

**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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

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BILL: CS/SB 756

INTRODUCER: Transportation Committee and Senator Brandes

SUBJECT: Department of Transportation

DATE: January 20, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Fav/CS</b>
2.	Sneed	Miller	ATD	<b>Pre-meeting</b>
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 756 is the Florida Department of Transportation's (FDOT) 2016 Legislative Package. More specifically, the bill:

- Creates the FDOT Financing Corporation, a nonprofit corporation, for the purpose of financing or refinancing projects in the FDOT's work program through one or more service contracts, under which the corporation is authorized to issue bonds and other forms of indebtedness secured by payments to the corporation by the FDOT.
- Requires the FDOT to consult with and provide information to the Division of Bond Finance (DBF) in connection with a proposal to finance or refinance a transportation facility through the FDOT's authority to enter into public-private partnerships, and authorizes the DBF to make an independent recommendation.
- Expressly authorizes an existing, federally approved business development program for highway projects within the FDOT, which is intended to assist small businesses, increase competition, and reduce costs.
- Increases from \$15 million to \$25 million the minimum annual funding for the Florida Seaport Transportation and Economic Development (FSTED) program.
- Authorizes the FDOT to assume certain review responsibilities under the National Environmental Policy Act (NEPA) with respect to highway projects
- Substantially revises chapter 333, F.S., relating to airport zoning regulations.
- Allows commercial motor vehicle (CMV) operators to purchase temporary CMV registration permits at certain locations and provides for a reduced non-registration penalty under certain circumstances.

- Increases from three to ten years the period after which a dormant prepaid toll account is presumed unclaimed.
- Deletes references to toll facilities no longer owned by the FDOT.

This bill has potential fiscal impacts to the private and government sectors. See Section V.

The bill has an effective date of July 1, 2016.

## 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 Financing Corporation (Section 26)

#### *Present Situation*

Authority to Issue Debt for Transportation Projects:

Current law reflects a number of provisions authorizing the issuance of debt for the purpose of financing or refinancing certain transportation projects, which include:

- *Right of way and bridge construction bonds issued by the DBF upon request of the FDOT pursuant to the State Bond Act.* These bonds are secured by the full faith and credit of the state and are payable primarily from motor fuel and diesel fuel taxes transferred to the Right-of-Way Acquisition and Bridge Construction Trust Fund. With an exception for refinancing bonds, these bonds must be first authorized by the Legislature in the General Appropriations Act or by general law.<sup>1</sup>
- *Revenue bonds issued by the DBF on behalf of the FDOT pursuant to the State Bond Act for fixed capital expenditures for fixed-guideway transportation systems.*<sup>2</sup> Such bonds must be approved by the Legislature by general law. These bonds do not constitute a general obligation of or a pledge of the full faith and credit of the state. The bonds are payable from a percentage of funds annually deposited into the State Transportation Trust Fund (STTF) for public transportation projects, or other funds available for the project, subject to annual appropriation.<sup>3,4</sup>
- *Federal highway apportionment grant anticipation revenue vehicle (GARVEE) bonds*<sup>5</sup> issued for or on behalf of the FDOT. These bonds are payable primarily from a prior and superior

<sup>1</sup> See s. 17, Art. VII of the State Constitution; ss. 215.57-215.83, F.S.; and s. 215.605, F.S.

<sup>2</sup> Defined in s. 341.031(2), F.S., as a public transit system for the transporting of people by a conveyance, or a series of interconnected conveyances, which is specifically designed for travel on a stationary rail or other guideway, whether located on, above, or under the ground.

<sup>3</sup> See s. 11, Art. VII of the State Constitution; ss. 215.57-215.83, F.S.; and s. 215.615, F.S.

<sup>4</sup> Section 215.615(1)(b), F.S., limits the revenues available for debt service on fixed-guideway bonds to no more than 2 percent of all state revenues deposited into the STTF.

