The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 1118
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Gainer and others
SUBJECT:	Transportation
DATE:	May 1, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Fav/CS**
2.	Pitts	Pitts	ATD	**Recommend: Fav/CS**
3.	Pitts	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1118 reflects the Department of Transportation's (FDOT) 2017 Legislative Package, as well as additional transportation-related matters. Specifically, the bill:

- Revises provisions relating to compensation for the FDOT secretary, assistant secretaries, Turnpike Enterprise executive director, and district secretaries; requires compensation for these positions to be based on a specified market analysis; and sets minimum salaries for these positions.
- Re-names the Charter County and Regional Transportation System Surtax as the County, Municipality, and Regional Transportation System Surtax; extends the authority of counties to levy the surtax to certain municipalities under specified conditions; authorizes the county within which the municipality is located to also levy a surtax under specified conditions.
- Directs the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to develop a Florida Smart City Challenge grant program;
- Increases the allowable gross vehicle weight for vehicles using natural-gas fueling systems by up to 2,000 pounds under certain conditions, resulting in a reduced overweight penalty and avoiding a potential loss of federal funds;
- Revises autonomous vehicle alert system requirements, consistent with current law, to clarify that an autonomous vehicle may operate in autonomous mode without a person physically present in the vehicle;

- Applies certain insurance coverage requirements, should legislation addressing insurance for transportation network companies (TNCs) become law, to autonomous vehicles used by TNCs to provide transportation, regardless of whether a human operator is physically present in the vehicle when the ride occurs;
- Defines the term "automated mobility district," directs the FDOT to designate such districts and, in determining a community's eligibility for designation, to consider applicable federal agency criteria for such districts and apply the criteria to eligible developments.
- Aligns state and federal law by mandating bridge inspections at regular intervals as required by the Federal Highway Administration, as opposed to intervals not exceeding two years, resulting in compliance with revised national bridge inspection requirements and avoiding a potential but likely insignificant diversion of federal funds;
- Directs the FDOT to establish a process for applications for placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely and to establish criteria for the design and fabrication of the markers; provides for incorporation of emblems of belief on such markers under certain conditions; provides requirements for the placement of such markers; and directs the FDOT to remove such markers under certain conditions, subject to certain notice requirements.
- Increases the current $120,000 cap on "fast response" contracts to $250,000 to account for increased construction costs due to inflation;
- Authorizes the FDOT and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to placing and maintaining within the right-of-way limits of any road or public owned rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities.
- Allows turnpike bonds to be validated at the option of the Division of Bond Finance (DBF) and limits the location of publication of certain related notices to Leon County;
- Authorizes the FDOT, subject to verification of economic feasibility and under specified conditions and restrictions, to include acquisition of the Garcon Point Bridge and related assets as a turnpike project in its tentative work program, and to acquire the bridge upon approval of the acquisition through approval of the FDOT's tentative work program.

Upon such acquisition, terminates a certain lease-purchase agreement between the FDOT and the Santa Rosa Bay Bridge Authority (SRBBA), and repeals the SRBBA.

- Repeals the Florida Highway Beautification Council and creates the Florida Highway Beautification Grant Program within the FDOT;
- Defines "department" to mean the FDOT for purposes of part II of ch. 343, F.S., relating to the South Florida Regional Transportation Authority (SFRTA);
- Prohibits the SFRTA from entering into, extending, or renewing any contract without the FDOT's prior review and written approval of the proposed expenditures if such contract may be funded with FDOT-provided funds;
- Deems funds provided by the FDOT to the SFRTA to be state financial assistance subject to specified requirements;
- Requires the FDOT to provide funds to the SFRTA in accordance with a written agreement containing certain provisions;
- Authorizes the FDOT to advance funds to the SFRTA at the start of each fiscal year, with monthly payments for maintenance and dispatch on the South Florida Rail Corridor over the fiscal year on a reimbursement basis;

- Expressly includes transportation network companies (TNCs) in the list of providers of services for the transportation disadvantaged;
- Authorizes the FDOT Secretary to enroll the state in any federal pilot program or project for the collection and study of specified types of transportation-related data;
- Provides an alternate means to measure permitted sign height on interstate highways within Broward County and authorizes the FDOT to promulgate rules.
- Deletes and revises cross-references to conform to changes made in the act.
- Provides the bill take effect on July 1, 2017

The bill's provisions have both indeterminate negative and positive fiscal impacts on state funds, of which combined are neutral. The bill may have impacts to revenues and expenditures related to the SFRTA and the DBF. See Section V., "Fiscal Impact Statement," for details.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

FDOT Executive Management Compensation (Section 1)

Present Situation:

FDOT Organization: Section 20.23, F.S., creates the FDOT, "which shall be a decentralized agency. "The FDOT is statutorily organized into seven districts, each of which is headed by a district secretary, as well as a turnpike enterprise and a rail enterprise, each of which is headed by an executive director.[1] The secretary, appointed by the Governor from among three persons nominated by the FTC and subject to confirmation, must be a proven, effective administrator who by education and experience clearly possesses broad knowledge of the administrative, financial and technical aspects of the development, operation, and regulation of transportation systems and facilities.[2] The district secretaries and the executive directors must be registered professional engineers or, in lieu of professional engineer registration, may hold an advanced degree in an appropriate related discipline, such as a Master of Business Administration.[3]

The FDOT's central office is directed to establish departmental policies, rules, procedures, and standards and to monitor the implementation of such policies, etc., in order to ensure uniform compliance and quality performance by the districts and central office units.[4] Additionally, to provide for efficient operations and expedite the decision-making process, the FDOT is directed to provide for maximum decentralization to the districts.[5]

Senior Management Service System/Compensation: Currently, any secretary appointed after July 5, 1989, and the assistant secretaries are exempt from the Senior Management Service System

[1] Section 20.23(4)(a), F.S.
[2] Section 20.23(1)(b), F.S.
[3] Section 20.23(4)(a), F.S.
[4] Section 20.23(3)(a), F.S.
[5] Section 20.23(4)(a), F.S.

(SMSS) contained in part III of chapter 110, F.S, and must receive compensation commensurate with their qualifications and competitive with compensation for comparable responsibility in the private sector.[6] Additionally, the Department of Management Services (DMS) is authorized to exempt positions within the FDOT that are comparable to positions within the SMSS pursuant to s. 110.205(2)(j), F.S.,[7] or positions comparable to positions in the Selected Exempt Service under s. 110.205(2)(m), F.S.[8]

Section 110.402, F.S., limits the SMSS to those positions that are exempt from the Career Service System by s. 110.205(2), F.S., and for which the salaries and benefits are set by the DMS. Among the powers and duties of the DMS is to provide for "a classification plan and a salary and benefit plan that provides appropriate incentives for the recruitment and retention of outstanding management personnel and provides for salary increases based on performance."

Effect of Proposed Changes:

FDOT Organization: The bill amends s. 20.23(1), F.S., revising paragraph designations and clarifying that the FDOT shall consist of a central office that establishes policies and procedures and districts that carry out projects as authorized or required under the policies and procedures implemented by the central office.

Senior Management Service System/Compensation: Current s. 20.23(1)(e), F.S., is re-designated as s. 20.23(1)(f)1., providing that any secretary appointed after July 1, 2019, and the assistant secretaries are exempt from the SMSS. This provision appears to have no effect with respect to the current FDOT secretary and assistant secretaries, as these positions are already exempt from the SMSS under ss. 20.23(1)(e) and 110.205(2)(j), F.S. As to any secretary appointed after July 1, 2019, commensurate compensation must be assessed on the basis of comparable responsibility in other public sector organizations, in addition to that in the private sector.

Section 20.23(1)(f)2., F.S., is created, providing that the salaries of the FDOT secretary and the assistant secretaries shall be established by the FTC. The salaries are to be determined by a market analysis focused on comparably skilled individuals in other public sector organizations, including, but not limited to, expressway, aviation, and port authorities, and on comparably skilled individuals in the private sector. The market analysis must serve as a basis for ascertaining compensation levels required to retain the secretary and assistant secretaries in their positions within the FDOT and to attract external talent that can fulfill the FDOT's mission and effect change. The salary of the secretary must be at least $180,000. The salary of an assistant secretary must be ten percent below that of the secretary who appoints the assistant. This provision of the bill, effective July 1, 2017, would require the FTC to conduct the market analysis and set the minimum salary for the secretary at $180,000. Effective on the same date,

[6] Section 20.23(1)(e), F.S.

[7] Section 20.23(5), F.S. Section 110.205(2)(j), F.S., deems a number of positions exempt from the Career Service System, including without limitation, the appointed secretaries, assistant secretaries, and executive directors of all departments, the FDOT's State Transportation Development Administrator and State Public Transportation and Modal Administrator, district secretaries, and a number of other FDOT positions.

[8] *Id.* Section 110.205(2)(m), F.S., exempts from the Career Service System a variety of other positions, including positions in the FDOT assigned primary duties of serving as regional toll managers and managers of offices, as specified in s. 20.23(3)(b) and (4)(c), F.S.

the minimum assistant secretary salaries must be set at ten percent below that of the secretary that appoints the assistant secretary, which would be ten percent below $180,000 at a minimum.

The bill also creates subparagraphs in subsection (4)(a) of s. 20.23, F.S. New s. 20.23(4)(a)2., F.S., exempts the FDOT district secretaries and the executive director of the Turnpike Enterprise from the SMSS. This provision appears to have no effect with respect to the district secretaries and the executive director, as these positions are already exempt from the SMSS under s. 110.205(j), F.S. Effective July 1, 2017, the bill requires these positions to receive compensation commensurate with their qualifications and competitive with compensation for comparable responsibility in other public sector organizations and in the private sector. The salaries of these positions must be 15 percent below that of the secretary who is head of the FDOT at the time the district secretaries and the executive director take their positions, which would be 15 percent below $180,000 at a minimum.

Charter County and Regional Transportation System Surtax (Section 2)

Present Situation:

Current law authorizes nine different types of local discretionary sales surtaxes (also known as local option sales taxes). These surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admission, and other authorized transportation pursuant to ch. 212, F.S., and communications services. The surtax rate varies from county to county and is dependent on the particular levies authorized in a given jurisdiction. The surtaxes must be collected "when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to state's sales and use tax."[9] The surtax applies to:

- The first $5,000 of any single taxable item, when sold to the same purchaser at the same time, with certain exclusions.
- The first $5,000 of the total sales price of motor vehicles, mobile homes, boats, or aircraft.
- Communications services as broadly defined in ch. 202, F.S.

One of the nine authorized types of local option sales taxes is the Charter County and Regional Transportation System Surtax, at a rate of one percent. Section 212.055(1), F.S., authorizes all of the following counties to levy this surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate:

- Each charter county that has adopted a charter;
- Each county which has its government consolidated with that of one or more municipalities;
- Each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chs. 343 or 349, F.S.

A proposal to adopt a discretionary sales surtax and to create a trust fund within the county accounts must be placed on the ballot at a time set by the county's governing body.[10] Proceeds from the surtax must be applied to as many or as few of the uses enumerated, in whatever combination the county commission deems appropriate.[11]

[9] *See* the Florida Revenue Estimating Conference *2017 Florida Tax Handbook* at 219-220, available at:http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf.
[10] Section 212.055(1)(c), F.S.
[11] Section 212.055(1)(d), F.S.

The Department of Revenue distributes the surtax proceeds to the county for deposit into the county trust fund or remittance by the county's governing body to an expressway, transit, or transportation authority created by law. Generally, the surtax proceeds may be expended by the county government or an expressway, transit or transportation authority created by law for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges.[12]

The governing body of a county is authorized, but not required, to enter into an interlocal agreement under which the county may distribute proceeds from the surtax to a municipality or an expressway or transportation authority to be used for the specified purposes. If a county enters into any agreement, the county is required to revise the agreement no less than every five years to include any newly created municipalities.[13]

Effect of Proposed Changes:

The bill re-names the Charter County and Regional Transportation System Surtax as the County, Municipality, and Regional Transportation System Surtax. The bill extends the authority of counties to levy the surtax to a municipality with a population greater than 270,000, located in a county with a population greater than 1.28 million but less than 1.5 million,[14] subject to approval by a majority of the electorate of the municipality, under the following conditions:

- The surtax may only be levied within the limits of the municipality. Levy of a surtax by a municipality does not prohibit the county from levying a surtax as otherwise authorized.
- If a municipality levies a surtax, the county in which the municipality is located may also levy a surtax, at the same level as the municipality, pursuant to a referendum of the voters of the county who reside outside the municipality, with collection of the proceeds restricted outside the municipal limits.
- Alternatively, the bill authorizes the municipality and the county, by interlocal agreement, to levy such a surtax by referendum of all the voters of the county.

The bill leaves the rate of the authorized surtax unchanged at up to one percent and conforms provisions to changes made by the act.

