

**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.)

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Prepared By: The Professional Staff of the Committee on Infrastructure and Security

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BILL: SPB 7020

INTRODUCER: For consideration by the Committee on Infrastructure and Security

SUBJECT: Emergency Staging Areas

DATE: December 2, 2019      REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Miller		<b>Pre-meeting</b>

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**I. Summary:**

SPB 7020 authorizes the Florida Department of Transportation (FDOT) to plan, design, and construct staging areas for emergencies as part of the turnpike system. These sites are intended to be designated areas for the staging of emergency supplies to facilitate the prompt provision of emergency assistance to the public in response to a declared state of emergency. The proposed bill recites that emergency supplies staged at key geographic points will aid in emergency response and assistance.

The proposed bill directs the FDOT, in consultation with the Division of Emergency Management (DEM), to consider certain factors when selecting a proposed site, and the FDOT is authorized to acquire property necessary for such staging areas. Under the proposed bill, the FDOT is required to give priority consideration to placement of such staging areas in counties with a population of 200,000 or less in which an M-CORES corridor is located.

The proposed bill grants the FDOT power to authorize certain other uses of a staging area and requires that staging-area projects be included in the FDOT's work program.

The proposed bill presents no immediate fiscal impact to state or local revenues or expenditures. The future fiscal impact to the FDOT is indeterminate, as the details of the costs to acquire property for and construct any staging area, and the number of staging areas to be constructed, is unknown. Increased availability of staging areas along the turnpike system may offset future costs. See the "Fiscal Impact Statement" heading below for additional information.

The proposed bill takes effect July 1, 2020.

## II. Present Situation:

### Emergency Declaration and Staging Areas

Chapter 252, F.S., confers certain emergency powers upon the Governor, the DEM, and the governing bodies of each political subdivision of the state with respect to emergencies that occur within the state.<sup>1</sup> With respect to the Governor, and among other related emergency powers, s. 252.36(2), F.S., provides for declaration of a state of emergency by executive order or proclamation if the Governor finds an emergency or the threat of an emergency has occurred or is about to occur.<sup>2</sup> The Governor's order or proclamation, among other items:

- Activates the emergency mitigation, response, and recovery aspects of the applicable state, local, and inter-jurisdictional emergency management plans, and
- Serves as authority for the deployment and use of any forces to which the plan or plans apply and for the use or distribution of any supplies, equipment, and materials and facilities relating to emergencies.

Among various other emergency powers, “to meet the needs of residents affected during a declared emergency and ensure continuing economic resilience of communities impacted by a disaster,” the DEM is charged with establishing “a statewide system to facilitate the transportation and distribution of essentials in commerce.”<sup>3</sup> Similarly, among other related authority, political subdivisions are likewise authorized to obtain and distribute equipment, materials, and supplies for emergency management purposes.<sup>4</sup>

Generally, when the Governor declares a state of emergency, the acquisition of property for staging area purposes involves similar processes at both the state and local level – identification of a potential site and execution of an agreement for use of the site. For example, DEM logistics personnel work with regional coordination teams and other DEM field staff to identify potential staging area sites, given the expected emergency. For purposes of executing a memorandum of agreement (MOU), the DEM requires the site location and owner, a point of contact, the square footage of the site, and photos or maps of the site. Locations are finalized after a site visit with the site owner to verify the site's feasibility for use. If agreement is reached, an MOU is executed. The acquired sites are mobilized to ensure resources are logged, prepared, and readied for redeployment to an impacted area.<sup>5</sup>

Pre-designated sites are also used for staging. For example, the FDOT allows utility providers and first responders to use commercial motor vehicle weigh stations as staging areas, most of

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<sup>1</sup> Section 252.32(1)(b), F.S.

<sup>2</sup> The law provides that the state of emergency continues until the Governor finds the emergency conditions no longer exist and terminates the state of emergency. However, a state of emergency may not exist for more than 60 days unless the Governor renews it. The Legislature may terminate a state of emergency at any time by concurrent resolution.

<sup>3</sup> Section 252.359, F.S. That section defines the term, “essentials,” to mean goods that are consumed or used as a direct result of a declared emergency, or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

<sup>4</sup> Section 252.38(3), F.S.