<sup>5</sup> These securities anticipate moneys from a specific source, in this case future federal-aid highway funding for eligible projects under Title 23 of the United States Code. See the FHWA website:<sup>5</sup>

claim on all federal highway reimbursements received each year with respect to federal-aid projects undertaken in accordance with Title 23 of the United States Code. These bonds do not constitute a debt or general obligation of the state or a pledge of the state's full faith and credit or taxing power of the state.<sup>6,7</sup>

- *Revenue bonds issued by the DBF upon request of the FDOT pursuant to the State Bond Act.* These revenue bonds are secured by toll revenues collected on non-turnpike facilities for projects in the county or counties in which the revenue-producing project is located.<sup>8</sup>
- *Turnpike revenue bonds issued by the DBF on behalf of the FDOT.* Turnpike revenue bonds are secured by toll revenues pledged for repayment of the principal and interest on such bonds for turnpike projects contained in the FDOT's legislatively approved tentative work program. These bonds do not constitute debts of the state and do not pledge the full faith and credit of the state.<sup>9,10</sup>

The FDOT is also authorized to enter into long-term public-private partnership contractual agreements with private entities for the building, operation, ownership, or financing of transportation facilities pursuant to s. 334.30, F.S. For projects on the State Highway System, the FDOT may use state resources to participate in funding and financing a project as provided for under the FDOT's enabling legislation. No more than 15 percent of total federal and state funding in any given year for the STTF may be obligated collectively for all projects under that section.<sup>11</sup>

#### ***Debt Management:***

To ensure that financing of transportation infrastructure is managed with fiscal integrity, section 339.139, F.S., requires the FDOT to provide a debt and debt-like contractual obligations load report along with submission of its annual tentative work program under s. 339.135, F.S. The report must include data on current and planned commitments payable from the STTF, including:

- Debt service payments required to be made under any resolution for the issuance of bonds secured by a lien on federal highway aid reimbursements or motor fuel and diesel fuel taxes.
- Funding for seaports which has been pledged to the payment of principal and interest on bonds issued by the Florida Ports Financing Commission pursuant to s. 320.20, F.S.
- Commitments of the FDOT to pay the costs of operating, maintaining, repairing, and rehabilitating expressway and bridge systems under the terms of lease-purchase agreements which are enforceable by the holders of bonds issued by expressway and bridge authorities pursuant to ch. 348, F.S.
- Availability, milestone, and final acceptance payments required by public-private partnerships pursuant to s. 334.30, F.S., that are not payments for the cost of operation or maintenance of a facility.

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[http://www.fhwa.dot.gov/ipd/finance/tools\\_programs/federal\\_debt\\_financing/garvees/default.aspx](http://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_debt_financing/garvees/default.aspx). Last visited November 23, 2015.

<sup>6</sup> See s. 11, Art. VII of the State Constitution; ss. 215.57-215.83, F.S.; and s. 215.616, F.S.

<sup>7</sup> Section 215.616(3), F.S., limits the revenues available for debt service on GARVEE bonds to no more than 10 percent of annual apportionments to the FDOT for federal highway aid under Title 23 of the United States Code.

<sup>8</sup> See s. 11, Art. VII of the State Constitution; ss. 215.57-215.83, F.S.; and s. 338.165, F.S.

<sup>9</sup> See s. 11, Art. VII of the State Constitution; ss. 215.57-215.83, F.S.; and ss. 338.227, 338.2275, and 338.228, F.S.

<sup>10</sup> No more than \$10 billion of bonds may be outstanding. Section 338.22275(1), F.S.

<sup>11</sup> Section 334.30(12), F.S.

- Agreed-on payments to an FDOT contractor for work performed in the current fiscal year for which payment is deferred to a later fiscal year for public-private partnerships pursuant to s. 334.30, F.S.
- Reimbursements to local governments for work performed on a project if the reimbursement is deferred to a later fiscal year pursuant to s. 339.12, F.S.
- Loan repayments on state infrastructure bank loans extended to an FDOT district pursuant to s. 339.55, F.S.