Florida Smart City Challenge Grant Program (Section 3)

Present Situation:

The United States Department of Transportation (USDOT) launched a Smart City Challenge in December of 2015. The challenge asked mid-sized cities "to develop ideas for an integrated, first-of-its-kind smart transportation system that would use data, applications, and technology to

[12] *Id.*
[13] *Id.*
[14] Currently, Tampa and Orlando, according to the Office of Economic and Demographic Research's latest *Florida Population Estimates for Counties and Municipalities*, April 1, 2016, available at: http://edr.state.fl.us/Content/population-demographics/data/2016_Pop_Estimates.pdf. (Last visited April 29, 2017.)

help people and goods move more quickly, cheaply, and efficiently."[15] The USDOT committed up to $40 million to one winning city.[16] The USDOT received 78 applications from cities across America, including the following cities in Florida: Jacksonville, Miami, Orlando, St. Petersburg, Tallahassee, and Tampa. However, no Florida city received any funding.

Ultimately, Columbus, Ohio won the challenge by proposing "a comprehensive, integrated plan addressing challenges in residential, commercial, freight, and downtown districts using a number of new technologies, including connected infrastructure, an integrated data platform, autonomous vehicles, and more."[17]The USDOT then worked with seven finalists to further develop the ideas proposed by the cities and, in October of 2016, announced an additional $65 million in grants to support advanced technology transportation projects. Again, no Florida city was among the finalists.

Effect of Proposed Changes:

The bill creates s. 316.0898, F.S., to direct the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles, to develop the Florida Smart City Challenge grant program and establish grant award requirements for municipalities or regions. Grant applicants must demonstrate and document the adoption of emerging technologies and their impact on the transportation system, and must address at least the following focus areas:

- Autonomous vehicles;
- Connected vehicles;[18]
- Sensor-based infrastructure;
- Collecting and using data;
- Electric vehicles, including charging stations; and
- Developing strategic models and partnerships;

The stated goals of the grant program include, without limitation:

- Identifying transportation challenges and identifying how emerging technologies can address those challenges;
- Determining the emerging technologies and strategies that have the potential to provide the most significant impacts;
- Encouraging municipalities to take significant steps to integrate emerging technologies into their day-to-day operations;
- Identifying the barriers to implementing the grant program and communicating those barriers to the Legislature and appropriate agencies and organizations;
- Leveraging the initial grant to attract additional public and private investments;

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[15] *See* the USDOT website available at: https://www.transportation.gov/smartcity. (Last visited April 11, 2017.)
[16] *See* the USDOT website available at: https://www.transportation.gov/sites/dot.gov/files/docs/Smart%20City%20Challenge%20Lessons%20Learned.pdf. (Last visited April 11, 2017.)
[17] *See* the USDOT website available at: https://www.transportation.gov/smartcity/winner. (Last visited April 11, 2017.)
[1818] These are "vehicles that use any of a number of different communication technologies to communicate with the driver, other cars on the road (vehicle-to-vehicle [V2V], roadside infrastructure (vehicle-to-infrastructure [V2I]), and the 'Cloud.'" *See* the Center for Advanced Automotive Technology website available at: http://autocaat.org/Technologies/Automated_and_Connected_Vehicles/. (Last visited April 14, 2017.)

- Increasing the state's competitiveness in the pursuit of grants from the USDOT, the United States Department of Energy (USDOE), and other federal agencies;
- Committing to the continued operation of programs implemented in connection with the grant;
- Serving as a model for municipalities nationwide;
- Documenting the costs and impacts of the grant program and lessons learned during implementation; and
- Identify solutions that will demonstrate local or regional economic impact.

The FDOT is directed to develop eligibility, application, and selection criteria for the program grants and a plan for the promotion of the grant program to municipalities or regions of the state as an opportunity to compete for grant funding, including the award of grants to a single recipient and secondary grants to specific projects of merit within other applications. The FDOT may contract with a third party demonstrating knowledge and expertise in that section's focuses and goals to provide guidance in the development of that section's requirements.

The FDOT must submit the grant program guidelines and plans for promotion of the program to the Governor, Senate President, and House Speaker on or before January 1, 2018. Lastly, the new s.316.0898, F.S., expires on July 1, 2018.[19]

Natural Gas-Fueled Vehicle Weight (Section 4)

Present Situation:

Motor Vehicle Weights and Overweight Penalties

The rate of damage to roads and bridges generally increases as vehicle weight increases, resulting in higher maintenance and replacement costs and potentially creating unsafe conditions. Maximum legal vehicle weights are established for all public roads and bridges and allow compliant vehicles to travel most public highways of the state without causing excessive road damage or bridge failures. However, some roads and bridges have lower weight limits due to their age, condition, or design, and these facilities have posted weight limits; *i.e.*, their lower weight limits are identified through signage at the facility. Vehicles exceeding the maximum weight limits on a facility, including posted facilities, are presumed to have damaged the highways of the state and are subject to fines.[20]

Gross vehicle weight is the total weight of a vehicle (or combination of vehicles) and any cargo carried by the vehicle.[21] Federal and state laws generally provide that gross vehicle weight may not exceed 80,000 pounds for both the interstate and non-interstate highway system, [22] or the maximum allowed by the Federal Bridge Formula.[23] In Florida, the maximum weight limit is

[19] SB 2500 currently authorizes the FDOT to use up to $75,000 to establish the Florida Smart City Challenge Grant Program.
[20] *See* ss. 316.545 and 316.555, F.S.
[21] Section 316.003(27), F.S.
[22] *See* 23 U.S.C. 127 (2015) and s. 316.535, F.S.
[23] This formula is used to determine the maximum allowable weight that any set of axles on a motor vehicle may carry on the Interstate Highway System. For further detail, see the Federal Highway Administration website: http://ops.fhwa.dot.gov/freight/sw/brdgcalc/calc_page.htm. (Last visited January 20, 2017.)

22,000 pounds on a single axle, and 44,000 pounds on a tandem axle.[24] These limits do not apply to those vehicles and loads that cannot be easily dismantled or divided (*i.e.*, "non-divisible"), or to other vehicles exceeding the maximum weight limits, if a special permit has been issued in accordance with applicable state laws.[25]

However, the vehicle's number of axles and the distance between the axles in part controls a vehicle's maximum allowable weight. Thus, a vehicle's maximum allowable gross weight may be reduced because the concentration of weight on a particular axle may reach unacceptable limits. For example, pavement and bridge stress is greater for a 30-foot truck with two axles and a gross vehicle weight of 50,000 pounds than a 54-foot tractor-trailer combination of the same weight because the tractor-trailer distributes the load over a greater area. Therefore, the 30-foot truck will have a lower maximum allowable weight.

For weight violations, including violations of weight criteria contained in a special permit, the penalty is as established in s. 316.545(3)(a), F.S., *i.e.*, $10 for 200 pounds or less and 5 cents per pound for each pound over 200 pounds. Unlawful axle weights are penalized at $10 for the first 600 pounds, if the gross weight of the vehicle (or vehicle combination) does not exceed the maximum allowable gross weight.[26]

For each violation of the operational or safety restrictions established in a special permit, *e.g.*, using a restricted bridge, the penalty may be as high as $1,000. However, the cumulative total for multiple violations may not exceed $1,000.[27]

These penalties are deposited into the State Transportation Trust Fund and used for roadway maintenance and repair.[28]

Cargo Capacity of Vehicles Fueled by Natural Gas Compared to Gasoline or Diesel-Fueled Vehicles

According to the U.S. Department of Energy, about 150,000 vehicles in this country are powered by natural gas, many of which are heavy-duty vehicles.[29] Natural gas vehicles (NGVs) are reported to be similar to gasoline or diesel-fueled vehicles with respect to power, acceleration, and cruising speed; and the use of natural gas as fuel provides additional advantages, such as its domestic availability, its relative low cost, and lower emissions.[30] However, these advantages may be offset by displacement of cargo capacity, due to the heavier weight of NGV fueling systems relative to gasoline or diesel systems.[31]

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[24] *See* the Florida Highway Patrol *Commercial Motor Vehicle Manual,* July 2016, at p. 8, available at: https://www.flhsmv.gov/fhp/CVE/2015truckingmanual.pdf. (Last visited January 26, 2017.)
[25] 23 U.S.C. 127(a) (2015) and s. 316.550, F.S...
[26] Section 316.545(3)(a), F.S.
[27] 316.550(10)(c), F.S.
[28] Section 316.545(6), F.S.
[29] *See* the U.S. Department of Energy Alternative Fuels Data Center website available at: http://www.afdc.energy.gov/vehicles/natural_gas.html. (Last visited November 18, 2016.)
[30] *Id.* at: http://www.afdc.energy.gov/fuels/natural_gas_benefits.html. (Last visited November 18, 2016.)
[31] *Id...* "The driving range of NGVs is generally less than that of comparable conventional vehicles because of the lower energy density of natural gas. Extra storage tanks can increase range, but the additional weight may displace cargo capacity."

Fast Act Natural Gas Vehicle Weight Allowance

The Fixing America's Surface Transportation Act (FAST Act), which authorized Federal surface transportation programs for fiscal years 2016-2020, contained a number of incentives for natural gas. In apparent recognition of the potential displacement of cargo capacity due to the heavier weight of NGVs, the FAST Act authorized a vehicle, if operated by an engine fueled primarily[32] by natural gas, to exceed any (single axle, tandem axle and bridge formula) weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by an amount that is equal to the difference between:

- The weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle, and
- The weight of a comparable diesel tank and fueling system.[33]

The Federal Highway Administration (FHWA) has advised states to review state statutes, regulations, and procedures, as well as load rating and posting calculations and enforcement practices, for necessary updating.[34] Further, the FHWA noted that while the federally increased weight allowance does not preempt a state from enforcing *state* weight limits on all highways, it does "prevent[] the FHWA from imposing funding sanctions if a state authorizes the additional weight limit on its Interstate system."[35]

Florida law has long adhered to the general maximum weight limits contained in the Federal law,[36] and the FDOT issues special permits for vehicles transporting non-divisible loads and for other vehicles exceeding maximum weight limits.[37] Florida law currently grants a 500-pound weight allowance for idle reduction technology consistent with federal law, but does not authorize the additional weight for NGVs allowed in the FAST Act.[38]

FDOT Permitting of NGVs

In response to the FAST Act, the FDOT performed an assessment to determine if any bridges, other than those currently posted for weight, would require posting because of the additional weight allowance for NGVs authorized in the Act. The FDOT advises that the study concluded that the additional weight of NGVs would not require bridges to be re-load rated or posted.[39] The FDOT also developed a permit process in June of 2016 to allow the operation of NGVs at the new Federal weight limits, but no permits were issued, perhaps because the industry is unaware of the need for such a permit.[40] As a result, the FDOT estimates that approximately 292

[32] Some NGVs are fueled solely by natural gas, some are bi-fueled with two separate fueling systems that enable them to run on either natural gas or gasoline, and some are dual-fueled. Dual-fueled vehicles "are traditionally limited to heavy-duty application, have fuel systems that run on natural gas, and use diesel fuel for ignition assistance." *Supra* note 8.
[33] P.L. 114-94, s. 1410 (2015). *See also* the Federal Highway Administration Memorandum dated February 24, 2016, *Information: Fixing America's Surface Transportation Act (FAST Act) Truck Size and Weight Provisions.* (On file in the Senate Transportation Committee.)
[34] *Id.*, Memorandum Question and Answer 16.
[35] *Id.*, Question and Answer 14.
[36] *See* s. 316.535, F.S.
[37] *See* s. 316.550, F.S.
[38] Section 316.545(3)(b), F.S.
[39] *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)
[40] *Id.*

citations[41] have been issued, totaling $375.00 in fines, 15 of which have been contested before the Commercial Motor Vehicle Review Board.[42] The FDOT advises no relief was granted for any of the 15 contested citations.[43]

Effect of Proposed Changes:

The bill amends s. 316.545(3), F.S., to provide for a specified reduction in the actual gross weight of an NGV, when calculating the penalty for exceeding maximum weight limits, so long as the actual gross weight of the vehicle does not exceed 82,000 pounds, exclusive of the existing 500-pound weight allowance for idle reduction technology. The bill will create greater uniformity between federal and state law, which is especially important for truck drivers doing interstate business, and avoids a potential withholding of federal funds.

If an NGV is found to be overweight, then the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the natural gas tank and fueling system carried by that vehicle, and a comparable diesel tank and fueling system, before applying the currently applicable penalty. If the actual gross weight of the NGV exceeds 80,000 pounds plus the certified weight difference, a penalty of $.05 per pound of excess weight could be assessed.

