

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 287 Transportation

SPONSOR(S): Infrastructure Strategies Committee, Infrastructure & Tourism Appropriations Subcommittee, Transportation & Modals Subcommittee, and Esposito

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 266

FINAL HOUSE FLOOR ACTION: 95 Y's

11 N's

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

CS/CS/CS/HB 287 passed the House on March 1, 2024, as amended, and subsequently passed the Senate on March 5, 2024.

The bill addresses matters related to transportation. Specifically, the bill:

- Limits the amount of fuel tax revenues and motor vehicle license-related fees that the Florida Department of Transportation (FDOT) may spend on public transit projects.
- Increases from five to eight the number of Department of Highway Safety and Motor Vehicles (DHSMV)-approved Basic Driver Improvement course elections that are allowed in a lifetime for a person who does not hold a commercial driver license or commercial learner's permit and who is cited for a noncriminal moving violation while driving a noncommercial motor vehicle.
- Requires DHSMV to annually review changes made to major traffic laws of this state and to require course content for certain driving courses to be modified accordingly.
- Amends laws relating to public-private transportation facilities and public-private partnerships to align with industry terms and practices and to improve current processes.
- Revises a provision in current law relating to the use of reclaimed asphalt pavement material.
- Adds phased design-build contracts to the requirements that FDOT receive at least three letters of interest in order to proceed with a request for proposals and that FDOT request proposals from no fewer than three of the firms submitting letters of interest.
- Amends the surety bond requirement for phased design-build contracts.
- Provides in law, rather than as a requirement in an FDOT contract, that a motor vehicle used for the performance of road or bridge construction or maintenance work on an FDOT project must be registered in compliance with ch. 320, F.S.
- Shortens the deadline for a claimant to institute an action, except an action for recovery of retainage, against the contractor or surety to within 365 days after performance of the labor or completion of delivery of the materials or supplies, rather than within 365 days after the final acceptance of the contract work by FDOT.
- Amends provisions relating to limitations on liability of FDOT and its contractors and design engineers.
- Amends provisions relating to the previous property owner's right of first refusal for property that FDOT acquired but subsequently determined is no longer needed for a transportation facility.
- Amends provisions relating to funding the fire station at mile marker 63 on the Alligator Alley toll road.
- Codifies the Local Agency Program (LAP) within FDOT.

The bill may have an indeterminate fiscal impact on state and local governments and the private sector.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

State Transportation Trust Fund

Current Situation

Florida law establishes the State Transportation Trust Fund (STTF), which is used for transportation purposes, under the direction of the Florida Department of Transportation (FDOT).¹ Such transportation purposes include maintaining and developing the state highway system and supporting various transportation related projects.²

STTF's primary revenue sources are from state fuel taxes and fees related to motor vehicle licensing.³ FDOT must expend moneys in the STTF in accordance with its annual budget.⁴

FDOT's annual budget is approved by the Legislature and the Governor and contains funding for transportation related projects through the inclusion and adoption of the Five-Year Work Program, which is a list of transportation projects planned for each fiscal year. State taxes and fees, along with federal aid, make up the primary funding sources for the work program. Other funding sources include tolls collected in certain facilities, proceeds from bond issuances, and local taxes and fees.⁵

When preparing the Five-Year Work Program, FDOT is instructed to budget sufficient funds for federal matching purposes.⁶ Additionally, FDOT's Five-Year Work Program includes projects from a Metropolitan Planning Organization's (M.P.O's) Transportation Improvement Program (TIP).

M.P.O's are responsible for developing a list of project priorities and a TIP, which includes a listing of upcoming transportation projects and priorities planned for a minimum of four years. The TIP is used to initiate federally aided transportation facilities and improvements as well as other transportation facilities and improvements including transit, rail, aviation, spaceport, and port facilities to be funded from the STTF.⁷

Each fiscal year, a minimum of 15 percent of all state revenues deposited into the STTF are committed annually by FDOT for public transportation projects.⁸

Florida law does not provide a cap on the maximum percent that FDOT may annually commit to public transit projects. Public transit is defined in Florida law as the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Public transit specifically includes those forms of transportation commonly known as paratransit.⁹

¹ S. 206.46(1), F.S.