Beginning in the 2017-2018 fiscal year, no more than 20 percent of total projected available state and federal revenues from the STTF, together with any local funds committed to FDOT projects, may be committed to the above identified obligations in any year.<sup>12</sup>

### *Effect of Proposed Changes*

The bill creates the FDOT Financing Corporation, authorizing the corporation to issue debt payable from, and secured by, contractually committed payments from the FDOT. The proceeds would then be used by the FDOT for the purpose of financing needed transportation projects.

The FDOT advises that creation of the corporation does not replace traditional funding mechanisms; rather, use of the corporation to issue debt is “another tool in the Department’s funding toolbox.” The state’s debt load calculation remains unchanged; *i.e.*, any bonds procured by the corporation would be included in the debt report, and the FDOT continues to be bound by the 20 percent statutory cap on its overall debt. The DBF will oversee the structuring and sale of bonds on behalf of the corporation and will account for and measure the debt in the same way that other state debt is recorded. Further, the FDOT advises:

The main advantage of creating the Corporation is to provide the Department with a mechanism to enter into long-term financing agreements which utilize the favorable terms available to governmental borrowers in the tax exempt municipal bond market. This will provide the Department the ability to fund significant, currently needed transportation projects that might otherwise have to wait for traditional funding to become available, while ensuring that the costs of financing those projects are kept to a minimum.<sup>13</sup>

Large public-private partnerships typically require long-term financing agreements.

Section 26 creates s. 339.0809, F.S., establishing the non-profit FDOT Financing Corporation for the purpose of financing or refinancing FDOT projects. The bill:

- Establishes the corporation’s Board of Directors consisting of the director of the Office of Policy and Budget in the Executive Office of the Governor, the director of the DBF, and the

<sup>12</sup> According to the FDOT, based on a November calculation, the current relationship of debt and debt-like contractual obligations to the 20 percent cap ranges from 9.7 percent in 2016 to 14.7 percent in 2022 (with some variation during that period of time), and then drops to 8.5 percent in 2023. *See* the FDOT email to committee staff dated November 30, 2015. On file in the Senate Transportation Committee.

<sup>13</sup> *See* the FDOT’s response to House staff questions on the FDOT Financing Corporation. On file in the Senate Transportation Committee.

FDOT Secretary, along with such other officers as determined by the board. The DBF director serves as the chief executive officer of the corporation responsible for controlling, directing, and supervising the corporation's operation.

- Grants to the corporation all of the powers of a corporate body under Florida law, to the extent the powers are not inconsistent with or restricted by the new section of law. Among the powers granted are the power to:
  - Borrow money and issue notes, bonds, certificates of indebtedness or other obligations necessary to finance or refinance projects under the conditions specified below.
  - Acquire, purchase, hold, lease, and convey real and personal property and to sell, lease, or otherwise dispose of such property.
  - Elect or appoint and employ such other officers, agents, and employees the corporation deems advisable to operate and manage the corporation, which officers, agents, and employees may be officers or employees of the FDOT and the state agencies represented on the Board of Directors.
  - Select, retain, and employ professionals, contractors, or agents, which may include the DBF, as necessary or convenient to enable or assist the corporation.

To accomplish the stated purpose, the bill authorizes the corporation to enter into one or more service contracts with the FDOT, each of which may have a term up to 35 years, to provide services to the FDOT in connection with projects approved in the FDOT's work program. Approval of the FDOT's work program specifically authorizes the FDOT to enter into a service contract for a project contained in the work program. The service contracts may provide for the FDOT to make payments to the corporation, subject to annual appropriation. The proceeds from the contracts may be used for the corporation's administrative costs and expenses after specified payments.

The FDOT's obligations under any service contract do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state. The obligations are not obligations of the State Board of Administration (SBA) or entities for which it invests funds, other than the FDOT as provided. The obligations are payable solely from amounts available in the STTF, subject to annual appropriation. A service contract must include a specific statement that the State's performance and obligation to pay under the contract is contingent upon annual appropriation by the Legislature.