If the NGV is also equipped with idle reduction technology, the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the natural gas tank and fueling system carried by that vehicle and a comparable diesel tank and fueling system, and by an additional 500 pounds. If the actual gross weight of the NGV with idle reduction technology exceeds 80,500 pounds plus the certified weight difference, a penalty of $.05 per pound of excess weight could be assessed.

The bill contains a proof requirement; *i.e.*, the vehicle operator must present a written certification that identifies the weight of the natural gas tank and fueling system, and the difference in weight of a comparable diesel tank and fueling system, upon request of a weight inspector or a law enforcement officer. The certification must originate from the vehicle manufacturer or the installer of the natural gas tank and fueling system.

The bill excludes vehicles described in s. 316.535(6), F.S., from qualifying for the reduced calculation. These vehicles, typically called straight trucks, include dump trucks, concrete mixing trucks, trucks engaged in waste collection and disposal, and fuel oil and gasoline trucks designed and constructed for special type work. The cargo unit and the power unit on these trucks sit on the same frame,[44] meaning that the concentration of weight is greater than, for example, a combination vehicle with an axle configuration that distributes the weight over a greater area. These vehicles continue to be limited to a gross weight of 70,000 pounds.

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[41] The FDOT notes this estimate is based on a search for companies that utilize NGVs and received an overweight citation in the last year. Because the citation form is not designed to specify this particular infraction, some of the 292 cases may not be related to the FAST Act. *Id.*

[42] Section 316.545(7), F.S., establishes the Board within the FDOT and authorizes the Board to review any penalty imposed under chapter 316, F.S.

[43] *Supra* note 11.

[44] *See* s. 316.003(76), F.S.

Autonomous Vehicle Alert System Clarification (Section 7)

Present Situation:

Section 316.003(2), F.S., defines "autonomous vehicle" as any vehicle equipped with autonomous technology. That subsection also includes a definition of "autonomous technology," which means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed *without the active control or monitoring by a human operator*.[45] If a vehicle is equipped with technology that requires the active control or monitoring by a human operator, that vehicle does not meet the definition of "autonomous vehicle" under Florida law.

Section 316.85, F.S., authorizes a person who possesses a valid driver license to operate an autonomous vehicle in autonomous mode on roads in this state if the vehicle is equipped with autonomous technology as defined in s. 316.003(2), F.S. A person is deemed to be the operator of an autonomous vehicle operating in autonomous mode when the person causes the vehicle's autonomous technology to engage, regardless of whether the person is physically present in the vehicle while the vehicle is operating in autonomous mode. Thus, under Florida law, an autonomous vehicle may be operated in autonomous mode even if a person is not physically present in the vehicle.

Section 319.145, F.S., requires autonomous vehicles registered in this state to:

- Have a system to safely alert the operator if an autonomous technology failure is detected while the technology is engaged. When an alert is given, the *system* must:
  - Require the operator to take control of the autonomous vehicle; or
  - If the operator does not, or is not able to, take control of the autonomous vehicle, be capable of bringing the vehicle to a complete stop.
- Have a means inside the vehicle to visually indicate when the vehicle is operating in autonomous mode; and
- Be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state.

Effect of Proposed Changes:

The bill amends s. 319.145, F.S., to clarify system requirements when an alert is given. The bill provides that if the *human* operator does not, or is not able to, take control of the autonomous vehicle, *or if a human operator is not physically present in the vehicle*, the system must be capable of bringing the vehicle to a complete stop. This revision is consistent with current law allowing an autonomous vehicle to operate in autonomous mode without a person physically present in the vehicle.

[45] The latter definition does not include a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed *to drive without the active control or monitoring by a human operator.*

Transportation Network Companies/Autonomous Vehicles/Insurance (Section 5)

Present Situation: Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire.

TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and drives to pick up the passenger. Once at the destination, payment is made through the phone application.

Drivers generally use their personal vehicles, and most personal automobile insurance policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.[46] Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is transporting passengers, but such insurance is not required. This could lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In contrast, taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage.[47]

Issues relating to insurance coverage for TNCs, and other TNC-related matters, have been under review by the Florida Legislature in recent years. The Florida Senate is currently considering legislation that would create uniform statewide minimum insurance requirements for TNCs and TNC drivers. Generally, when a TNC driver is logged onto the digital network[48] but not engaged in a prearranged ride,[49] the legislation requires:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;
- Personal Injury Protection (PIP) benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[50] and

[46] The exclusion in Florida law is mentioned in s. 627.041(8), F.S.
[47] Section 324.032(1)(a), F.S.
[48] CS/CS/SB 340 currently defines "digital network" to mean any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of rides with TNC drivers.
[49] CS/CS/SB 340 currently defines "prearranged ride" to mean the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle.
[50] These provisions, known as the No-Fault Law, require coverage for PIP to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.

- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.[51]

When a TNC driver is engaged in a prearranged ride, the following insurance requirements apply:

- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine[52] under ss. 627.730-627.7405, F.S.; and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.[53]

Interest in the use of autonomous vehicles in ridesharing services is increasing, including with respect to fully autonomous vehicles that do not require drivers. General Motors reportedly paid $500 million for a stake and strategic alliance in Lyft to develop the use of autonomous vehicles in ridesharing and recently spent $1 billion to buy a technology company that has self-driving cars on roads in California.[54]Current Florida law does not specifically address insurance requirements for autonomous vehicles, or for autonomous vehicles used by TNCs.

Effect of Proposed Changes:

The bill creates s. 316.851, F.S., with an effective on the same date that the TNC legislation currently under consideration, or similar legislation, takes effect, if such legislation is enacted in the 2017 Regular Session or in any extension thereof. In that case, the bill would require an autonomous vehicle used by a TNC *to provide a prearranged ride* to be covered by automobile insurance as required by s. 627.748, F.S., created in that TNC legislation, regardless of whether a human operator is physically present in the vehicle when the ride occurs. As the legislation currently stands, the required coverage would be primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage, and uninsured and underinsured vehicle coverage as required by s. 627.727, F.S. The coverage ultimately specified in that legislation, if enacted, would be required coverage for an autonomous vehicle used by a TNC to provide prearranged transportation, regardless of the presence or absence of a human driver.

The bill further requires an autonomous vehicle logged on to a digital network but not engaged in a prearranged ride to maintain insurance coverage as defined in s. 627.748(7)(b), F.S. As the TNC legislation currently stands, subsection (7)(b) requires during the identified period of time:

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[51] Section 627.727(1), F.S., requires uninsured motorist vehicle coverage if a policy provides bodily injury coverage unless it is specifically rejected.

[52] Although the legislation currently requires PIP coverage at the same amounts required of limousines, limousines are excluded from PIP requirements under s 627.733(1)(a), F.S. Thus, the effect of this provision should it remain in the TNC legislation and be enacted would be to require no PIP coverage when an autonomous vehicle is engaged in a prearranged ride, regardless of whether a human operator is physically present in the vehicle when the ride occurs.

[53]*See* the CS/CS/SB 340 staff analysis for additional information and details of the legislation, available at: http://www.flsenate.gov/Session/Bill/2017/340/Analyses/2017s00340.rc.PDF. (Last visited April 24, 2017.)

[54]*See Autonomous Cars with Ridesharing Key to GM's Vision for Future Mobility*, available at: http://www.autotrader.com/car-shopping/autonomous-cars-with-ridesharing-key-to-gms-vision-for-future-mobility-254768. *See also Ford Targets Fully Autonomous Vehicle for RideSharing in 2021; Invests in New Tech Companies, Doubles Silicon Valley Team*, available at https://media.ford.com/content/fordmedia/fna/us/en/news/2016/08/16/ford-targets-fully-autonomous-vehicle-for-ride-sharing-in-2021.html . (Last visited April 14, 2017.)

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;
- PIP benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[55] and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.

The bill also requires an autonomous vehicle used to provide a transportation service to carry in the vehicle proof of the required coverage at all times while operating in autonomous mode.

Automated Mobility Districts (Section 6)

Present Situation:

The USDOE Office of Energy Efficiency and Renewable Energy (EERE) partners with business, industry, universities, and other organizations with a focus on using renewable energy and energy efficiency technologies. One of EERE's functions is to encourage the growth of such technologies by offering funding opportunities for their development and demonstration.[56] According to the EERE, most grants are selected competitively through funding opportunity announcements (FOAs) and solicitations that occur from time to time. FOA's are posted online with directions and information for finding funding opportunities, for applying for funding, and for managing awards, as well as necessary forms.[57]

The National Renewable Energy Laboratory (NERL) is a research arm of the USDOE. The NERL in a recent study introduced the term "automated mobility districts" to describe a campus-sized implementation of automated vehicle technology to realize the benefits of fully-automated vehicle mobility service. Such districts are envisioned to use fully automated and driverless vehicles, service is confined to a geographic boundary that encompasses a relatively dense area of trip attractions, and mobility within the district is restricted to or dominated by automated vehicles. The NERL has concluded that its initial study "points to the need to better understand ride-sharing scenarios and calls for future research on sustainability benefits of an AMD system at both vehicle and system levels."[58]

Effect of Proposed Changes:

The bill creates s. 316.853, F.S., to define the term "automated mobility districts" to mean a master planned development or combination of contiguous developments in which the deployment of autonomous vehicles as defined in s. 316.003, F.S., as the basis for a shared mobility system is a stated goal or objective of the development or developments. The FDOT is directed to designate such districts. In determining eligibility of a development for such

[55] These provisions, known as the No-Fault Law, require coverage for personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.
[56] *See* the EERE website available at: https://www.energy.gov/eere/funding/eere-funding-opportunities. (Last visited April 14, 2017.)
[57] *Id.*
[58] *See Estimate of Fuel Consumption and GHG Emission Impact on an Automated Mobility District*, Chen, Young, Gonder, and Qi, presented at the 4th International Conference on Connected Vehicles & Expo in Shenzhen, China, October 19-23, 2015, available at: http://www.nrel.gov/docs/fy16osti/65257.pdf. (Last visited April 14, 2017.)

designation, the FDOT must consider applicable criteria from federal agencies for autonomous mobility districts and apply those criteria to eligible developments in the state.

According to proponents, this proposed statute is expected to increase the likelihood of receiving approval of federal grant applications for funding opportunities associated with the deployment of autonomous vehicles in Florida.Bridge Inspection Frequency (Section 8)

Present Situation:

National Bridge Inspection Standards

Federal law requires the U.S.D.O.T. Secretary, in consultation with states and Federal agencies having jurisdiction, to inventory all highway bridges on public roads; to classify the bridges according to serviceability, safety, and essentiality for public use; and to assign each bridge a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation.[59] The Federal-aid Highway Act of 1968 required the Secretary to develop regulations establishing national bridge inspection standards with the primary purpose of locating and evaluating existing bridge deficiencies to ensure the safety of the traveling public. The current standards are specified in 23 C.F.R. 650, Subpart C, and apply to all highway bridges located on all public roads.

States are required by the standards to inspect all highway bridges located on public roads that are fully or partially located within the state, except for bridges owned by Federal agencies. Inspections are to be conducted in accordance with the American Association of State Highway and Transportation Officials *Manual for Condition Evaluation of Bridges*, which "serves as a standard and provides uniformity in the procedures and policies for determining the physical condition, maintenance needs, and load capacity of the Nation's highway bridges."[60]

National Inspection Frequency Revisions

Before 2005, with specific reference to frequency of bridge inspections, the national standards generally required each bridge to be inspected at regular intervals not to exceed two years but recognized that certain bridges require inspection at less than two-year intervals. Those earlier standards also recognized that the maximum inspection interval for certain bridges could be appropriately increased in cases in which past inspection reports and favorable experience and analysis justified an increase. States were authorized to submit a detailed proposal and supporting data for approval of an increased interval, but in no case could the maximum time period between inspections exceed four years.

Changes to the standards, effective January 13, 2005, among other items, included expansion of the bridge inspection frequency provisions, such that the FDOT is required to:

- Inspect each bridge at regular intervals not exceeding 24 months for routine inspections;[61] establish criteria to determine the level and frequency of inspection of bridges at less than 24-

[59] *See* 23 U.S.C. 144 (2015).
[60] *Federal Register*, Vol. 74, no. 246, Thursday, December 24, 2009, at 68378.
[61] "Routine inspection" is defined as a regularly scheduled inspection consisting of observations and/or measurements needed to determine the physical and functional condition of the bridge, to identify any changes from initial or previously recorded conditions, and to ensure that the structure continues to satisfy present service requirements. 23 C.F.R. 650.305 (4-1-16).

month intervals, considering such factors as age, traffic characteristics, and known deficiencies; and seek written approval from the Federal Highway Administration (FHWA) to inspect certain bridges at greater than 24-month intervals if past inspection findings and analyses justify an increased interval.