² Office of Work Program and Budget Florida Department of Transportation, *Florida's Transportation Tax Sources*, (2023), p. 2,

<https://fdotewp1.dot.state.fl.us/FMSupportApps/Documents/prs/Primer.pdf#:~:text=STTF%E2%80%99s%20primary%20revenue%20sources%20from%20state%20taxes%20and,fuel%20taxes%20and%20motor%20vehicle%20license%20related%20fees>. (last visited Mar. 6, 2024).

³ *Id.*

⁴ S. 339.08(1), F.S.

⁵ Office of Work Program and Budget Florida Department of Transportation, *supra* note 2.

⁶ S. 339.135(3), F.S.

⁷ S. 339.175(8)(a), F.S.

⁸ S. 206.46(3), F.S. The funding cap minimum is for public transportation projects that are in accordance with ch. 311, ss. 332.003-332.007, ch. 341, and ch. 343 of F.S.

⁹ S. 341.031(6), F.S.

Effect of the Bill

The bill provides that FDOT may not annually commit more than 20 percent of the revenues derived from state fuel taxes and motor vehicle license-related fees deposited into the State Transportation Trust Fund to public transit projects, in accordance with ch. 341, F.S. However, FDOT may annually commit more than 20 percent of such revenues for any of the following:

- A public transit project that uses revenues derived from state fuel taxes and motor vehicle license-related fees to match funds made available by the Federal Government.
- A public transit project included in the transportation improvement program adopted pursuant to s. 339.175(8), F.S., and approved by a supermajority vote of the board of county commissioners or the governing board of a consolidated county and city government where the project is located.
- A bus rapid transit or rail project that would result in maintaining or enhancing the level of service of the state highway system along the corridor of the project, provided state funds do not exceed 50 percent of the nonfederal share of the costs and the percentage of the local share.

Course Content for New Driver Education Courses and Driver Improvement Courses

Current Situation

Each applicant for a driver license who is not already licensed in another jurisdiction must complete a traffic law and substance abuse education course (TLSAE course), unless the applicant has satisfactorily completed a Department of Education driver education course.¹⁰ The Department of Highway Safety and Motor Vehicles (DHSMV) must approve TLSAE courses, and course materials must be designed to promote safety, education, and driver awareness.¹¹ Approved TLSAE courses must be updated at DHSMV's request, and a course provider's failure to do so within 90 days after DHSMV's request will result in the suspension of the course approval until such time that the updates are submitted and approved by DHSMV.¹²

DHSMV must approve and regulate the basic driver improvement courses required by ss. 322.0261 and 318.14(9), F.S., as well as the advanced driver improvement courses required by ss. 322.0261(1)(c) and 322.291, F.S.¹³ In determining whether to approve these courses, DHSMV must consider course content designed to promote safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve driver performance from a safety viewpoint, including promoting motorcyclist, bicyclist, and pedestrian safety and risk factors resulting from driver attitude and irresponsible driver behaviors, such as speeding, running red lights and stop signs, and using electronic devices while driving.¹⁴ DHSMV must set and modify course content requirements to keep current with laws and safety information.¹⁵ DHSMV may require that approved driver improvement courses listed above be updated, and failure to do so will result in the suspension of the course approval until the course is updated and approved by DHSMV.¹⁶

Effect of the Bill

The bill requires DHSMV to annually review changes made to major traffic laws of this state, including the Move Over Law in s. 316.126(1)(b), F.S. DHSMV must require that course content for the TLSAE course and the basic and advanced driver improvement courses be modified in accordance with

¹⁰ S. 322.095(1), F.S.

¹¹ S. 322.095(2), F.S.

¹² S. 322.095(7), F.S.

¹³ S. 318.1451(1), F.S. See also DHSMV, *Driver Improvement Schools*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/driver-improvement-schools/#:~:text=All%20first%2Dtime%20drivers%20must,have%20to%20take%20the%20TLSAE> (last visited Mar. 6, 2024); DHSMV, *What are 3 crashes in 3 years and how do I complete this requirement?*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/driver-improvement-schools/3-crashes-3-years-complete-requirement/> (last visited Mar. 6, 2024).