The corporation is authorized to issue and incur notes, bonds, or other evidences of indebtedness payable from and secured by the amounts payable to the corporation by the FDOT under a service contract. The duration of any such evidence of indebtedness is limited to 30 years. The corporation is authorized to select its financing team and issues its obligations through competitive bidding or negotiated contract, whichever is most cost-effective. Indebtedness of the corporation also does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state, but is payable from and secured by payments made by the FDOT under a service contract.

The bill further provides that:

- The purposes of the corporation promote the health, safety, and general welfare of the people of the state and serves essential governmental functions and a paramount public purpose.

- The corporation is exempt from taxation and assessments on its income, property, and assets or revenues acquired, received, or used in furtherance of the corporation's purpose.
- The corporation's obligations on indebtedness and the interest and income on such obligations are exempt from taxation.
- All security agreements, letters of credit, liquidity facilities, or other obligations or instruments to secure payment of such obligations are exempt from taxation, except that the exemption does not apply to any tax imposed under ch. 220, F.S., on the interest, income, or profits on debt obligations owned by the corporation.

The corporation is authorized to validate obligations<sup>14</sup> to be incurred and the validity and enforceability of any service contracts by proceedings under ch. 75, F.S. The corporation may also contract with the SBA to serve as trustee with respect to the corporation's issued debt obligations; to hold, administer, and invest proceeds of such obligations and other funds of the corporation; and to perform other services required by the corporation. The SBA may perform such services and contract with others to provide all or part of such services and to recover its and such other costs and expenses thereof. The FDOT may enter into a service contract in conjunction with the issuance of debt obligations that provides for periodic payments for debt service or other amounts payable with respect to the obligations, plus any administrative expenses of the corporation.

Similar bond finance corporations currently exist. The language in the bill creating the FDOT Financing Corporation is similar to the language creating the Inland Protection Financing Corporation in s. 376.3075, F.S.

### **Public-Private Partnerships (P3s) (Section 22)**

#### ***Present Situation***

Section 334.30, F.S., authorizes the FDOT to receive and solicit proposals and, with legislative approval of a project in the FDOT's work program, enter into agreements with private entities for the building, operation, ownership, or financing of transportation facilities. The 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. The entities are then reimbursed from FDOT funds for the project as programmed in the adopted work program.<sup>15</sup>

P3 agreements are typically long-term but may not exceed 50 years, unless authorized for a term of up to 75 years by the FDOT secretary, or unless a term in excess of 75 years is approved by the Legislature. P3 projects are also typically large and generally involve complex financial arrangements, and often include the issuance of debt obligations such as bonds.<sup>16</sup>

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<sup>14</sup> According to the DBF, 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. See copy of email from Ben Watkins, Director, Florida Division of Bond Finance, to House staff dated January 27, 2015. On file in the Senate Transportation Committee.

<sup>15</sup> See the FDOT website for a summary of P3 projects as of November, 2015, and additional project information: <http://www.dot.state.fl.us/officeofcomptroller/PFO/p3.shtm>. Last visited December 2, 2015.

<sup>16</sup> No more than 15 percent of total federal and state funding in any given year for the STTF may be obligated collectively for all P3 projects.

Provisions in current law require the FDOT to make certain determinations before approval of a proposed project; *i.e.*, that a project:

- Is in the public's best interest;
- Would not require state funds to be used unless the project is on the State Highway System;
- Would have adequate safeguards in place to ensure that no additional costs or service disruptions would be realized in the event of default or cancellation of the agreement;
- Would have adequate safeguards in place to ensure the FDOT or the private entity has the opportunity to add capacity to the project and other facilities serving similar origins and destinations; and
- Would be owned by the FDOT upon completion or termination of the agreement.<sup>17</sup>

The FDOT is also required to provide an independent analysis of a proposed P3 agreement that demonstrates the cost-effectiveness and overall benefit of the project prior to moving forward with the procurement and, if the procurement moves forward, prior to awarding the contract.<sup>18</sup>