- Inspect underwater structural elements at regular intervals not exceeding 60 months; establish criteria to determine the level and frequency of inspection of these elements at less than 60-month intervals, considering such factors as construction material, environment, age, scour characteristics, condition rating from past inspections, and known deficiencies; and seek written approval from the FHWA to inspect certain underwater structural elements at greater than 60-month intervals, but not exceeding 72 months, if past inspection findings and analysis justify an increased interval.
- Inspect fracture critical members (FCMs)[62] at intervals not to exceed 24 months; establish criteria to determine the level and frequency of inspection of FCMs at less than 24-month intervals, considering such factors as age, traffic characteristics, and known deficiencies; and establish criteria to determine the level and frequency of damage, in-depth, and special inspections.[63]

Compliance Reviews

States are subject to an annual review for compliance with the national standards using 23 metrics[64] that contain criteria for assessing a state's compliance with each metric. A state is notified of any finding of noncompliance and provided an opportunity for correction. If a state ultimately remains noncompliant, the penalty is that the state must dedicate certain funds that would otherwise be available for projects to correcting the noncompliance.[65] The FDOT advises it has received no such notification.[66]

Florida Bridge Inspection Law

The existing Florida Statutes do not comply with the described national bridge inspection frequency provisions. Currently, Florida law requires the governmental entity having maintenance responsibility for each bridge on a public transportation facility to inspect such bridges at regular intervals not to exceed two years.[67, 68]

[62] "Fracture critical member" is defined as a member in tension, or with a tension element, whose failure would probably cause a portion of or the entire bridge to collapse. A "fracture critical member inspection" is defined as a hands-on inspection of a fracture critical member or member components that may include visual and other non-destructive evaluation. *Id.*
[63] "Damage inspection" is defined as an unscheduled inspection to assess structural damage resulting from environmental factors or human actions. "In-depth inspection" is defined as a close-up inspection of one or more members above or below the water level to identify any deficiencies not readily detectable using routine inspection procedures, with hands-on inspection being necessary at some locations. "Special inspection" is defined as an inspection scheduled at the discretion of the bridge owner, used to monitor a particular known or suspected deficiency. *Id.*
[64] *See* the *Federal Register*, Vol. 79, No. 91, Monday, May 12, 2014, for a listing of each metric and citations to their locations in the Code of Federal Regulations, as well as an overview of the compliance review process.
[65] These are National Highway Performance Program funds and Surface Transportation Block Grant Program funds. *See* 23 U.S.C. 144(h)(5) (2015).
[66] Telephone conversation with the FDOT staff, January 26, 2017.
[67] Section 335.074(2), F.S.
[68] Section 335.074(3)(b), F.S., requires each governmental entity to report its inspections to the FDOT.

The FDOT does have already-established criteria for routine inspections at intervals not exceeding 24 months, and for certain other inspection levels and frequencies for bridges determined to require inspection at less than 24-month intervals.[69] However, because of the existing state mandate for inspection of each bridge at intervals *not exceeding* 2 years, the FDOT has not developed nor sought written approval from the FHWA for the inspection intervals, criteria, and FHWA approvals required by the revised national standards.

Effect of Proposed Changes:

The bill amends s. 335.074(2), F.S., to require bridge inspections at regular intervals *as required by the Federal Highway Administration*, rather than at intervals not exceeding 2 years. This revision will allow the FDOT to seek FHWA approval of its existing procedures, develop and establish the criteria for the required increased inspection intervals, and obtain the FHWA's approval, consistent with the revised national standards. A potential but likely insignificant[70] diversion of federal funds from actual projects to noncompliance correction is avoided.

Highway Memorial Markers/Traffic-Related Fatalities (Section 9)

Present Situation:

Current Florida law contains no provision specifically relating to the placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System.[71] Current state law also contains no provision addressing the use of belief system symbols or imagery on roadside memorial markers. Research suggests some states ban roadside markers outright as a matter of safety, without regard to symbols or imagery. Other states, including Florida, have programs or policies for roadside markers that use a standard round sign with a safety message, such as, "Drive Safely," with the deceased person's name on the sign. Still other states appear to allow roadside memorials for a limited time, after which they are removed, but whether those memorials may display belief system symbols or imagery is not clear. Arizona's Roadside Memorial *Policy* allows markers to "incorporate various types of symbols."[72]

Emblems of belief are allowed under certain conditions in National Cemeteries. The U.S. Department of Veterans Affairs National Cemetery Administration (Administration) prohibits graphics, logos, or symbols on government-furnished headstones or markers placed in National Cemeteries, other than the available emblems of belief, the Civil War Union Shield, the Civil War Confederate Southern Cross of Honor, and the Medal of Honor insignias.

An "emblem of belief" is defined in federal regulations to mean an emblem that represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief

[69] *See* the FDOT Procedure 850-010-030-j, section 3.2. (Copy on file in the Senate Transportation Committee.)
[70] Telephone conversation with the FDOT staff February 1, 2017.
[71] Section 334.044(24), F.S., defines "State Highway System" as the interstate system and all other roads within the state that were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state's jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state's jurisdiction. These facilities are facilities to which access is regulated.
[72] Copy available at: http://azdot.gov/docs/default-source/about/roadside-memorial-policy.pdf?sfvrsn=0. (Last visited April 5, 2017.)

system that was functionally equivalent to a religious belief system in the life of the decedent. In the absence of evidence to the contrary, the Veterans Administration will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system of a deceased eligible individual. The religion or belief system represented by an emblem need not be associated with or endorsed by a church, group or organized denomination. Emblems of belief do not include social, cultural, ethnic, civic, fraternal, trade, commercial, political, professional or military emblems.[73, 74]

Emblems of belief for inscription on government-furnished headstones and markers may be requested by the decedent's next of kin, a person authorized in writing by the next of kin, or a personal representative authorized in writing by the decedent.[75]

After establishing the decedent's initial eligibility, emblems of belief not available for inscription on headstones and markers may be requested by application that contains:

- Certification by the applicant that the proposed new emblem represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent;[76] and
- A three-inch diameter digitized black and white representation of the requested emblem that can be reproduced in a production-line environment.[77]

In the absence of evidence to the contrary, the Administration will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system. If a dispute arises, federal regulation provides for resolution first in accordance with any specific instructions given by the decedent, second in accordance with the instructions of the descendant's surviving spouse and, if no surviving spouse, in accordance with the agreement and written consent of the decedent's living next of kin.[78]

Effect of Proposed Changes:

The bill creates s. 335.094, F.S., relating to highway memorial markers, modeled after the National Cemetery regulations. Recognizing the FDOT's mission to provide a safe transportation system, the bill expresses Legislative intent that the FDOT allow the use of highway memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely, by memorializing people who have died as a result of a traffic-related crash.

The FDOT is required to establish a process, including any forms deemed necessary, for submitting applications for installation of memorial markers. The bill authorizes the following individuals to submit applications:

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[73] 38 C.F.R. 38.632(b)(2) (7-1-16).
[74] *See* the Administration's website, which reflects the currently approved emblems of belief, available at: https://www.cem.va.gov/hmm/emblems.asp. (Last visited April 14, 2017.)
[75] 38 C.F.R. 38.632(b)(1) (7-1-16).
[76] 38 C.F.R. 38.632(e)(1) (7-1-16).
[77] 38 C.F.R. 38.632(e)(2) (7-1-16).
[78] 38 C.F.R. 38.632(g) (7-1-16).

- A member of the decedent's family, which includes the decedent's spouse; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent; or
- Any individual who is responsible under the laws of this state for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent.

The FDOT must establish criteria for the design and fabrication of the markers, including, but not limited to, marker components, fabrication material, and size.

At no charge to the applicant, the FDOT is authorized to install a marker described as a round aluminum sign panel with white background and black letters uniformly inscribed "Drive Safely, In Memory Of" followed by the decedent's name.

On request of the applicant and payment of a reasonable fee set by the FDOT to offset production costs, the marker may incorporate the available emblems of belief approved by the National Cemetery Administration. An applicant may request a new emblem not specifically approved by the Administration for inscription on a marker as follows:

- The applicant must certify that the propose new emblem represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent.
- In the absence of evidence to the contrary, the FDOT is directed to accept as genuine an applicant's statement of the religious or functionally equivalent belief system of a decedent.

If the FDOT determines that any application is incomplete, the FDOT is directed to notify the applicant in writing of the missing information, and that no further action on the application will be taken until the missing information is provided.

For any approved application, the FDOT is directed to place a memorial marker at or near the location of the fatality in a fashion that reduces driver distraction and positions the marker as near the right-of-way line as possible.

Lastly, the bill provides that memorial markers are intended to remind passing motorists of the dangers of unsafe driving and are not intended for visitation, and directs the FDOT to remove a marker if the FDOT determines its presence creates a safety hazard. In such cases, the FDOT is directed to post a notice near where the marker was located indicating the marker has been removed and provide contact information for pickup of the marker. The FDOT must store any removed marker for 60 days and may thereafter, at its discretion, dispose of any marker not claimed.

Fast Response Contracts Cap (Section 10)

Present Situation:

FDOT Contracting Authority

Generally, the FDOT is authorized to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System, the State Park Road System, or of any roads placed under its supervision by law. This authorization includes construction and maintenance contracts for rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities. With certain exceptions, these contracts must be advertised for competitive bidding, and such contracts generally must be awarded to the lowest responsible bidder.[79]

Required Surety Bond

A successful bidder on a construction or maintenance contract is required to post a surety bond in an amount equal to the awarded contract price with certain exceptions. One exception is the FDOT's authorization to waive all or a portion of the bond requirement if the contract price is $250,000 or less, and if the FDOT determines that the project is of a noncritical nature and that nonperformance will not endanger public health, safety, or property.[80] With respect to construction contracts, the FDOT may waive all or a portion of a bond for contracts of $150,000 or less if the FDOT makes the same determination.[81]

Fast Response Contracting Cap

One of the exceptions to the competitive bidding requirement currently authorizes the FDOT, under certain conditions, to enter into construction and maintenance contracts, up to the amount of $120,000, without advertising and receiving competitive bids. The FDOT may exercise this authority when the FDOT determines that doing so is in the best interest of the public for reasons of public concern, economy, or improved operations or safety, and only when circumstances dictate rapid completion of the work:

- To ensure timely completion of projects or avoidance of undue delay for other projects;
- To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or
- To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.[82]

The FDOT is required to make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract and give consideration to disadvantaged business enterprise participation. If, however, the work exists within the limits of an existing contract, the FDOT must make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract. These contracts fund projects such as

[79] Section 337.11, F.S.
[80] Section 337.18(1), F.S.
[81] Section 337.14(2). F.S.
[82] Section 337.11(6)(c), F.S.

sinkhole repairs that protect roadways and other infrastructure, traffic railing and guardrail repairs needed to protect the safety of the traveling public, and drainage and inlet work that prevents roadway flooding during heavy rain.

When first enacted in 1999, the threshold amount was set at $60,000,[83] and the Legislature increased that amount to the current $120,000 in 2002.[84]

Construction Costs and Inflation

The FDOT advises that the usefulness of this statute has been limited by increased construction costs due to inflation and notes the only issue with meeting the conditions outlined in the statute is the current $120,000 cap. The FDOT performed an analysis to reach an approximate estimate of the current $120,000 contract cap converted to present-day costs, concluding that the current cap, adjusted for inflation, amounts to over $200,000.[85] The FDOT advises that increasing the current cap to $250,000 "will account for increased construction costs and extend the Department's ability to quickly respond to construction and maintenance needs that are in the best interest of safety and the economy."[86]

Effect of Proposed Changes:

The bill amends s. 337.11(6)(c), F.S., to increase the current $120,000 threshold amount to $250,000. The FDOT will be authorized to enter into maintenance and construction contracts, after making the necessary determination and when circumstances dictate rapid completion of the work, up to a contract amount of $250,000. The FDOT's described authority to waive all or a portion of a required surety bond remains unchanged.

Right-of-Way Use by Communications Services Providers/Wireless Facilities (Section 11)

Present Situation:

Section 337.401, F.S., authorizes the FDOT and local governmental entities that have jurisdiction and control of public roads (jointly referred to as the or an authority) to prescribe and enforce reasonable rules or regulations for placing and maintaining structures across, on, or within the right-of-way limits of a road. An authority may authorize any person who is a resident of this state or any corporation either organized under the laws of this state or licensed to do business within this state to use a right-of-way for the utility[87] in accordance with the authority's adopted rules or regulations.[88] The statute prohibits a utility from installing, locating, or

[83] Ch. 99-385, Laws of Fla.
[84] Ch. 2002-20, Laws of Fla.
[85] *See* the FDOT's Office of Policy Planning document, *Advisory Inflation Factors for Previous Years (1987-2016)*, available at: http://www.fdot.gov/planning/policy/costs/retrocostinflation.pdf. (Last visited January 25, 2017.)
[86] *See* the FDOT's 2017 Legislative Proposal, *Rapid-Response Contracts-Price Increase*. (On file in the Senate Transportation Committee.)
[87] Existing paragraph 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the 'utility'." This indirectly defines the term "utility" not by type of entity or by type of service provided but by the type of structure an entity might use in providing some type of service.
[88] Section 337.401(2), F.S.

relocating within a right-of-way unless authorized by a written permit.[89] The permit must require the permit holder to be responsible for any damage resulting from the use of the right-of-way.90 Section 337.401(1)(a), F.S., currently does not expressly authorize an authority to prescribe and enforce reasonable rules or regulations with respect to placing and maintaining voice or data communications services lines or wireless facilities within the rights-of-way.