¹⁴ S. 318.1451(2)(a), F.S.

¹⁵ S. 318.1451(6)(d), F.S.

¹⁶ S. 318.1451(6)(b), F.S.

changes relevant to the courses.

Basic Driver Improvement Course Election

Current Situation

Under Florida law, if a person who does not hold a commercial driver license or commercial learner's permit is cited while driving a noncommercial motor vehicle for a noncriminal moving violation, then such person may, in lieu of a court appearance, elect to attend in the location of his or her choice within this state a Basic Driver Improvement (BDI) course approved by the DHSMV. This election may only be made once every 12 months and a total of five times within his or her lifetime.¹⁷

Effect of the Bill

The bill increases from five to eight the number of DHSMV-approved BDI course elections that are allowed in a lifetime for a person who does not hold a commercial driver license or commercial learner's permit and who is cited for a noncriminal moving violation while driving a noncommercial motor vehicle.

Additionally, the bill conforms a cross-reference to reflect this increase in the section of law relating to insurance discounts for persons completing a driver improvement course.

Public-Private Transportation Facilities and Comprehensive Agreements

Current Situation

Public-Private Transportation Facilities

Florida law allows FDOT to receive and solicit proposals and, with legislative approval of a project in FDOT's work program, enter into agreements with private entities for the building, operation, ownership, or financing of transportation facilities. FDOT may advance projects in the adopted Five-Year Work Program or projects in the 10-year Strategic Intermodal Plan greater than \$500 million that increase transportation capacity using funds provided by private entities.^{18 19}

Public-Private Partnerships (P3s)

The use of P3s is authorized by Florida law²⁰ for a broad range of infrastructure projects at the local and state level. P3s are contractual agreements between public and private-sector partners that perform functions that are normally undertaken by a public agency. P3s allow cooperation between both sectors, with the agency remaining ultimately responsible for the public function.²¹ In P3s, the private sector typically takes on the additional project risks such as design, construction, finance, long-term operation, and traffic revenue.²² P3s have potential to lower the cost of infrastructure to the public partner by reducing construction costs and overall life-cycle costs.²³

Proposals for P3 projects can be unsolicited or solicited. Before the procurement process is initiated, or before a contract is awarded, the public entity must perform an independent analysis of the proposed

¹⁷ S. 318.14(9), F.S.

¹⁸ S. 334.30(1), F.S.

¹⁹ FDOT, Agency Analysis of 2024 Senate Bill 266, p. 2 (Jan. 5, 2024).

²⁰ S. 255.065, F.S.

²¹ Florida Tax Watch, *Using Public-Private Partnerships and Public-Public Partnerships to Meet the Growing Demands for Public Infrastructure* (Jan. 2023), p. 2, file:///C:/Users/walker.rachel/Downloads/Web-Public-Private%20Partnership%20Report_Florida%20TaxWatch%20FINAL.pdf (last visited Mar. 6, 2024).

²² U.S. Department of Transportation, *Public Private-Partnerships (P3)*, (Jan. 3, 2024), <https://www.transportation.gov/buildamerica/p3> (last visited Mar. 6, 2024).

²³ Florida Tax Watch, *supra* note 21.

Effect of the Bill

The bill amends the law relating to public-private transportation facilities and P3s by:

- Replacing the term “public-private partnership agreement” with the term “comprehensive agreement”, thereby aligning with industry terms.
- Requiring a private entity, as part of the private entity proposal, to provide an independent traffic and revenue study prepared by a traffic and revenue expert, rather than an investment grade traffic and revenue study prepared by an internationally recognized traffic and revenue expert. The independent traffic and revenue study must be accepted by national bond rating agencies before closing on financing that supports the comprehensive agreement for the P3 project.
- Adding a minimum timeframe of 30 days for FDOT to accept other proposals on a project where FDOT has received an unsolicited proposal and providing FDOT discretion as to such timeframe based on the complexity of the project.
- Authorizing FDOT before or in connection with the negotiation of a comprehensive agreement, to enter into an interim agreement with the private entity proposing the development or operation of a qualifying project. An interim agreement does not obligate FDOT to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:
 - Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, designing, environmental analysis and mitigation, surveying, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.
 - Establish the process and timing for the negotiation of the comprehensive agreement.
 - Contain such other provisions related to an aspect of the development or operation of a qualifying project which FDOT and the private entity deem appropriate.
- Requiring FDOT to notify the Division of Bond Finance of the State Board of Administration before entering into an interim or comprehensive agreement and to provide the division with information necessary to provide timely consultation and recommendations.
- Providing that a comprehensive agreement with a term of more than 50 and no more than 75 years may only be authorized for projects that are partially or completely funded from project user fees.