Before soliciting a proposal, the FDOT must provide a summary of the proposed project to the Governor, the chair of each legislative appropriations committee, the President of the Senate, and the Speaker of the House of Representatives. The summary must include a description of any anticipated commitment by the FDOT for the years outside the adopted work program, a description of the anticipated impacts on the FDOT's 20 percent overall debt load limit, and sufficient information to demonstrate that the project will not cause the debt load to exceed the debt load limitation. The FDOT may proceed with a project upon approval of the Governor, but the Governor may not approve a project if the chair of either appropriations committee, the President of the Senate, or the Speaker of the House of Representatives objects in writing within 14 days after receipt of the summary.<sup>19</sup>

The same summary is required for unsolicited proposals, but the FDOT may not accept an unsolicited proposal, advertise its receipt as required by s. 334.30, F.S., or solicit other proposals for the same project without the approval of the Governor. Again, the Governor may not approve a proposed project if a written objection is received from the chair of either appropriations committee, the President of the Senate, or the Speaker of the House of Representatives.<sup>20</sup>

### ***Effect of Proposed Changes***

Section 22 requires the FDOT to consult with staff of the DBF in connection with a proposal to finance or refinance a transportation facility through a P3 agreement under s. 334.30, F.S. The FDOT must provide the DBF with information necessary to provide timely consultation and recommendations, and the DBF is authorized to make an independent recommendation to the Governor.

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<sup>17</sup> Section 334.30(1), F.S.

<sup>18</sup> Section 334.30(6)(e), F.S.

<sup>19</sup> Section 339.2825(1), F.S. Section 339.2825, F.S., does not apply to a P3 agreement under which the FDOT proposes to lease an existing toll facility per s. 339.2825(3), F.S., but the FDOT must provide the independent analysis described above prior to awarding a contract, per s. 334.30(2)(d), F.S.

<sup>20</sup> Section 339.2825(2), F.S.

## **Business Development Initiative (Section 23)**

### ***Present Situation***

The FDOT currently operates a federally approved program which is intended to increase competition, lower prices, and ensure businesses are available to carry out the FDOT's work program. The FDOT designed its Business Development Initiative (BDI) "... to provide more opportunities and support for small businesses to move from subcontracting and subconsulting to prime contracting and consulting roles."<sup>21</sup>

The BDI was first implemented in the FDOT's District Two beginning in Fiscal Year 2006-2007 and then expanded to the remaining FDOT districts. The FDOT implemented a number of strategies to increase competition while maintaining a focus on preventing any adverse effects on projects in the work program. Among the strategies the FDOT employed to assist small businesses in bidding on FDOT contracts for which the businesses would not typically submit bids are:

- Reserving certain construction and maintenance contracts for small businesses.
- Waiving performance bond requirements for contracts under \$250,000.
- Using a modified qualification process instead of the standard prequalification process for construction and maintenance projects.<sup>22</sup>

The FDOT advises that the BDI, being the first of its kind nationally to be considered, was approved by the Federal Highway Administration for use on federally funded projects in March 2009.

The FDOT's districts, when selecting candidate projects, are instructed to consider whether a project is low-risk in nature and whether a sufficient number of small businesses are available to bid on the contract.<sup>23</sup> Construction and maintenance projects that are candidates for reservation for the program are identified prior to the upcoming fiscal years contract letting plan, subject to the FDOT central office approval.

Identification of a construction or maintenance project for the BDI means:

- The contract, limited in amount to \$1,500,000 or less, will be reserved for bids by small businesses.
- Prequalification is not required.<sup>24</sup>

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<sup>21</sup> See the FDOT's BDI website: <http://www.dot.state.fl.us/equalopportunityoffice/bdi.shtm>. Last visited November 3, 2015.

<sup>22</sup> *Id.* Select "BDI Program Guidelines."

<sup>23</sup> The FDOT maintains a small business listing for road and bridge construction and maintenance contracts at: [http://www2.dot.state.fl.us/sasweb/cgi-bin/broker.exe?\\_service=default&\\_program=inetprog.db2.smbusform.scl](http://www2.dot.state.fl.us/sasweb/cgi-bin/broker.exe?_service=default&_program=inetprog.db2.smbusform.scl). Last visited November 10, 2015.