Effect of Proposed Changes:

The bill amends s. 337.401(1)(a), F.S., authorizing the FDOT and local governmental entities with jurisdiction and control of public roads or publicly owned rail corridors to prescribe and enforce reasonable rules and regulations with respect to placing and maintaining voice or data communications services lines or wireless facilities within the rights-of-way.[91]

Turnpike Revenue Bonds/Bond Validation (Sections 12 and 19)

Present Situation:

Bond Validation

The Division of Bond Finance (DBF) is authorized to issue revenue bonds on behalf of the FDOT to finance or refinance the cost of legislatively approved turnpike projects in accordance with s. 11(f), Art. VII of the State Constitution.[92] The state or its agencies may issue revenue bonds without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects[93] authorized by law, and purposes incidental thereto, which bonds are payable solely from funds other than state tax revenues; e.g., toll revenues.[94] The DBF must submit a proposed bond issuance for approval by the State Board of Administration.[95] The Board, by resolution, may authorize the DBF to issue bonds on behalf of a state agency at one time or from time to time,[96] and the Board must approve all bonds to be issued by the DBF as to fiscal sufficiency.[97]

Once approved, such bonds must be validated under ch. 75, F.S.[98] In a bond validation proceeding, the entity authorized by law to issue bonds files a complaint to establish its authority to incur bonded debt, as well as the legality of all proceedings in connection with the bond

[89] *Id.*
[90] *Id.*
[91] The revision of s. 337.401(1)(a), F.S., relating to installation of voice or data communications services lines or wireless facilities in public rights-of-way is also contained in CS/CS/CS/SB 596.[91]
[92] Section 338.227(3), F.S.
[93] Defined in s. 216.011(1)(p), F.S., to mean the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.
[94] *See also* s. 215.59(2) and s. 215.79, F.S.
[95] The State Board of Administration, created by the Florida Constitution, is governed by the Governor as the Chair of the Board of Trustees, the Chief Financial Officer, and the Attorney General. The Board is one of several boards and commissions making up the Florida Cabinet system. The Florida Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.
[96] Section 215.68, (1), F.S.
[97] Section 215.73, F.S.
[98] Section 215.82(2), F.S.

issuance.[99] A final judgment validating such bonds is "forever conclusive" and may not be challenged in any court by any person or party.[100]

As described by the DBF with specific reference to Turnpike bonds:

> Bond validation is a judicial procedure through which the legality of a proposed bond issue may be determined in advance of its issuance. It serves to assure bondholders that future court proceedings will not invalidate a government's pledge to repay the bonds. Validation is generally not necessary for established borrowing programs, such as Turnpike bonds, where any legal issues relating to the bonds have been resolved previously. Validation is optional for almost all bonds issued by the Division of Bond Finance, including Public Education Capital Outlay Bonds and University Revenue Bonds. If a constitutional or statutory question arises for a proposed bond issue, a complaint for validation may be filed in circuit court even if validation is not required.[101]

Required Notice Publication

In any action to validate bonds issued pursuant to s. 338.227, F.S., the complaint must be filed in the circuit court of Leon County, and the notice required by s. 75.06, F.S., must be published in a newspaper of general circulation *in Leon County and in two other newspapers of general circulation in the state*.[102] The complaint and order of the circuit court must be served only on the state attorney of the circuit in which the action is pending (the Second Circuit).

Section 75.06(2), F.S., requires the clerk, before the date set for hearing on a complaint to validate Turnpike bonds, to publish a copy of the court's order requiring appearance at the hearing in Leon County at least once each week for two consecutive weeks, commencing with the first publication, which may not be less than 20 days before the date set for hearing, *in a newspaper in each of the counties where the proceeds of the bonds are to be expended, and in a newspaper published in Leon County.*[103]

However, if publication pursuant to s. 215.82, F.S., would require publication in more newspapers than would publication pursuant to s. 75.06, F.S., then publication pursuant to s. 75.06, F.S., controls. [104] The currently required publication is dependent upon the geographic reach of the project(s) for which funding through bond issuance is sought.

Effect of Proposed Changes:

The bill leaves validation of turnpike bonds to the discretion of the DBF and limits provisions relating to publication of the required notice.

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[99] *See* s. 75.02, F.S.
[100] Section 75.09, F.S.
[101] *See* copy of email from the Florida Division of Bond Finance to House staff dated January 27, 2015 (On file with the Senate Committee on Transportation).
[102] Emphasis added.
[103] Emphasis added.
[104] *See* s. 215.82(2), F.S.

The bill creates subsection (5) of s. 338.227, F.S., to:

- Provide turnpike bonds issued pursuant to that section are not required to be validated pursuant to chapter 75, F.S., notwithstanding s. 215.82, F.S.;
- Provide for validation at the option of the DBF; and
- Require the notice under s. 75.06, F.S., to be published only in Leon County.

The bill amends s. 215.82(2), F.S., to strike the reference to s. 338.227, F.S., and add a reference to the language in newly created s. 338.227(5), F.S.

Santa Rosa Bay Bridge Authority/Garcon Point Bridge (Section 13)

The SRBBA is an agency of the state and an independent district, created in 1984 under part IV of ch. 348, F.S.[105] The SRBBA has the right to acquire, hold, construct, improve, maintain, operate, own, and lease all or any part of the Santa Rosa Bay Bridge System.[106] The SRBBA may also fix, alter, charge establish, and collect tolls, rates, fees, rentals and other charges for the service and facilities of the system; [107] and may borrow money and make and issue bonds.[108] The SRBBA governing body consists of seven members.[109] A review of the SRBBA's website suggests that the governing body's last meeting occurred in June of 2014.[110] According to the FTC, six of the seven positions are vacant.[111]

The SRBBA owns the Garcon Point Bridge, which is a 3.5-mile bridge spanning Pensacola/East Bay between Garcon Point and Redfish Point in southwest Santa Rosa County. The bridge opened to traffic in 1999. The SRBBA administered the financing and construction of the bridge. Series 1996 Revenue Bonds financed the bridge construction, with a portion of the cost of the project funded by $8.5 million in loans from the FDOT's Toll Facilities Revolving Trust Fund. The SRBBA is solely responsible for outstanding debt.[112]

The FDOT, pursuant to a lease-purchase agreement with the SRBBA, maintains and operates the bridge and remits all tolls collected to the SRBBA as lease payments. The lease runs concurrently with the bonds and matures in 2028, at which time the FDOT would own the bridge, assuming the bonds are fully paid. If in 2028 any bonds remain outstanding, the term of the lease will be extended through the payoff date of the outstanding bonds. The Turnpike Enterprise provides toll operations. The FDOT's District Three performs maintenance functions. These costs are recorded as debt owed to the FDOT, as toll revenues are insufficient to pay both debt service on the bonds and operations and maintenance expenses.[113]

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[105] Section 348.967, F.S.
[106] Section 348.968(1)(a), F.S.
[107] Section 348.968(2)(f), F.S.
[108] Section 348.968(2)(g), F.S.
[109] Section 348.967(2)(a), F.S.
[110] *See* the SRBBA's website, *Meeting Minutes*, available at: http://www.garconpointbridge.com/New/update.htm. (Last visited May 1, 2017.)
[111] *See* the FTC's *Transportation Authority Monitoring and Oversight Fiscal Year 2015 Report*, at 59, available at: http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf. (Last visited May 1, 2017.)
[112] *Id.* at 60.
[113] *Id.*

According to the FTC, the SRBBA is in default on its bonds because it failed "to meet toll covenants relating to debt service coverage and reserve account requirements and for failure to make required debt service payments." In January of 2013, the appointed Trustee declared the principal of all outstanding SRBBA bonds immediately due and payable and is recommending that tolls be increased to maximize revenues.[114]

Economic Feasibility: Section 338.223(1)(a), F.S., requires any proposed project to be constructed or acquired as part of the turnpike system and any turnpike improvements to be included in the tentative work program. Such project or projects may not be included unless determined to be economically feasible.

With respect to turnpike projects,[115] section 338.221(8), F.S., defines "economically feasible," to mean:

- For a proposed turnpike project, that, as determined by the FDOT before the issuance of revenue bonds for the project, the estimated net revenues of the proposed turnpike project, excluding feeder roads and turnpike improvements, will be sufficient to pay at least 50 percent of the annual debt service on the bonds associated with the project by the end of the 12th year of operation and to pay at least 100 percent of the debt service on the bonds by the end of the 30th year of operation. Up to 50 percent of the adopted work program costs of the project may be funded from turnpike revenues.
- For turnpike projects, except for feeder roads and turnpike improvements, financed from revenues of the turnpike system, such project, or such groups of projects, originally financed from revenues of the turnpike system, that the project is expected to generate sufficient revenues to amortize project costs within 15 years of opening to traffic.

Effect of Proposed Changes:

The bill creates a new s. 338.2275(4), F.S. The FDOT is authorized to include the acquisition of the Garcon Point Bridge, and related assets, as a turnpike project in its tentative work program[116] in accordance with s. 338.223, F.S., subject to the FDOT's verification of economic feasibility. Upon approval of the acquisition through approval of the FDOT's tentative work program in accordance with s. 339.135, the FDOT may acquire the bridge, including related assets, and may purchase outstanding SRBBA bonds as part of the acquisition. The bill grants the FDOT authority to enter into any agreements necessary to implement the acquisition, including the purchase of SRBBA bonds, and to specify the terms and conditions of such agreements. Upon acquisition, the bridge becomes a part of the turnpike system. The bill authorizes the issuance of revenue bonds to finance the FDOT's acquisition of the bridge.

The bill requires the acquisition price paid by the FDOT to first be used to settle all claims of the SRBBA bondholders. The bill *prohibits*:

- The SRBBA, the FDOT, or the Trustee for the bondholders from imposing any toll rate increase in connection with the FDOT's acquisition of the bridge;

[114] *Id.*

[115] Section 338.221(9), F.S., defines "turnpike project" as any extension to or expansion of the existing turnpike system and new limited access toll highways and associated feeder roads, and other structure, interchanges, appurtenances, or rights as may be approved in accordance with the Florida Turnpike Enterprise Law."

[116] Current s. 339.135(4)(h), F.S., requires the FDOT to annually submit its tentative work program to the Executive office of the Governor and the legislative appropriations committees no later than 14 days after the regular legislative session begins.

- Any increase in tolls for use of the bridge following any acquisition, except as required by law[117] or as required to comply with the covenants contained in any resolution under which bonds have been issued;
- The FDOT and the state from incurring any financial obligation for the acquisition of the bridge in excess of forecasted gross revenues from the operation of the bridge and, therefore, prohibits the total acquisition price paid by the FDOT from exceeding the present value of the gross revenues (calculated without any increase in the existing toll rate) anticipated to be collected from operation of the bridge between the date of a purchase agreement and the end of the anticipated remaining useful life of the bridge as it exists as of the date of the purchase agreement.

The bill terminates the lease-purchase agreement between the FDOT and the SRBBA, and repeals part IV of ch. 348, F.S., upon the acquisition of the bridge as authorized in the new subsection.

