.O.F.

Effective Date (Section 13)

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

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|------------|---|
| Section 1 | Amends s. 20.23, F.S., relating to the Department of Transportation. |
| Section 2 | Amends s. 316.0076, F.S., relating to the regulation and use of cameras. |
| Section 3 | Amends s. 316.0083, F.S., relating to the Mark Wandall Traffic Safety Program; administration; report. |
| Section 4 | Amends s. 316.0776, F.S., relating to traffic infraction detectors; placement and installation. |
| Section 5 | Amends s. 318.18, F.S., relating to the amount of penalties. |
| Section 6 | Amends s. 335.10, F.S., relating to the State Highway System; vehicle regulation; prohibited use and traffic; liability for damage; parking. |
| Section 7 | Amends s. 337.25, F.S., relating to the acquisition, lease, and disposal of real and personal property. |
| Section 8 | Amends s. 337.251, F.S., relating to the lease of property for joint public-private development and areas above or below department property. |
| Section 9 | Amends s. 338.161, F.S., relating to the authority of department or toll agencies to advertise and promote electronic toll collection; expanded uses of electronic toll collection system; authority of department to collect tolls, fares, and fees for private and public entities. |
| Section 10 | Amends s. 373.4137, F.S., relating to mitigation requirements for specified transportation projects. |
| Section 11 | Amends s. 2 of ch. 85-386, L.O.F., as amended by ch. 95-382, L.O.F., relating to the Pinellas Bayway. |
| Section 12 | Amends s. 110.205, F.S., relating to career service; exemptions to conform. |
| Section 13 | Provides an effective date. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**A. FISCAL IMPACT ON STATE GOVERNMENT:****1. Revenues:**

On January 10, 2014, the Revenue Estimating Conference projected a significant negative fiscal impact on state revenues due to the red light camera provisions of this bill. This includes a loss of \$23.1 million of General Revenue and \$4.5 million in state trust funds in the first year, with a recurring negative impact of \$13.8 million from General Revenue and \$2.7 million from state trust funds. The trust funds impacted include: the Emergency Medical Services Trust Fund, the Brain and Spinal Cord Injury Trust Fund, the State Courts Revenue Trust Fund, the State Attorneys Revenue Trust Fund, the Public Defenders Revenue Trust Fund, the State Radio System Trust Fund, and the Additional Court Cost Clearing Trust Fund.

In FY 2012 – 2013, the state portion of the penalties collected from red light camera violations has resulted in \$62,454,920, of which \$52,663,609 was distributed to the General Revenue Fund; \$7,510,916 to the DOH Administrative Trust Fund; and \$2,257,262 to the Brain and Spinal Cord Injury Program Trust Fund.

The bill reduces from \$100 to \$70 the amount of the penalty that DOR deposits in the General Revenue Fund when the fine is the result of a DHSMV red light camera. However, DHSMV does not currently operate red light camera programs or enforce such violations. The bill does not change the \$70 amount of the penalty that DOR deposits in the General Revenue Fund when the fine is the result of a local government's red light camera. Also, revenue from penalties levied as a result of a law enforcement officer's citation, as opposed to a red light camera, would continue to be distributed to these funds.

Unsolicited lease proposals of DOT property for joint public-private development or commercial development may bring an indeterminate amount of revenue to DOT through fees DOT would be authorized to collect to defray the cost of reviewing such proposals. Such fees would be sufficient to pay the costs of evaluating these proposals; and this authorization is consistent with authority already provided to the department for evaluating similar public-private partnership proposals.

2. Expenditures:

The Florida Transportation Commission may incur an indeterminate, but insignificant increase in expenses associated with its monitoring of the Mid-Bay Bridge Authority.

The changes to provisions relating to the disposal of DOT's surplus property could reduce the cost of sale and leasing. While indeterminate, there could be nominal savings associated with eliminating the need for outside contracted appraisals of certain properties.

DOT may incur an indeterminate negative fiscal impact associated with reviewing unsolicited lease proposals for development of DOT property. However, the expenses should be offset by the fees DOT is authorized to collect.