Use of Recyclable Materials in Construction

Current Situation

Florida law provides that it is the intent of the Legislature that FDOT continue to expand its current use of recovered materials in its construction programs.²⁵ Among various provisions effectuating such legislative intent, current law states the following:

Notwithstanding any law, rule, or ordinance to the contrary, a local governmental entity may not adopt standards or specifications that are contrary to [FDOT] standards or specifications for permissible use of reclaimed asphalt pavement material in construction. For purposes of [s. 336.044, F.S.], such material may not be considered solid waste.²⁶

Effect of the Bill

The bill amends the provision above relating to the use of reclaimed asphalt pavement material to read as follows:

²⁴ *Id.*

²⁵ S. 336.044(1), F.S.

²⁶ S. 336.044(5), F.S.

Notwithstanding any law, rule, or ordinance to the contrary, a local governmental entity may not adopt standards or specifications that are contrary to [FDOT] standards or specifications for permissible use of reclaimed asphalt pavement material and may not deem reclaimed asphalt pavement as solid waste.

Design-Build and Phased Design-Build Contracts

Current Situation

If FDOT determines that it is in the best interests of the public, it may:

- Combine the design and construction phases of a project into a single contract, which is referred to as a design-build contract.²⁷
- Combine the design and construction phases of a project fully funded in the work program into a single contract and select the design-build firm in the early stages of a project to ensure that the design-build firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. Such a contract is referred to as a phased design-build contract.²⁸

Provisions in Florida law related to phased design-build contracts were added in the 2023 Legislative Session.²⁹

Effect of the Bill

The bill adds phased design-build contracts to the requirements that FDOT receive at least three letters of interest in order to proceed with a request for proposals and that FDOT request proposals from no fewer than three of the firms submitting letters of interest.

The bill also amends the surety bond requirement for phased design-build contracts by allowing, according to FDOT's discretion, the issuance of multiple contract performance and payment bonds in succession to align with each phase of the contract, rather than requiring that the successful bidder provide a surety bond equal to the full awarded contract price.

Motor Vehicles and Road and Bridge Construction or Maintenance

Current Situation

FDOT contracts let for the performance of road or bridge construction or maintenance must require that motor vehicles that the contractor operates or causes to be operated in the state of Florida be registered in compliance with ch. 320, F.S., relating to motor vehicle license laws.³⁰

Effect of the Bill

The bill provides in law, rather than as a requirement or condition in an FDOT contract, that a motor vehicle used for the performance of road or bridge construction or maintenance work on an FDOT project must be registered in compliance with ch. 320, F.S.

Retainage

Current Situation

Retainage

Retainage is the portion of monies kept aside until a project is completed in all aspects according to the

²⁷ S. 337.11(7)(a), F.S.

²⁸ S. 337.11(7)(b), F.S.

²⁹ Ch. 2023-197, Laws of Fla.

³⁰ S. 337.11(13), F.S.

contract.³¹ FDOT may provide in its construction contracts for retaining a portion of the amount due a contractor for work that the contractor has completed, until completion and final acceptance of the project by FDOT.³²

FDOT may, when using flexible start and finish time limits on public contracts, withhold up to 10 percent retainage on completed work when the contractor either fails to timely commence work or falls behind in work progress at any point prior to completion of the contract.³³

Timeline for Actions Filed Against Construction or Maintenance Contractors or Surety Bonds

Under Florida law, an action must be instituted by a claimant, whether in privity with the contractor or not, against the contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond within 365 days after the final acceptance of the contract work by FDOT.³⁴

Effect of the Bill

The bill shortens the deadline for a claimant to institute an action against the contractor or surety to within 365 days after performance of the labor or completion of delivery of the materials or supplies, rather than within 365 days after the final acceptance of the contract work by FDOT. However, the bill excludes an action for recovery of retainage from the amended deadline and retains current law as to the deadline to institute such an action.