Emergency Work Program Amendments (Section 14)

Present Situation:

The FDOT's Work Program

The FDOT is responsible for developing a five-year plan of transportation projects in partnership with other entities such as communities, metropolitan planning organizations, local governments, other state and federal agencies, modal partners, and regional entities. Each of the FDOT's districts develops a "district work program," which is a five-year listing of transportation projects planned for each fiscal year and submitted to the FDOT's central office for review. The central office then develops a "tentative work program" (TWP) based on the district work programs. The TWP is a future five-year listing of all projects planned for each fiscal year, setting forth all projects by phase to be undertaken during the ensuing fiscal year and planned for the successive four fiscal years. On July 1 of each year, the FDOT adopts the "adopted work program," (AWP) which is the five-year listing of all projects planned for each fiscal year, including the current fiscal year.[118]

The TWPs and AWPs must set out the proposed commitments and planned expenditures for the projects listed and be based on a complete, balanced financial plan.[119] Commitments[120] generally must be planned so as to deplete the estimated resources for the fiscal year.[121] Budgeting in

[117] Section 338.165(3), F.S., requires the FDOT, including the Turnpike Enterprise, to index toll rates on existing toll facilities to the annual Consumer Price Index or similar inflation indicators. Toll rate adjustment for inflation may be made no more frequently than a year and no less frequently that once every five years as necessary to accommodate cash toll rate schedules. Toll rates may be increased beyond these limits as direct by bond documents, covenants, or governing body authorization or pursuant to FDOT administrative rule.
[118] *See* s. 339.135, F.S.
[119] Section 339.135(3)(a), F.S.
[120] The FDOT operates on a cash flow-commitment basis. Multi-year transportation projects begin before the total amount of cash is available to fund the entire project. Future revenues are used to pay for a project as actual expenditures occur. The FDOT measures and evaluates anticipated future revenues against total and planned project commitments. *See* the FDOT's *Work Program 101* computer based training available at: http://wbt.dot.state.fl.us/ois/WorkProgram101CBT/index.shtm. (Last visited December 2, 2016.)
[121] Section 339,135(3)(b), F.S.

excess of revenues received from various sources is prohibited.[122] The FDOT may include in each new TWP proposed changes to the projects contained in the previous AWP but is required to minimize changes to the four common fiscal years contained in the previous AWP and the new TWP.[123]

Amending the Adopted Work Program

The AWP may be amended, subject to certain procedures. The FDOT may amend the AWP to transfer fixed capital outlay appropriations for projects within the same appropriations category or between appropriations categories, including the following:

- To delete any project or project phase estimated to cost over $150,000;
- To add a project estimated to cost over $500,000;
- To advance or defer to another fiscal year a right-of-way phase, a construction phase, or a public transportation project phase estimated to cost over $1.5 million, with certain exceptions; or
- To advance or defer to another fiscal year any preliminary engineering phase or design phase estimated to cost over $500,000, with certain exceptions.[124, 125]

If the FDOT proposes any amendment to the AWP described above the FDOT must submit the proposed amendment to the Governor for approval.[126] The FDOT must notify:

- The chairs of the appropriations and transportation committees;
- Each member of the Legislature representing a district affected by the proposed amendment; and
- Each affected metropolitan planning organization (MPO) and unit of local government, if not notified in connection with the 14-day comment period.[127]

Current law prohibits the Governor from approving a proposed amendment until 14 days following the notification to the committee chairs, Legislative members, MPOs, and local governments.[128] If either of the appropriations committee chairs, the Senate President, or the House Speaker objects in writing to a proposed amendment within 14 days following the notification and specifies the reason for the objection, the Governor must disapprove the proposed amendment.[129]

[122] Section 339.315(3)(c), F.S.
[123] Section 339.315(4)(b)3., F.S.
[124] Section 339.135(7)(c), F.S.
[125] FDOT Districts may loan funds between districts, under specified conditions. Such loans constitute an amendment to the AWP per s. 339.135(7)(b), F.S., and are subject to the same budget amendment threshold amounts contained in s. 339.135(7)(c), F.S. The FDOT is required to index the thresholds to the Consumer Price Index or similar inflation indicators no more frequently than once a year, subject to specified notice and review procedures
[126] If the amendment deletes or defers a capacity project construction phase, affected counties and cities must be given a 14-day comment period prior to the amendment being submitted to the Governor. Section 339.135(7)(d)1., F.S.
[127] Section 339.135(7)(d)2., F.S.
[128] Section 339.135(7)(d)3., F.S.
[129] Section 339.135(7)(d)4., F.S.

Any work program amendment that also requires the transfer of fixed capital outlay[130] appropriations between categories within the FDOT, or the increase of an appropriation category, is subject to the approval of the Legislative Budget Commission (LBC), if not subject to legislation enacted in 2016.[131] The 2016 legislation required LBC approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP.[132]

Emergency Work Program Amendments

Recognizing that circumstances can arise that would make the above-described processes unworkable, existing law makes provision for emergencies. Notwithstanding the notification and approval requirements described above and the requirement for LBC review of amendments transferring fixed capital outlay appropriations between categories,[133] current law authorizes the FDOT secretary to request AWP amendments when an emergency[134] exists and the emergency relates to the repair or rehabilitation of any state transportation facility. The Governor may grant approval and amend the FDOT's approved budget if a delay due to the notification requirements described above would be detrimental to the interests of the state. The FDOT must immediately notify the committee chairs and the affected Legislative members, MPOs, and local governments, and provide written justification for the emergency action within seven days after approval.[135]

The FDOT notes that this exemption ensures that emergency repairs proceed quickly, protecting the safety and convenience of the traveling public.[136] However, when the 2016 legislation was enacted to require LBC approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP, no exception from the notification, approval, and LBC-review requirements was granted for emergencies. The FDOT seeks to clarify that emergency work program amendments are also exempt from the LBC approval requirement of the 2016 legislation. In Fiscal Year 2016-2017 so far, the FDOT advises only one work program amendment was submitted for LBC review that, under the proposed revision, would not have been submitted.[137]

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[130] Defined in s. 216.011(1)(p), F.S., to mean the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.

[131] Section 339.135(7)(g), F.S.

[132] Section 339.135(7)(h), F.S.

[133] Section 339.135(7)(e), F.S., also expressly notwithstands the provisions of s. 216.772(2), F.S., relating to certain other notice, review, and objection procedures with respect to appropriations, and s. 216.351, F.S., providing that subsequent inconsistent laws supersede that chapter only by express reference to that section,.

[134] Defined by s. 252.34(4), F.S., to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

[135] Current law prohibits amending the AWP for emergency purposes unless the FDOT's comptroller certifies the availability of sufficient funds. Section 339.135(7)(e), F.S.

[136] *See* the FDOT's 2017 Legislative Proposal, *Work Program Amendments-LBC/Emergency Projects*. (On file in the Senate Transportation Committee.)

[137] *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

Effect of Proposed Changes:

The bill amends s. 339.135(7)(e), F.S., relating to emergency amendment of the FDOT's work program, to insert a cross-reference to subsection (h), relating to the 2016 requirement for LBC review and approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP. This revision results in an exception to LBC review and approval of such amendments in the case of emergencies, under the conditions specified in current law.

Florida Highway Beautification Council Repeal/FDOT Grant Program (Section 15)

Present Situation:

The Council's Role

Section 339.2405, F.S., established the Florida Highway Beautification Council (Council) within the FDOT in 1987. The Council consists of seven members appointed by and serving at the pleasure of the Governor, with each chair selected by the Council members and serving a two-year term. Currently, all appointed members must be residents of this state. Of the seven members, two must be private citizens and one each must be:

- A licensed landscape architect;
- A representative of the Florida Federation of Garden Clubs, Inc.;
- A representative of the Florida Nurserymen and Grower Association;
- An FDOT representative designated by the FDOT secretary; and
- A representative of the Department of Agriculture and Consumer Services.

The Council is required to meet at least semiannually and may prescribe, amend, and repeal bylaws. The Council's duties are to:

- Provide information to local governments and local highway beautification councils about the state highway beautification grants program;
- Accept and review grant requests from local governments;
- Establish rules for evaluating and prioritizing the grant requests;
- Maintain a prioritized list of approved grant requests;
- Assess the feasibility of planting and maintain indigenous wildflowers and plants, instead of sod groundcovers, along the rights-of-way of state roads and highways;
- At the request of the FDOT secretary, review and make recommendations on any other highway beautification matters; and
- Annually submit to the FDOT secretary a proposal recommending the level of grant funding.

Local councils may be created by local governmental entities or by the Legislature. The local government or governments of the area in which the project is located must approve a grant request before its submission to the Council. After receiving recommendations from the Council, the FDOT secretary must award grants to local governmental entities in the order they appear on the Council's prioritized list and in accordance with available funding.[138]

[138] Section 334.044(26), F.S., requires the FDOT to allocate no less than 1.5 percent of the amount contracted for roadway and bridge construction projects for the purchase of plant materials. The FDOT advises that highway beautification grant funds are included in its calculation of the 1.5 percent requirement. *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

Beautification grants may be requested only for projects to beautify through landscaping roads on the State Highway System. A grant request must identify all costs associated with the project, including sprinkler systems, plant materials, equipment, and labor. Grant funds must provide for the costs of purchase and installation of a sprinkler system and the cost of plant materials and fertilizer. Grant funds may provide for the costs for labor associated with the installation of plantings.

Each local government that receives a grant is responsible for paying any costs for water, sprinkler system maintenance, and landscaped area maintenance in accordance with a maintenance agreement with the FDOT. Except as provided in the grant, each local government is also responsible for paying any costs for labor associated with plant installation. The FDOT is authorized to provide by contract services to maintain such landscaping at a level not to exceed the cost of routine maintenance of an equivalent un-landscaped area.

The FDOT's Role

The FDOT reports that each FDOT District appoints a District Highway Beautification Council Grant Manager (District Manager). The District Manager works with the District Landscape Architect and the State Transportation Landscape Architect (STLA), promoting the grant program and assisting applicants through the grant process. Each District Manager compiles and submits to the STLA a district-wide list of all applications received, and the STLA then compiles a statewide list. After the Council ranks each project, the STLA produces a Ranked Listing of the projects. Grants are awarded in the ranked order until the remaining budget is insufficient to fund the next ranked project.[139]

Recent Grant Funding and Council Expenses

The line items for highway beautification included in the FDOT's budget for the most recent five Fiscal Years is as follows:

Fiscal Year	Line-Item
2012-2013	$1,000,000
2013-2014	$1,000,000
2014-2015	$1,800,000
2015-2016	$1,817,000
2016-2017	$1,800,000[140]

The FDOT is required to provide staff support services to the Council. For Fiscal Years 2012-13 through 2016-17, the FDOT advises it expended $167,500 for administrative costs and travel to support the Council.[141]

[139] *See* the FDOT's 2017 Legislative Proposal, *Repeal of the Florida Highway Beautification Council*. (On file in the Senate Transportation Committee.)
[140] *Id.*
[141] *See* the FDOT's *Estimated Admin and Travel Expense to Administer the Grants*. (On file in the Senate Transportation Committee.)

Effect of Proposed Changes

The bill repeals the Florida Highway Beautification Council and creates the Florida Highway Beautification Grant Program within the FDOT, with the FDOT secretary awarding grants to local governmental entities for beautification of roads on the State Highway System based on the FDOT's prioritized list.

The bill amends s. 339.2405, F.S., creating the Grant Program within the FDOT and repealing all of the provisions relating to the Council, its membership, chair selection, meeting frequency, quorum requirements, compensation, and bylaws, etc.

The current Council duties are transferred to the FDOT, with the exception of assessing the feasibility of planting and maintaining indigenous wildflowers and plants, instead of sod groundcovers, using data from other states. The bill removes the required assessment, as it has been accomplished. The FDOT continues its efforts to improve aesthetics and driver safety while lowering maintenance costs through its Wildflower and Natural Areas Program.[142]

Also removed to conform to the repeal of the Council is its authorization to make recommendations on other highway beautification matters and direction to the FDOT secretary to provide staff support services to the Council. Authorization to create local councils remains in place. The FDOT would rank the requests, rather than the Council, and the FDOT secretary would award grants based on the FDOT's prioritized list of approved grant requests, until the remaining budget is insufficient to fund the next ranked project.

South Florida Regional Transportation Authority (SFRTA) Funding and Contracting (Sections 16-18 and 20)

Present Situation:

The SFRTA and Funding

The SFRTA, created in 2003, is an agency of the state established in part II of ch. 343, F.S. The governing body of ten voting members includes:

- One county commissioner each, elected by the county commission from Broward, Miami-Dade, and Palm Beach Counties;
- One citizen who is not a commission member, appointed by each county commission;
- An FDOT district secretary or his designee appointed by the FDOT secretary; and
- Three citizens appointed by the Governor.

Members serve four-year terms, except that the terms of the Governor's appointees must be concurrent.

The SFRTA is authorized to coordinate, develop, and operate a regional transportation system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties. The SFRTA provides commuter rail service (Tri-Rail) for residents and visitors in the area served. Statutory provisions

[142] *See* the FDOT website for further information on the current program, including links to the referenced report, a history of the program, the FDOT's current wildflower procedure, and other related details available at: http://www.fdot.gov/designsupport/wildflowers/default.shtm. (Last visited March 2, 2017.)

require each of the three counties served to provide no less than $2.67 million annually, dedicated by each governing body by October 1 of each year, which funds may be used for capital, operations, and maintenance.[143] Additionally, current law requires each county to annually fund SFRTA operations in an amount no less than $1.565 million.[144]

Further, if the SFRTA, by December 31, 2015, had not received federal matching funds based on the dedicated $2.67 million in tri-county funding, current law provides that funding is repealed. The SFRTA's 2016 Comprehensive Annual Financial Report reflects that the three counties contributed approximately $1.6 million each towards the SFRTA's operating budget in Fiscal Years 2015 and 2016.[145] Thus, it appears the SFRTA received no federal matching funds, and the counties are no longer required to provide the annual $2.67 million to the SFRTA.