<sup>24</sup> Section 337.14, F.S., generally requires the FDOT to certify as qualified any person desiring to bid on a construction contract in excess of \$250,000 by addressing requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification. See also Fla. Admin. Code R. 14-22 (2010).

- Performance bonds are waived on contracts under \$250,000.<sup>25</sup>
- Bid bonds are \$500 for contracts over \$150,000.<sup>26</sup>
- All subcontractors must be small businesses, defined by the FDOT for construction and maintenance contracts to mean those businesses with average annual gross receipts over the last three years not to exceed \$15 million.<sup>27</sup>
- The contract will be procured under s. 337.025, F.S., the FDOT's authority to use innovative techniques for highway projects.<sup>28</sup>

Similarly, the FDOT's districts are responsible for reviewing and identifying candidate professional services<sup>29</sup> contracts for the BDI, again considering whether a sufficient number of small businesses are available to submit a bid.<sup>30</sup> A request to use the BDI for a professional services contract is submitted to the FDOT's central office Procurement Manager, who is responsible for approving or denying the request. Identification of a professional services contract for the BDI means:

- The contract, limited in amount to \$1,500,000 or less, will be reserved for bids by small businesses.
- No preference points will be used for the contract.
- Prequalification in all listed professional services work types is required.<sup>31, 32</sup>
- An overhead audit prepared by an independent Certified Public Accountant is required for any contracts in excess of \$500,000.<sup>33</sup>
- All prime firms and sub-consultants must be small businesses, defined by the FDOT for professional services contracts to mean those businesses with average annual gross receipts over the last three years not to exceed \$6.5 million.<sup>34</sup>
- Professional services contracts will be procured under s. 287.055, F.S.<sup>35</sup>

<sup>25</sup> Section 337.18, F.S., generally requires a surety bond of a successful bidder in an amount equal to the awarded contract price. However, if the contract price is \$250,000 or less, the FDOT may waive the requirement if the FDOT determines the project is of a noncritical nature and nonperformance will not endanger public health, safety, or property.

<sup>26</sup> Section 337.17, F.S., requires a bid guaranty only for a construction contract in excess of \$150,000. The bid bond may not exceed 10% of the preliminary estimate of the cost of the work.

<sup>27</sup> *Supra* note 20 and note 21.

<sup>28</sup> *Id.*

<sup>29</sup> Section 287.055, F.S., defines "professional services" to mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

<sup>30</sup> The FDOT maintains a small business listing for professional services contracts at:

<http://www2.dot.state.fl.us/procurement/ProfessionalServices/lppc/listmenu.htm>. Last visited November 10, 2015.

<sup>31</sup> Section 337.105, F.S., generally requires the FDOT, before employing a professional consultant, to make a finding that the person to be employed is fully qualified to render the desired service, taking into consideration factors such as the professional reputation, past performance record, and experience of the candidate and the adequacy of the personnel making up his or her organization.

<sup>32</sup> Two levels of qualification may be sought. The unlimited level allows consultants to compete for any projects for which they are technically qualified with the FDOT. The minor-projects-only level allows consultants to compete for minor projects with fees estimated below \$500,000. *See* the FDOT's *Professional Services Prequalification* website:

<http://www.dot.state.fl.us/procurement/prequalification.shtm#AQI>. Last visited November 10, 2015. *See also* Fla. Admin.

Code R. 14-75 (2006).

<sup>33</sup> *Id.*

<sup>34</sup> *Supra* note 20 and note 21.

<sup>35</sup> That section sets out procedures for public announcement and qualification and requirements for competitive solicitation and negotiation, etc. *See also supra* note 20 and note 21.

The FDOT advises its goal is to reserve 10 percent of construction and maintenance contracts and 15 percent of professional services contracts for the BDI. By the end of last year, the goal fell short for the former contracts at 7.36 percent, but the goal was achieved for the latter at 15 percent. Combining the two types of contracts, 92 different small businesses received contracts through the BDI. The FDOT advises that many of these firms for the first time worked as a prime contractor with the FDOT.<sup>36</sup>

While the current cited authority, taken together, appears to authorize the BDI, current law reflects no express statutory authority for the program.