Limits on Liability on FDOT and its Construction and Maintenance Contractors

Current Situation

Under Florida law, in a civil action for the death of or injury to a person, or damage to property due to a motor vehicle crash within a construction zone, against FDOT and its agents, it is presumed that the driver's operation of the vehicle was the sole proximate cause of her or his own death, injury, or damage under the following circumstances:

- The driver operated a vehicle recklessly; or³⁵
- The driver was under influence of alcoholic beverages, under the influence of certain chemical substances, or illegally under the influence of any other substance controlled under ch. 893, F.S., to the extent that the driver's normal faculties were impaired.³⁶

This presumption can be overcome if the gross negligence or intentional misconduct of the FDOT, or of its agents, consultants, or contractors, was a proximate cause of the driver's death, injury, or damage.³⁷

Florida law also limits the liability of FDOT's construction and maintenance contractors performing services for FDOT if, at the time of the personal injury, property damage, or death, the contractor was in compliance with the contract documents material relating to the condition that was the proximate cause of the personal injury, property damage, or death.³⁸ This limitation on the liability of such contractors does not apply when the proximate cause is a latent condition, defect, error, or omission that was created by the contractor and not a defect, error, or omission in the contract documents; or when the proximate cause was the contractor's failure to perform, update, or comply with the maintenance of the traffic safety plan as required by the contract documents.³⁹

³¹ FDOT, *supra* note 19 at p. 3.

³² S. 337.175, F.S.

³³ S. 337.015(5), F.S.

³⁴ S. 337.18(2)(d), F.S.

³⁵ Section 316.192(1), F.S., provides that any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

³⁶ S. 337.195(1), F.S.

³⁷ *Id.*

³⁸ S. 337.195(2), F.S.

³⁹ *Id.*

Additionally, Florida law limits the liability of a person or entity contracting with FDOT to provide engineering plans for construction or repair of highway, road, street, bridge, or other transportation facility. This limit on liability presumes that, in all cases involving personal injury, property damage, or death, the person or entity shall be presumed to have prepared such engineering plans using the degree of care and skill ordinarily exercised by other engineers in the field under similar conditions and in similar localities and with due regard for acceptable engineering standards and principles if the engineering plans conformed to FDOT's design standards material to the condition or defect that was the proximate cause of the personal injury, property damage, or death.⁴⁰ This presumption can be overcome only upon a showing of the person's or entity's gross negligence in the preparation of the engineering plans, and this limitation on liability does not apply to any hidden or undiscoverable condition created by the engineer.⁴¹

If FDOT, its agents, consultants, engineers, or contractors are immune from liability, or are not parties to the litigation, they may not be named on the jury verdict form or be found to be at fault or responsible for the injury, death, or damage that gave rise to the damages.⁴²

Effect of the Bill

The bill defines the following terms:

- Contract documents: Has the same meaning as in the applicable contract between the FDOT and the contractor.
- Contractor: A person or an entity, at any contractual tier, including any member of a design-build team pursuant to s. 337.11, F.S., who constructs, maintains, or repairs a highway, road, street, bridge, or other transportation facility for the FDOT in connection with an FDOT project.
- Design engineer: A person or an entity, including the design consultant of a design-build team, who contracts at any tier to prepare or provide engineering plans, including traffic control plans, for the construction or repair of a highway, road, street, bridge, or other FDOT transportation facility for FDOT or in connection with an FDOT project.
- Traffic control plans: Maintenance of traffic plans designed by a professional engineer, or otherwise in accordance with FDOT's standard plans, and approved by FDOT.

The bill adds the following circumstance wherein it is presumed that the driver's operation of the vehicle was the sole proximate cause of her or his own death, injury, or damage from a motor vehicle crash within a construction zone: The driver was under the influence of medical marijuana authorized by Florida law,⁴³ excluding low-THC cannabis.