The SFRTA is currently responsible for dispatching, maintenance, and inspection of the South Florida Rail Corridor.[146] Having assumed such responsibility, the FDOT is required to annually transfer to the SFRTA a total of $42.1 million as follows:

- $15 million for SFRTA operations, maintenance, and dispatch; and
- $27.1 million for operating assistance, corridor track maintenance, and contract maintenance for the SFRTA.[147]

According to a Florida Transportation Commission report, the FDOT has agreed to cover 100 percent of annual maintenance costs up to $14.4 million, with shared costs in excess of that amount, pursuant to an Operating Agreement between the FDOT and the SFRTA setting out agreed-upon percentages.[148] The SFRTA's 2016 Comprehensive Annual Financial Report indicates that of the $102,201,506 million in total revenue for 2016, the FDOT contributed $55,260,036 million or 54.1 percent.[149]

The FDOT's Oversight Role

The SFRTA may not commit any funds provided by the FDOT without the FDOT's approval. The FDOT may not unreasonably withhold approval. At least 90 days before advertising any procurement or renewing any existing contract using state funds for payment, the SFRTA must notify the FDOT of the proposed procurement or renewal and the proposed terms. If the FDOT objects in writing within 60 days of receipt of the notice, the SFRTA may not proceed. Failure of the FDOT to object within 60 days is deemed consent.[150] To enable the FDOT's evaluation of the SFRTA's proposed uses of state funds, the SFRTA must annually provide the FDOT with its proposed budget and with any additional documentation or information required by the FDOT.[151]

[143] Section 348.58(1), F.S.
[144] Section 348.58(3), F.S.
[145] *Supra* note 89.
[146] *Transportation Authority Monitoring and Oversight Fiscal Year 2015 Report,* pp. 197-199, available at: http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf. (Last visited March 2, 2017.)
[147] Section 348.58(4)(a)1., F.S.
[148] *Supra* note 86, p. 197.
[149] At p. 25, available at: http://www.sfrta.fl.gov/docs/overview/Fiscal-Year-2016_Comprehensive-Annual-Financial-Report-FINAL.pdf. (Last visited March 2, 2017.)
[150] Section 348.58(4)(c)1., F.S.
[151] Section 348.58(4)(c)2., F.S.

Recent Contracting

According to the SFRTA, services for the operation of Tri-Rail are currently provided through four separate contracts covering train operations, maintenance of equipment, train dispatching, and station maintenance. Those contracts expire in June of this year. The SFRTA made a decision to bundle the four contracts into one and, on September 22, 2016, issued a Request for Proposals (RFP). Eighty percent of the scoring of the proposals was to be based on technical ability to do the work; 20 percent was to be based on price. The RFP cautioned proposers not to condition their prices. Proposals were due by December 16, 2016.[152]

According to the SFRTA, five of the six proposers submitted with their price proposals "extraneous" pages with labels such as "Proposal Exceptions," "Exceptions to RFP," and "Pricing Assumptions."[153] Other examples included pages indicating that their price did not include the cost of certain requirements in the RFP or that the price assumed facts that contradicted the RFP.[154] The SFRTA's procurement director determined five of the six proposers had materially and significantly conditioned their proposals — specifically, their price – and that the proposals were therefore nonresponsive and should be rejected, based on requirements in the RFP.[155]

On January 27, 2017, the SFRTA's governing board approved a Notice of Intent of Contract Award for Request for Proposal 16-010 "Operating Services," reflecting a determination to enter into a contract with an initial seven-year term, plus a three-year renewal option, for a price of $511,418,271.65.[156]

A request for an injunction to block Tri-Rail from awarding the contract was rejected following issuance of a temporary injunction to enable judicial review of allegations of unfair disqualification. The judge in the case ruled that the plaintiff failed to show any entitlement to a preliminary injunction and had not established a likelihood of success on the merits of their case." [157] Four of the five rejected bidders have timely filed a bid protest with the SFRTA, which is currently under review.[158]

The Florida Single Audit Act/Agreements Funded with Federal or State Assistance

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[152] *See* the SFRTA presentation to the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 16, 2017, available at: http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2017021204. (Last visited March 2, 2017.)
[153] *Id.* at (52:29).
[154] *Id.* at (53:18).
[155] *Id.* at (51:15).
[156] Available at: http://www.sfrta.fl.gov/docs/Procurement/Posting-Notice-Operating-Services.pdf. (Last visited March 3, 2017.)
[157] *See Transdev Services, Inc., et al., v. South Florida Regional Transportation Authority*, Case No.: 17-000877 CACE(21), Broward County Circuit Court, public copy available at: https://www.browardclerk.org/Web2/WebForms/Document.aspx?CaseID=ODc4NTc2MA%3d%3d-%2fxl4ct%2bcVyo%3d&CaseNumber=CACE17000877&FragmentID=MjM3NTk1MzQ%3d-tV6MANspieA%3d&DtFile=01/17/2017&DocName=Order&PgCnt=22&UserName=&UserType=Anonymous. (Last visited March 24, 2017.)
[158] Telephone conversation with the SFRTA staff, March 24, 2017.

Section 215.97, F.S., creates the Florida Single Audit Act. Among its stated purposes is to establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.

- "State financial assistance" is defined to mean state resources, not including federal financial assistance and state matching on federal programs, provided to a nonstate entity to carry out a state project, including the types of state resources stated in the rules of the Department of Financial Services established in consultation with all state awarding agencies. State financial assistance may be provided directly by state awarding agencies or indirectly by nonstate entities. The term does not include procurement contracts used to buy goods or services from vendors and contracts to operate state-owned and contractor-operated facility.
- "Nonstate entity" means a local government entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

Section 215.971, F.S., requires an agreement that provides state financial assistant to a recipient or subrecipient to include all of the following:

- A scope of work that clearly establishes the tasks to be performed;
- A division of the agreement into deliverables that must be received and accepted in writing by the agency before payment. Deliverables must be directly related to the scope of work. The agreement must specify the required minimum level of service to be performed and criteria for evaluating completion of each deliverable;
- Specification of the financial consequences for failure to perform the minimum level of service.
- Specification that a recipient may expend funds only for allowable costs, and that any balance of unobligated funds and any funds paid in excess of the amount to which the recipient is entitled must be refunded to the state agency; and
- Any additional information required by the Florida Single Audit Act.

In 2016, the FDOT's Inspector General engaged in an effort "to determine the nature and extent of SFRTA's expenditures and whether their financial records were in compliance with applicable laws, rules, and regulations."[159] Based on the SFRTA's response, the Inspector General requested a determination from the Department of Financial Services whether appropriations to the SFRTA constitute "state financial assistance."[160] The Inspector General's report found:

> SFRTA, as determined by the Department of Financial Services (DFS), is a Special District and a nonstate entity that is a recipient of state financial

[159] *See Audit Report No. 141-4002*, available at: http://www.fdot.gov/ig/Reports/14I-4002%20Final.pdf. (Last visited March 18, 2017.)
[160] *Audit Report* at 7.

> assistance.[161] We determined the Operating Agreement[162] between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S. nor does it contain the procurement provisions outlined in Chapter 287, F.S. We also determined $153 million of state appropriations was omitted from audit coverage in accordance with the Florida Single Audit Act for fiscal years 2010/11 to 2014/15. Additionally, SFRTA did not provide a standard operating budget-to-actual expenditure report based upon the use of each grant or funding source.[163]

Effect of Proposed Changes:

The bill places restrictions on the SFRTA's contracting authority and use of state funds and revises the FDOT's oversight role.

The bill amends s. 343.54, F.S., to prohibit the SFRTA from entering into, extending, or renewing any contract or other agreement under that part without the FDOT's prior review and written approval of the SFRTA's proposed expenditures, if such contract or agreement may be funded, in whole or in part, with FDOT-provided funds. The prohibition applies notwithstanding any provision of that part, which contains the SFRTA's authorization to enter into contracts. The SFRTA must obtain the FDOT's approval, under the funding condition specified, to enter into, extend, or renew any contract or other agreement.

The bill amends s. 343.48(4)(c)1., F.S., to remove the current statutory language:

- Prohibiting the FDOT from unreasonably withholding its approval of the SFRTA's commitment of FDOT-provided funds;
- Requiring the SFRTA to notify the FDOT of a proposed procurement or renewal before advertising any procurement or renewing any existing contract that will rely on state funds;
- Requiring the FDOT to object in writing and, if timely, prohibiting the SFRTA from proceeding with the procurement or renewal;
- Providing that the FDOT's failure to timely object constitutes consent; and
- Providing no-impairment-of-contract language for contracts existing as of June 30, 2012.

This section replaces the notice and objection process with language deeming funds provided to the authority by the FDOT under that section to be state financial assistance provided to a

[161] The DFS determined the SFRTA had for nine years submitted financial audit reports per s. 28.39, F.S., as a special district; that a special district as defined by statute is a unit of government created for a special purpose by a special act with jurisdiction to operate within a limited geographic boundary; that the SFRTA was created by the South Florida Regional Transportation Authority Act for the special purpose of operating and managing a transit system in Broward, Miami-Dade and Palm Beach Counties; and that the law limits operations to those counties. The DFS also noted the SFRTA is a state project (a state program that provides state financial assistance to a nonstate organization) that must be assigned a Catalog of State Financial Assistance number and, finally, since state law created the SFRTA to carry out a state project, the SFRTA is a recipient of state financial assistance. *Audit Report,* Appendix J.

[162] The report notes a June 2013 operating agreement between the FDOT and the SFRTA for continuing SFRC operating rights for a 14-year period that included SFRTA's agreement to conduct all activities in accordance with applicable federal and state laws and regulations and the operating rules, policies, and procedures adopted pursuant to such laws and regulations. *Id.* at 5.

[163] *Audit Report* at 1.

nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971, F.S. The FDOT is directed to provide the funds in accordance with the terms of a written agreement to be entered into between the SFRTA and the FDOT. The agreement must provide for FDOT review, approval, and audit of the SFRTA's expenditure of such funds and must include such other provisions as are required by applicable law. The FDOT is expressly authorized to advance the SFRTA one-fourth of the total funding provided under that section for a state fiscal year at the beginning of each state fiscal year. Thereafter, the bill requires monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the FDOT may reasonably require, and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year.

This section of the bill also modifies the SFRTA's existing obligation to provide the FDOT with its proposed budget and any additional documentation or information required by the FDOT for its evaluation of SFRTA-proposed uses of state funds by requiring the SFRTA to *promptly* provide such documentation or information.
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Section 16 amends s. 343.52, F.S., to define "department" within Part II of ch. 343, F.S. to mean the Department of Transportation.

Section 20 of the bill amends s. 343.53, F.S., revising a cross-reference to conform to changes made in the act.

Transportation Disadvantaged Services/Transportation Network Companies (Section 21)

Present Situation:

The Legislature created the Transportation Disadvantaged (TD) Program in Part I of ch. 427, F.S., in 1979.[164] The TD Program coordinates a network of local and state programs providing transportation services for elderly, disabled, and low-income citizens. In 1989, the Legislature created the Commission for the Transportation Disadvantaged (commission) as an independent entity within the Florida Department of Transportation.[165] The purpose of the commission is to accomplish the coordination of transportation services provided to the transportation disadvantaged,[166] with the goal of such coordination to assure the cost-effective provision of transportation by qualified community transportation coordinators[167] or transportation operators.[168] The commission describes the program as "a shared-ride service which, depending

[164] 79-180, L.O.F.
[165] 89-376, L.O.F.
[166] A "transportation disadvantaged person" is a person who because of physical or mental disability, income status, or age is unable to transport himself or herself or to purchase transportation and is, therefore, dependent on others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202, F.S.Section 427.011(1), F.S.
[167] Section 427.011(5), F.S.
[168] A "transportation operator" is one or more public, private for-profit, or private nonprofit entities engaged by the community transportation coordinator to provide service to transportation disadvantaged persons pursuant to a coordinated system service plan. Section 427.011(6), F.S.

on location, may be provided using the fixed route transit or paratransit (door-to-door) service."[169]

Section 427.011(9), F.S., defines "paratransit" to mean those elements of public transit that provide service between specific origins and destinations selected by the individual user with such service being provided at a time agreed upon by the user and provider of the service. That section also specifies that paratransit services are provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations characterized by their nonscheduled, nonfixed route nature. Paratransit service has its own challenges, however, such as waiting long periods of time for a ride home after a doctor's visit or problems getting to a fixed route stop.