### *Effect of Proposed Changes*

The bill expressly authorizes an existing, federally-approved program within the FDOT, known as the Business Development Initiative.

Section 23 creates s. 337.027, F.S., to specifically authorize the FDOT to establish a program for highway projects to assist small businesses, with the stated purpose of increasing competition, lowering prices, and providing increased support to meet the FDOT's future work program.

Program efforts may include, but are not limited to:

- Setting aside contracts;
- Providing preference points for the use of small businesses;
- Providing special assistance to small businesses in bidding and contract completion;
- Waiving bond requirements; and
- Implementing other strategies that would increase competition.

For purposes of the newly created section, the bill defines “small business” to mean a business with average gross receipts over the last three years of less than \$15 million for road and bridge contracts and less than \$6.5 million for professional and nonprofessional services contracts, including the receipts of an affiliate.<sup>37</sup> The bill authorizes the FDOT to adopt rules to implement the program.

## **Florida Seaport Transportation and Economic Development Program (Sections 1 and 2)**

### *Present Situation*

Section 311.07(2), F.S., requires a minimum of \$15 million per year from the STTF to fund the Florida Seaport Transportation and Economic Development (FSTED) Program.<sup>38</sup> The program represents a collaborative relationship between the FDOT and the 15 public seaports.<sup>39</sup> FSTED

<sup>36</sup> See the FDOT email to committee staff dated November 10, 2015. On file in the Senate Transportation Committee.

<sup>37</sup> Section 337.165(1)(a), F.S., defines “affiliate” to mean a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate.

<sup>38</sup> See also s. 311.09(9), directing the FDOT to include no less than \$15 million annually in its legislative budget request for the FSTED Program.

<sup>39</sup> Jacksonville (JaxPort), Port Canaveral, Port Citrus, Port of Fort Pierce, Port of Palm Beach, Port Everglades, Port of Miami, Port Manatee, Port of St. Petersburg, Port of Tampa, Port St. Joe, Port Panama City, Port of Pensacola, Port of Key West, and Port of Fernandina. List in s. 311.09(1), F.S.

funds are to be used on approved projects on a 50-50 matching basis.<sup>40</sup> Funding grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port.
- Dredging or deepening of channels, turning basins, or harbors.
- Construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing.
- Acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce.
- Acquisition of land to be used for port purposes.
- Acquisition, improvement, enlargement, or extension of existing port facilities.
- Certain environmental protection projects required as a condition of a permit...
- Transportation facilities which are not otherwise part of the FDOT's Adopted Work Program.<sup>41</sup>
- Intermodal access projects.
- Construction or rehabilitation of port facilities with operating revenues of \$5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports.
- Seaport master plan or strategic plan development updates.

In order for a project to be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

The FSTED program is managed by the FSTED Council, which consists of the port director or director's designee of the 15 public seaports, the Secretary of FDOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.<sup>42</sup>

Other statutorily required seaport-related funding programs also include:

- A minimum of \$35 million annually from the STTF for the Strategic Port Investment Initiative under s. 311.10, F.S., to fund projects that meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities.
- A minimum of \$5 million annually from the STTF for the Intermodal Logistics Center Infrastructure Support Program under s. 311.101, F.S., to fund the same type of projects, along with those that enhance transportation facilities for the conveyance or shipment of goods through a seaport to or from an intermodal logistics center.
- Additional debt service funding of \$35 million under ss. 320.20 and 339.0801, F.S., for seaport-related bonds.

### ***Effect of Proposed Changes***

Sections 1 and 2 amend s. 311.07(2) and s. 311.09(9), F.S., respectively, to increase the annual minimum funding from the STTF for the FSTED Program from \$15 million to \$25 million. The

<sup>40</sup> Section 311.07(3)(a), F.S.

<sup>41</sup> The FDOT's work program is adopted pursuant to s. 339.135, F.S.

<sup>42</sup> Section 311.09(1), F.S.

bill requires FDOT to include no less than the \$25 million in its annual legislative budget request to fund the program.