<sup>5</sup> See DEM email to committee staff November 14, 2019 (copy on file in the Senate Infrastructure and Security Committee).

which are along I-75. The FDOT also uses its maintenance yards and operations centers to stage FDOT crews and, sometimes, contracted crews.<sup>6,7</sup>

At the local level, both pre-designated sites and sites identified in anticipation of need may be used. For example, Leon County Emergency Management staff advise that both the county and the City of Tallahassee have regularly used public property (such as the fairgrounds and the airport), as well as private property for staging areas, obtained for use through private agreements.<sup>8</sup>

### Florida's Turnpike

The Florida Turnpike Enterprise (FTE) within the FDOT is empowered to plan, construct, maintain, repair, and operate the Florida Turnpike System. The term, "turnpike system," is defined to mean "those limited access toll highways and associated feeder roads and other structures, appurtenances, or rights previously designated, acquired, or constructed pursuant to the Florida Turnpike Enterprise Law and such other additional turnpike projects as may be acquired or constructed as approved by the Legislature."<sup>9</sup> The turnpike system currently includes the mainline from Miami to Central Florida, as well as the Homestead Extension, Sawgrass Expressway, Seminole Expressway, Beachline Expressway, Southern Connector Extension, Veterans Expressway, Suncoast Parkway, Polk Parkway, Western Beltway, and the I-4 Connector.<sup>10</sup>

In addition, any future multi-use corridor of regional significance (M-CORES corridor) constructed as authorized under s. 338.2278, F.S., will be part of the turnpike system. Enacted during the 2019 Session, M-CORES is a program designed to advance construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure. The specific purpose of the program is to revitalize rural communities, encourage job creation in those communities, and provide regional connectivity while leveraging technology, enhancing quality of life and public safety, and protecting the environment and natural resources. The following three corridors comprise the M-CORES Program:

- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).<sup>11</sup>

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<sup>6</sup> See the FDOT email to committee staff November 18, 2019 (copy on file in the Senate Infrastructure and Security Committee).

<sup>7</sup> For a map of the FDOT's maintenance yards and operations centers, see FDOT, *Transportation Organizational Partners Map*, select Legend icon, bottom left, available at <https://fdot.maps.arcgis.com/apps/webappviewer/index.html?id=659db618c58d4a279bc95386ab20fe30> (last visited November 19, 2019).

<sup>8</sup> Telephone conversation with Leon County Emergency Management staff, November 12, 2019.

<sup>9</sup> Section 338.221(6), F.S.

<sup>10</sup> For a map of the system, see Florida's Turnpike, under the *About* heading, available at <http://www.floridasturnpike.com/about.html> (last visited November 14, 2019).

<sup>11</sup> For additional detailed M-CORES information, see the FDOT M-CORES site available at <https://floridamcores.com/#home> (last visited November 15, 2019).

## **FDOT Acquisition of Property**

Section 338.04, F.S., grants the FDOT's FTE (and others, collectively called "authorities") authorization to acquire private or public property and property rights for limited access facilities and service roads in the same manner as they are authorized to acquire property or property rights for highways. That process involves negotiated sales or, failing successful negotiation, the power of eminent domain granted to the FDOT under s. 337.27, F.S.

Eminent domain is the constitutional power of the government to take private property for public use. Chapters 73 and 74, F.S., provide for eminent domain and proceedings supplemental to eminent domain, respectively. Chapter 73, F.S., specifies the pre-suit negotiation requirements, the petition filing requirements, the service of process and publication requirements, the pretrial process, jury trial process, and post-trial process. Chapter 74, F.S., sets out the supplemental proceedings to eminent domain, including provisions allowing a governmental entity to take possession and title of property in advance of entry of final judgment by depositing with the court an amount no less than the governmental entity's good faith estimate of the value of the property being sought.

Before an eminent domain proceeding can be filed, the FDOT must attempt to negotiate in good faith with the fee owner of the property to be acquired and attempt to reach an agreement regarding the amount of compensation to be paid for the owner's property.<sup>12</sup> The condemning authority must meet additional requirements, such as providing the owner with a written offer, notifying the owner of statutory rights to receive fees and costs,<sup>13</sup> and notifying business owners of all of their rights.<sup>14</sup> Once a petition for eminent domain is filed, both the FDOT and the owner must make offers of judgment; *i.e.*, an offer to have judgment entered for payment of compensation for amounts specified in the offers.