The bill provides that the limitation on liability contained in s. 337.11, F.S., does not apply when the proximate cause of the personal injury, property damage, or death was the contractor's failure to comply with the traffic control plans as required by the contract documents.

The bill provides that, in all cases involving personal injury, property damage, or death, a design engineer, as defined above, is presumed to have prepared engineering plans using the degree of care and skill ordinarily exercised by other engineers in the field under similar conditions and in similar localities and with due regard for acceptable engineering standards and principles if the engineering plans conformed to FDOT's design standards material to the condition or defect that was the proximate cause of the personal injury, property damage, or death. This presumption can be overcome only upon a showing of the design engineer's gross negligence in the preparation of the engineering plans and may not be interpreted or construed to alter or affect any claim of FDOT against such design engineer. This limitation on liability does not apply to any hidden or undiscoverable condition created by the

⁴⁰ S. 337.195(3), F.S.

⁴¹ *Id.*

⁴² S. 337.195(4), F.S.

⁴³ S. 381.986, F.S.

design engineer and does not affect any claim of any entity against such design engineer, which claim is associated with such entity's facilities on or in FDOT roads or other transportation facilities.

The bill revises current law that prohibits naming the (FDOT), its agents, consultants, engineers, or contractors on a jury verdict form and prohibits such persons from being found at fault if such persons are immune from liability or are not parties to the litigation. The bill would allow naming FDOT or a contractor or design engineer, as those terms are defined in the bill, on a jury verdict form and allow such persons to be found at fault or responsible even if they are not parties to the litigation, so long as they are not immune from liability for the theory of liability that gave rise to the damages.

Disposal of Real Property by FDOT

Current Situation

FDOT is authorized to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings, or other improvements necessary to secure or use transportation rights-of-way for existing, proposed, or anticipated transportation facilities.⁴⁴ At a later date, if FDOT determines the acquired property is no longer needed for a transportation facility,⁴⁵ FDOT is authorized to convey the property.⁴⁶ In such cases, FDOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means FDOT deems to be in its best interest and must advertise the disposal of the property if it is valued over \$10,000.⁴⁷

Before a conveyance may be made, FDOT must first afford a right of first refusal to the previous property owner for FDOT's current estimate of the property's value.⁴⁸ The right of first refusal must:⁴⁹

- Be made in writing;
- Be sent to the previous owner via certified mail or hand delivery, effective upon receipt;
- Provide the previous owner with a minimum of 30 days to exercise the right in writing; and
- Be sent to the originator of the offer by certified mail or hand delivery, effective upon dispatch.

If the previous owner exercises his or her right of first refusal, the previous owner has a minimum of 90 days to close on the property.⁵⁰ This right of first refusal is not required if the property was acquired by FDOT more than 10 years before the date of disposition.⁵¹

Effect of the Bill

The bill amends provisions relating to the previous property owner's right of first refusal for property that FDOT acquired but subsequently determined is no longer needed for a transportation facility. If, within 10 years after the date of FDOT's acquisition of the property, the previous property owner notifies FDOT, in writing provided via certified mail to FDOT's district secretary of the district in which the property is located, of the previous property owner's interest in reacquiring the property, the right to receive the right of first refusal vests with such previous owner, and FDOT is thereafter obligated to issue a right of first refusal to the previous property owner before disposal or conveyance of the property, whenever that may occur. Within 60 days after FDOT's receipt of the previous property owner's notice of interest, FDOT must acknowledge receipt of such notice, in writing provided via certified mail, to the previous property owner.

⁴⁴ S. 337.25(1)(a), F.S.

⁴⁵ S. 334.03(30), F.S., defines "transportation facility" as any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place.