DOT anticipates an indeterminate reduction in costs associated with the change to the environmental mitigation provisions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On January 10, 2014, the Revenue Estimating Conference projected a significant negative fiscal impact on local revenues due to the red light camera provisions of this bill. This includes a loss of \$27.1 million in the first year with a recurring negative impact of \$16.3 million.

Current law requires local governments to retain up to \$75 out of each \$158 red light camera penalty. The bill would eliminate this source of revenue for local governments. The bill also removes the local government authorization to further install and enforce additional red light camera systems. However, the bill allows local governments to impose a surcharge limited to the amount necessary for funding administrative costs and contracts related to existing red light cameras.

Although the bill reduces the amount of county and municipal costs that may be assessed and collected from red light camera violations through the local hearing process from \$250 to the current amount of the penalty, this still would allow for local governments to assess and collect \$83 in such costs, which are in addition to the \$83 penalty amount.

Local governments may see a decrease in revenues due to the prohibition of charging for public parking within the right-of-way limits of the State Highway System. However, the amount of the potential decrease is indeterminate.

If disposal of surplus DOT property becomes more efficient, there will likely be a positive impact to local governments as more of these parcels are returned to the property tax rolls. However, due to widely varying factors that could impact the amount, it is impossible to estimate a dollar amount.

2. Expenditures:

Expenditures from the red light camera surcharge are only to be used to fund administrative costs and contractual agreements with manufacturers and vendors of red light camera systems.

For those local governments that have implemented red light camera programs as a result of the 2010 legislation, the bill would eliminate the revenues currently expected by those governments, but would also reduce expenses related to enforcement, legal challenges, and initial costs of implementation, related to additional red light camera systems.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill reduces the possibility of motor vehicle operators being issued a \$158 penalty for violations occurring at additional red light cameras, and reduces the penalty amount to \$83 for violations occurring at existing red light cameras. The bill also reduces the amount of county and municipal costs that may be assessed and collected when a notice of violation is upheld by a local hearing officer, from \$250 to the current amount of the penalty, which will be \$83 if the bill is enacted into law. Consequently, the bill will reduce the overall amount that motor vehicle operators would have to pay from \$158 (original penalty alone) to \$108 (reduced penalty + surcharge), and when an infraction is upheld through the local hearing process from a maximum of \$408 (original penalty + original county and municipal fee) to \$191 (reduced penalty + reduced county and municipal fee + surcharge).

D. FISCAL COMMENTS:

In Fiscal Year 2009-2010, DOT implemented the FSPRC without any additional resources or appropriations. Eliminating the FSPRC enables these resources to be directed back to their original purpose.

Although the bill reduces the red light camera penalty from \$158 to \$83, it does not change the \$158 penalty for when a law enforcement officer cites a motorist for a red light violation on the street. It is important to note the difference in costs between a red light citation that is issued on the street and one that is issued from photographic evidence. Procedurally, red light camera notices of violation may be contested and paid through a local hearing process before the violation becomes a more costly uniform traffic citation (additional costs include court costs and fees). From an enforcement standpoint, a red light camera violation does not require a law enforcement officer to make the traffic stop and issue the citation on the street. This would provide for cheaper enforcement, and additional officers to focus on other crimes.

Local governments will see a decrease in revenues due to the prohibition of charging for public parking within the right-of-way limits of the State Highway System. It is unknown whether any local governments have issued bonds secured by revenues from parking meters or other parking time-limit devices located on state right-of-way.

DOT advised environmental mitigation projects are currently included in DOT's work program budget submitted annually for legislative approval, and the additional tracking and accounting requirements will have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOT to establish by rule an application fee for the submission of unsolicited lease proposals.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 9, 2014, the Transportation & Highway Safety Subcommittee adopted two amendments to PCB THSS 14-01 before reporting it favorably. The amendments:

- Revise the surcharge that the cities and counties are allowed to impose for a red light camera violation.
- Prohibit charges from being imposed on public parking within the right-of-way limits of the State Highway System.

The analysis is drafted to the PCB as amended.