In accordance with s. 73.071, F.S., eminent domain trials for valuation of property are argued before a twelve-person jury. The amount of compensation is determined as of the date of trial, or the date upon which title passes, whichever occurs first. The jury determines solely the amount of compensation to be paid. Generally, whether the parties settle prior to or after a petition is filed, the landowners and business owners are entitled to attorney fees<sup>15</sup> and reasonable costs incurred, including appraisal fees and accountant fees.<sup>16</sup>

## **The Florida Transportation Code**

The Florida Transportation Code<sup>17</sup> sets out a variety of duties and responsibilities for the FDOT, including many for which the proposed staging areas might serve during non-emergency periods. Under authorizations contained in the Code, the proposed sites may, for example, provide space to facilitate the conduct of research and demonstration projects relative to innovative

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<sup>12</sup> Section 73.015, F.S.

<sup>13</sup> Section 73.0511, F.S.

<sup>14</sup> *Supra* note 10.

<sup>15</sup> Section 73.092, F.S.

<sup>16</sup> Section 73.091, F.S.

<sup>17</sup> Chapters 334-339, 348, and 349 and ss. 332.003-332.007, 351.35, 351.36 351.37, and 861.011, F.S.

transportation technologies<sup>18</sup> or serve as staging areas for the FDOT's construction and maintenance contractors.<sup>19</sup> The sites may provide additional or overflow parking for both commercial motor vehicles and other vehicular traffic<sup>20</sup> or serve other functions, such as making fuel or food services available to travelers.<sup>21</sup>

### III. Effect of Proposed Changes:

The proposed bill authorizes the FDOT to plan, design, and construct staging areas for emergencies as part of the turnpike system. The sites are intended to be designated areas for the staging of emergency supplies to facilitate the prompt provision of emergency assistance to the public in response to a declared state of emergency. The proposed bill includes a recitation that emergency supplies, such as water, fuel, generators, vehicles, equipment, and other related materials, staged at key geographic points will aide in emergency response and assistance, including evacuations, deployment of emergency-related supplies and personnel, and restoration of essential services.

In selecting a proposed site, the proposed bill directs the FDOT, in consultation with the DEM, to consider the extent to which a proposed site for a staging area:

- Is located in a geographic area that best facilitates wide dissemination of emergency-related supplies and equipment;
- Provides ease of access to major highways and other transportation facilities;
- Is sufficiently large to accommodate staging of a significant amount of emergency-related supplies and equipment;
- Provides space in support of emergency preparedness and evacuation activities, such as fuel reserve capacity;
- Could be used during non-emergency periods for commercial motor vehicle parking; and
- Is consistent with other state and local emergency management considerations.

The FDOT is directed to give priority consideration to placement of such staging areas in counties with a population of 200,000 or less as determined by the most recent official estimate pursuant to s. 186.901 in which an M-CORES corridor is located.

The proposed bill authorizes the FDOT to acquire property and property rights necessary for such staging areas as provided in s. 338.04, F.S.; *i.e.*, through negotiated sales or the eminent domain process. The FDOT is also granted the power to authorize other uses of a staging area, as provided in the Florida Transportation Code, including, but not limited to, commercial motor vehicle parking to comply with federal hours of service off-duty and sleeper berth requirements and for other vehicular parking to provide rest for drivers.

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<sup>18</sup> See s. 334.044(21), F.S.

<sup>19</sup> See s. 337.11(1), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> See s. 338.234, F.S.

Lastly, the proposed bill requires that staging area projects be included in the FDOT's work program.<sup>22</sup>

The increased availability of staging areas may elevate the efficiency of response to emergencies in this state, thereby facilitating faster recovery from such emergencies for both the public and private sectors, including, but not limited to, quicker resumption of market activity, such as tourism. Authorization for other appropriate uses of the proposed staging areas during non-emergency periods of time may result in other economic efficiencies.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increased availability of staging areas on the turnpike system may provide the general public with earlier provision of essential emergency supplies during emergencies and may provide additional benefits, such as increased availability of parking on the turnpike system, during non-emergency periods. The business community may experience a positive impact in that more efficient emergency response may allow for a faster return to

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<sup>22</sup> The FDOT's work program is developed pursuant to s. 339.175, F.S. 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.

normal market activity. The FDOT's maintenance and construction contractors may benefit from increased availability of staging areas during non-emergency periods.

**C. Government Sector Impact:**

The proposed bill presents no immediate fiscal impact to state or local revenues or expenditures. The details of the costs of any property to be acquired for staging areas, the number of such areas to be acquired, and the costs of any related modifications to accomplish suitability for such purposes is unknown. However, having such staging areas in place may reduce costs associated with providing necessary staging areas for emergency response purposes, for both state and local governments, and may reduce costs incurred by the FDOT for the provision of other uses authorized by the proposed bill during non-emergency periods of time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 338.236.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.