⁴⁶ S. 337.25(4), F.S.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

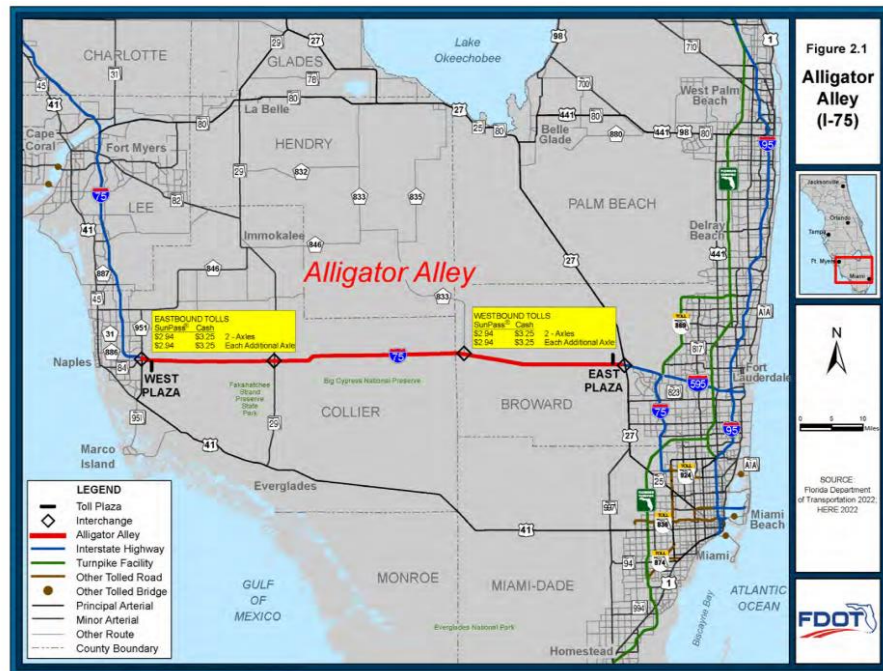
⁵⁰ *Id.*

⁵¹ *Id.*

Alligator Alley Toll Road

Current Situation

Alligator Alley is a 78-mile toll road connecting Naples and Fort Lauderdale. It is established as a toll road because the construction of the road contributed to the alteration of water flows in the Everglades and affected ecological patterns of the historical southern Everglades.⁵² Collier County provides fire, rescue, and emergency management services along Alligator Alley through a fire station located at mile marker 63 on Alligator Alley. A map of the Alligator Alley toll road is below.⁵³



Florida law sets forth required uses of the revenues generated from tolls collected on Alligator Alley as follows:⁵⁴

- To reimburse outstanding contractual obligations;
- To operate and maintain the highway and toll facilities, including reconstruction and restoration; and
- By interlocal agreement effective July 1, 2019, through no later than June 30, 2027, to reimburse a local governmental entity for the direct actual costs of operating the fire station at mile marker 63 on Alligator Alley, which shall be used by the local governmental entity to provide fire, rescue, and emergency management services exclusively to the public on Alligator Alley. The local governmental entity must contribute 10 percent of the direct actual operating costs. The amount of reimbursement to the local governmental entity may not exceed \$1.4 million in any state fiscal year. At the end of the term of the interlocal agreement, the ownership and title of all fire, rescue, and emergency equipment used at the fire station during the term of the interlocal agreement transfers to the state.

Revenues generated annually in excess of those required to pay the above-described expenses may be transferred to the Everglades Trust Fund and used for certain environmental projects.⁵⁵

⁵² S. 338.26(1), F.S.

⁵³ FDOT, *Enterprise Toll Operations (FY 2022)*, p.20, <https://floridasturnpike.com/wp-content/uploads/2023/02/2022-Department-owned-Facilities.pdf> (last visited Mar. 6, 2024).

⁵⁴ S. 338.26(3)(a), F.S.

⁵⁵ S. 338.26(3)(b), F.S.

Effect of the Bill

The bill makes permanent the requirement that revenues generated from tolls collected on Alligator Alley be used to reimburse, by interlocal agreement, a local governmental entity (i.e., Collier County) for the direct actual costs of operating the fire station at mile marker 63.

The bill provides that the interlocal agreement effective July 1, 2019, through June 20, 2027, controls until such time that the local governmental entity and the FDOT enter into a new agreement or agree to extend the existing agreement. For the 2024-2025 fiscal year, the amount of reimbursement may not exceed \$2 million, which is an increase from \$1.4 million.

By December 31, 2024, and every five years thereafter, the local governmental entity must provide to the FDOT a maintenance and operations comprehensive plan. The comprehensive plan must include a current inventory of assets, including their projected service life, and area service needs; the call and response history for emergency services provided in the preceding 5 years on Alligator Alley, including costs; and future projects for assets and equipment, including replacement or purchase needs, and operating costs.