Some communities are employing TNCs, such as Uber, Lyft, and SideCar, to improve mobility for transportation disadvantaged persons. For example, the Massachusetts Bay Transportation Authority partnered with Uber and Lyft to provide paratransit services.[170] Here in Florida, the Pinellas Suncoast Transit Authority (PSTA) recently expanded a small pilot project to the entire county. Branded as Direct Connect, the program is designed to give low-cost rides to designated bus stops using Uber, United Taxi, and Lyft.[171] However, current state law does not expressly include TNCs as a provider of transportation disadvantaged services.

Effect of Proposed Changes:

Section 21 amends s. 427.011, F.S., to re-order the definitions alphabetically, re-numbering current subsection (9) as subsection (7), and includes TNCs as a provider of paratransit service, thereby allowing TNCs to provide transportation disadvantaged services.

Broward County Outdoor Advertising Signs (Section 22)

Present Situation:

Since the passage of the Highway Beautification Act (HBA) in 1965,[172] the Federal Highway Administration has established controls for outdoor advertising along Federal-Aid Primary, Interstate, and National Highway System (NHS) roads. The HBA allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for

[169] *See* the Commission's website available at: http://www.fdot.gov/ctd/communitytransystem.htm. (Last visited March 27, 2017.)
[170] *See Uber, Lyft partner with transportation authority to offer paratransit customers service in Boston*, available at: https://www.washingtonpost.com/news/dr-gridlock/wp/2016/09/16/uber-lyft-partner-with-city-to-offer-paratransit-customers-on-demand-service-in-boston/?utm_term=.0a9f1dca38bb. (Last visited April 13, 2017.
[171] *See PSTA Expands Partnership with Uber, Lyft Across Pinellas County,* available at: https://patch.com/florida/stpete/psta-expands-partnership-uber-lyft-across-pinellas-county. (Last visited April 14, 2017.)
[172] 23 U.S.C. 131.

noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.[173]

Under the provisions of a 1972 agreement[174] between the State of Florida and the United States Department of Transportation incorporating the HBA's required controls, the Florida Department of Transportation (FDOT) requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." However, the Federal-State Agreement does not address the issue of the height of signs.

Chapter 479, F.S., addresses outdoor advertising. A "sign" is defined as any combination of structure and message in the form of an outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, advertising structure, advertisement, logo, symbol, or other form, whether placed individually or on a V-type, back-to-back, side-to-side, stacked, or double-faced display or automatic changeable facing, designed, intended, or used to advertise or inform, any part of the advertising message or informative contents of which is visible from any place on the main-traveled way.[175]

Section 479.07, F.S., relates to sign permits. Section 479.07(9)(b), F.S., prohibits a permit from being granted for a sign located on any portion of the Interstate or Federal-Aid Primary highway system, which sign:

- Exceeds 50 feet in sign structure height above the crown of the main-traveled way to which the sign is permitted, if outside an incorporated area;
- Exceeds 65 feet in sign structure height above the crown of the main-traveled way to which the sign is permitted, if inside an incorporated area; or
- Exceeds 950 square feet of sign facing including all embellishments.

Broward County: Broward County's Ordinance defines a "billboard sign" as a sign which directs attention to a business, commodity, service, product, activity, or ideology not conducted, sold, offered, available, or propounded on the premises where the sign is located and the copy of which is intended to be changed periodically.[176] The height of a sign is measured as follows:

- Billboard signs: The top of any billboard, excluding authorized embellishments, must not be higher than 35 feet above the crown of the right-of-way along the property frontage which the sign serves.
- All other free-standing signs: height must be measured from the elevation of the sidewalk adjacent to the sign location to the top of the sign. In the event no sidewalk exists, height must be measured from the crown of the right-of-way at its closest point to the sign location.[177]

[173] 23 U.S.C. 131(b).
[174] A copy of the agreement is available at: http://www.fdot.gov/rightofway/documents.shtm. (Last visited April 29, 2017.)
[175] Section 479.01(19), F.S.
[176] Broward County Code of Ordinances, art. VI, s. 39-51.
[177] *Id.*

Permanent signs must be issued a permit before being placed or altered on any plot, except for a number of specified exempt signs.[178]

Effect of Proposed Changes:

The bill creates three undesignated sections of the Florida Statutes. The bill expresses the Legislative finding that over the last five years, Broward County has undergone a significant expansion of its interstate system. This expansion occurred in fully developed areas in which relocating permitted signs is difficult, the placement of new ramps, bridges, and other construction within the interstate right-of-way can hinder the public's ability to view existing permitted signs, and allowing a minimal height increase based upon the height of the obstruction is reasonable.

The bill provides that notwithstanding general law, in the event a properly permitted sign on an interstate highway within Broward County is subsequently obstructed by the construction of a ramp, braided bridge, or other permanent visual obstruction within the interstate right of way, then the allowable height of the permitted sign will be measured from the top of the visual obstruction. In no event, will the height of the sign exceed 100 feet above the crown of the main traveled way of the road to which the sign is permitted regardless of the visual obstruction.

The bill authorizes the FDOT to promulgate any rules or forms necessary to implement these provisions.

Federal Pilot Program Enrollment (Section 23)

Present Situation:

Section 334.044, F.S., sets out a number of the FDOT's powers and duties. Among those are the FDOT's power and duty to:

- Conduct research studies and collect data necessary for the improvement of the state transportation system;
- Conduct research and demonstration projects relative to innovative transportation technologies; and
- Identify, obtain, and administer all federal funds available to the FDOT for all transportation purposes.

Effect of Proposed Changes:

The bill creates an unspecified section of Florida law authorizing the Secretary of Transportation to enroll the State of Florida in any federal pilot program or project for the collection and study of data for the review of federal or state roadway safety, infrastructure sustainability, congestion mitigation, transportation system efficiency, autonomous vehicle technology, or capacity challenges.

While research reveals no provision of law expressly authorizing the FDOT to enroll the state in any federal pilot program or project, the FDOT's existing powers and duties appear to grant

[178] *Id.* at 39-54.

sufficient authority for the FDOT to enroll the state in a federal pilot program or project relating to the collection and study of data for review of the identified subject matters.

The bill provides the act take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Article VII, s. 18(d) of the Florida Constitution provides laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

An exemption from the mandates provision may apply if the expected fiscal impact on municipalities/counties is less than $2 million. Because the fiscal impact is anticipated to be less than $2 million, the bill appears to be exempt from the mandate requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions relating to highway memorial markers and incorporation of emblems of belief may be subject to challenge under the First Amendment of the U.S.

Constitution.[179]If such a legal challenge is made, case law does not provide clear direction as to the legal standard to be used as different "tests" of constitutionality have been applied in establishment clause cases based on various fact patterns leading to an inconsistency in results.[180]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 2: Because the authority to levy the surtax is permissive and subject to referendum approval, and because the rate of surtax is up to one percent, the fiscal impact is indeterminate.

Section 4: The trucking industry may realize an insignificant positive fiscal impact resulting from the additional weight allowance for natural gas vehicles due to potentially fewer overweight citations.

Section 5: Riders in autonomous vehicles used by TNCs to provide transportation may benefit from the bill's required insurance coverage. The insurance industry may benefit from increased sales.

Section 9: Applicants requesting memorial markers incorporating emblems of belief may be required to pay the fee to be set by the FDOT to offset production costs.
Section 8: The FDOT notes an indeterminate positive fiscal impact to the extent a private sector company is awarded a fast response contract and is not required to obtain a surety bond.[181]

C. Government Sector Impact:

Section 1: The FDOT may incur increased salary expenses related to the bill's minimum salary requirements for the secretary, assistant secretaries, Turnpike executive director, and district secretary positions. However, FDOT should save other personnel costs, such as retirement costs, as these positions will be eligible for Regular Class participation rather than SMS Class.

Section 2: Because the authority to levy the surtax is permissive and subject to referendum approval, and because the rate of surtax is up to one percent, the fiscal impact is indeterminate.

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[179] Congress shall make no law respecting an establishment of religion…." U.S. Const. amend. I.
[180] *Utah Highway Patrol Association v. American Atheists, Inc.*, decided October 31, 2011, available at: https://www.supremecourt.gov/opinions/11pdf/10-1276.pdf. (Last visited April 5, 2017.)
[181] *See* the FDOT's 2017 Legislative Proposal, *Rapid Response Contracts – Price Cap Increase*. (On file in the Senate Transportation Committee.)

Section 4: The FDOT may realize a loss of revenues relating to fewer overweight citations being written. This revenue loss may be offset to an extent by reduced regulatory costs. A potential withholding of federal funds is avoided.

Section 8: The FDOT will incur additional administrative expenses associated with developing the federally required bridge inspection policies and criteria, seeking FHWA approval, and revising relevant policies and procedures, which expenses are expected to be absorbed within existing resources. The FDOT expects cost savings to the extent the FHWA approves bridges for extended inspection frequencies. The FDOT estimates approximately $500,000 in inspection services could be redirected to bridge repair, rehabilitation, and/or replacement.[182]

Section 9: The FDOT may experience administrative expenses associated with the memorial marker program, offset by the authorized fee for markers incorporating emblems of belief, in an indeterminate amount.

Section 12: The DBF may avoid some costs if it is not required to validate turnpike revenue bonds.

Section 15: Based on costs for Fiscal Years 2012-13 through 2016-17, the FDOT is expected to realize a positive fiscal impact of approximately $33,400 annually resulting from repeal of the Florida Highway Beautification Council, due to removal of the FDOT's duty to provide for administrative costs and travel to support the Council. The FDOT will absorb administrative expenses associated with revising Rule Chapter 14-40, F.A.C., and implementing the grant program, within existing resources.

Sections 17 and 18: The FDOT and the SFRTA may incur additional administrative expenses associated with the FDOT's review, written approval, and audit of the SFRTA's proposed expenditures using any funding provided to the SFRTA under s. 343.58(4), F.S., as well as administrative expenses associated with the required reimbursement and reconciliation process.

VI. Technical Deficiencies:

.None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 316.545, 335.074, 337.11, 338.227, 339.135, 339.2405, 343.52, 343.54, 343.58, 215.82, and 343.53.

[182] *See* the FDOT's 2017 Legislative Proposal, *Bridge Inspection Frequency*. (On file in the Senate Transportation Committee.)

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on May 1, 2017:
The committee substitute:

- Revises provisions relating to compensation for the FDOT secretary, assistant secretaries, Turnpike Enterprise executive director, and district secretaries; requires compensation for these positions to be based on a specified market analysis; and sets minimum salaries for these positions.
- Re-names the Charter County and Regional Transportation System Surtax as the County, Municipality, and Regional Transportation System Surtax; extends the authority of counties to levy the surtax to certain municipalities under specified conditions; authorizes the county within which the municipality is located to also levy a surtax under specified conditions.
- Authorizes the FDOT and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to placing and maintaining within the right-of-way limits of any road or public owned rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities.
- Authorizes the FDOT, subject to verification of economic feasibility and under specified conditions and restrictions, to include acquisition of the Garcon Point Bridge and related assets as a turnpike project in its tentative work program, and to acquire the bridge upon approval of the acquisition through approval of the FDOT's tentative work program.
- Upon such acquisition, repeals a certain lease-purchase agreement between the FDOT and the Santa Rosa Bay Bridge Authority (SRBBA), and repeals the SRBBA.
- Provides an alternate means to measure permitted sign height on interstate highways within Broward County and authorizes the FDOT to promulgate rules.

Recommended CS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 13, 2017:
The committee substitute:

- Directs the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to develop a Florida Smart City Challenge grant program;
- Revises autonomous vehicle alert system requirements, consistent with current law, to clarify that an autonomous vehicle may operate in autonomous mode without a person physically present in the vehicle;
- Directs the FDOT to establish a process for applications for placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely.
- Applies certain insurance coverage requirements, should legislation addressing insurance for transportation network companies (TNCs) become law, to autonomous vehicles used by TNCs to provide transportation, regardless of whether a human operator is physically present in the vehicle when the ride occurs;

- Removes the provisions requiring the SFRTA to terminate the Operating Services contract and:
  - Deems funds provided by the FDOT to the SFRTA to be state financial assistance subject to specified accountability requirements;
  - Requires the FDOT to provide funds to the SFRTA in accordance with a written agreement containing certain provisions;
  - Authorizes the FDOT to advance funds to the SFRTA at the start of each fiscal year, with monthly payments for maintenance and dispatch on the South Florida Rail Corridor over the fiscal year on a reimbursement basis;
- Expressly includes transportation network companies (TNCs) in the list of providers of services for the transportation disadvantaged; and
- Authorizes the FDOT Secretary to enroll the state in any federal pilot program or project for the collection and study of specified types of transportation-related data.

CS by Transportation March 28, 2017:
A technical amendment to the original bill was adopted to clarify that the 2,000-pound weight allowance for natural gas-powered trucks is in addition to the 500-pound weight allowance for idle reduction technology.

B. Amendments:

None.