The local governmental entity and the FDOT must review and adopt the comprehensive plan as part of the interlocal agreement.

In accordance with projected incoming toll revenues for Alligator Alley, the FDOT must include the corresponding funding needs of the comprehensive plan into the FDOT's work program, and the local government entity must include the same in its capital comprehensive plan and the appropriate fiscal year budget.

Lastly, regarding the requirement that ownership and title of all fire, rescue, and emergency equipment transfers to the state at the termination of the interlocal agreement, the bill provides that such transfer only applies to such equipment that was *purchased with state funds* and used at the fire station during the term of the interlocal agreement.

Local Agency Program

Current Situation

Currently, FDOT oversees the Local Agency Program (LAP) on behalf of the Federal Highway Administration (FHWA). The LAP provides federal funds to sub-recipient towns, cities, and counties in order to develop, design, and construct transportation facilities. This program prioritizes local projects through the M.P.O.s or governing boards, and the reimbursement of project costs with federal funds is only available to local agencies that perform the required certification process. Such certification process evaluates whether the local agency has the sufficient qualifications and ability to undertake and satisfactorily complete the work.⁵⁶ The LAP is not currently codified in Florida law.

Effect of the Bill

The bill codifies the LAP program within FDOT. The bill provides that the LAP will have the purpose of providing assistance to subrecipient agencies, which include counties, municipalities, intergovernmental agencies, and other eligible governmental entities, in developing, designing, and constructing transportation facilities using funds allocated by federal agencies to FDOT which are then suballocated by FDOT to local agencies.

The bill requires FDOT to:

- Take the responsibility of oversight of funded projects on behalf of FHWA; and
- Update the project cost estimate in the year the project is granted to the local agency and include a contingency amount as part of the project cost estimate.

⁵⁶ FDOT, *LAP Certification*, <https://www.fdot.gov/programmanagement/lap/becomingcertified.shtm> (last visited Mar. 6, 2024).

The bill requires local agencies to:

- Prioritize and budget local projects through their respective M.P.O's or governing boards that are eligible for reimbursement for the services provided to the traveling public through compliance with applicable federal statutes, rules, and regulations.
- Be certified by FDOT based on their qualifications, experience, ability to comply with federal requirements, and ability to undertake and satisfactorily complete the work; and
- At minimum, include in their contracts to develop, design, or construct transportation facilities FDOT's Division I General Requirements and Covenants for local agencies and a contingency amount in the project cost to account for unforeseen conditions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See "Fiscal Comments" section below.

2. Expenditures:

Indeterminate. See "Fiscal Comments" section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See "Fiscal Comments" section below.

2. Expenditures:

Indeterminate. See "Fiscal Comments" section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. See "Fiscal Comments" section below.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on FDOT, as well as local government and transit agencies, as the bill establishes a 20 percent STTF funding cap on public transit projects. The funding cap would limit the total amount of state discretionary funding the department can provide to local governments and transit agencies. However, these costs will be contained within the confines of the Work Program and will not alter overall State expenditures.

The bill may have an indeterminate positive fiscal impact on FDOT and its contractors and design engineers to the extent that such entities benefit from:

- Increased immunity from liability for personal injury, property damage, or death that may occur due to a motor vehicle crash within a construction zone.
- The ability, under certain circumstances, to name FDOT, a contractor, or a design engineer on a jury verdict form in order to allow such persons to be found at fault even if they are not parties to the litigation.

Due to the increase in the costs that must be reimbursed to support the fire station at mile marker 63 on the Alligator Alley toll road, the bill may have an indeterminate negative fiscal impact on FDOT,

specifically the Turnpike Authority, and certain environmental projects funded through the Everglades Trust Fund.

The bill may have an indeterminate negative fiscal impact on FDOT as a result of codifying the LAP Program. Although, FDOT already oversees LAP and LAP certifications, FDOT has communicated that the creation of the LAP program in law may increase their administrative burden and, therefore, increase their need for additional staff in the future.⁵⁷

⁵⁷ FDOT, *supra* note 19 at p. 8-9.