## **National Environmental Policy Act/Delegation of Responsibilities to States (Section 21)**

### ***Present Situation***

The National Environmental Policy Act (NEPA) establishes national environmental policy for protection of the environment. “NEPA’s basic policy is to assure that all branches of government give proper consideration to the environment prior to undertaking any major federal action that significantly affects the environment.” Federal agencies are required to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions that significantly affect the environment.<sup>43</sup>

NEPA requirements also apply to *state* highway projects eligible for federal funding. According to the FDOT, when a highway project is advanced and is federally eligible, project development occurs consistent with NEPA requirements, in consultation with and subject to the oversight of the Federal Highway Administration (FHWA). The FDOT utilizes two processes to meet NEPA requirements. One process, the Efficient Transportation Decision Making process, is used during the project’s planning phase to initiate contact with agencies and other stakeholders and obtain multiple-party input and information used to inform the second process. The Project Development and Environment (PD&E) process is used to analyze, perform outreach, guide agency coordination, and meet regulatory requirements before a project may be advanced. The FDOT prepares necessary documents, analyzes alternatives, consults with agencies, and makes recommendations. This information is provided to the FHWA, which is the lead agency for review, comment, and ultimate approval.<sup>44</sup>

Following an initial pilot project conducted in California, Congress in 2012 enacted the Moving Ahead for Progress in the 21st Century Act, which established a permanent surface transportation project delivery program.<sup>45</sup> Under the program, in which California and Texas are already participating, the U.S. Department of Transportation (USDOT) secretary may assign, and any state may assume, pursuant to a written agreement, all or part of the secretary’s responsibilities under NEPA with respect to projects or classes of projects. The written agreement must provide that the state:

- Agrees to assume all or part of the described responsibilities;
- Expressly consents, on behalf of the state, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the secretary assumed by the state;<sup>46</sup>
- Certifies that state laws and regulations are in effect that authorize the state to take the actions necessary to carry out the responsibilities; and
- Agrees to maintain the financial resources necessary to carry out the responsibilities.

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<sup>43</sup> See the U.S. Environmental Protection Agency website: <http://www2.epa.gov/laws-regulations/summary-national-environmental-policy-act>. Last visited October 12, 2015.

<sup>44</sup> See the FDOT 2016 Legislative Proposal form, *Authorization to Participate in Certain Federal Transportation Programs*. On file in the Senate Transportation Committee.

<sup>45</sup> 23 U.S.C. s. 327 (2013).

<sup>46</sup> This requirement apparently exists to address the Eleventh Amendment to the U.S. Constitution, which generally prohibits suits in law or equity against one of the United States by its citizens, citizens of another state, or subjects of any foreign state.

The USDOT secretary is authorized to terminate the participation of any state if the state is not adequately carrying out the responsibilities and the secretary notifies the state of the determination of noncompliance. If the state fails to take corrective action as determined by the USDOT secretary within 30 days after notice, the agreement is terminated.<sup>47</sup>

With respect to the consent to federal court jurisdiction, the FDOT advises:

This waiver is limited to only those actions delegated to the Department by the USDOT and related to carrying out its NEPA duties on state highway projects. Challenges to NEPA decision making are filed in federal district court pursuant to the Federal Administrative Procedures Act and are limited to a review of the underlying administrative record. The standard for review is whether the Department's action is arbitrary and capricious. To the extent that a challenger is successful, the remedy is to require additional review, analysis and documentation to support the action. The state's exposure is further limited by 23 U.S.C. 327(a)(2)(G), which provides that a state assuming the responsibilities of the Secretary [of the USDOT] under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorneys' fees directly attributable to eligible activities associated with the project.<sup>48</sup>

### ***Effect of Proposed Changes***

Section 21 amends s. 334.044, F.S., to authorize the FDOT to assume responsibilities of the USDOT under 23 U.S.C. s. 327 with respect to highway projects, and with respect to related responsibilities for environmental review, consultation, or other action required under any federal environmental law pertaining to review or approval of a highway project, within Florida. The FDOT is authorized to enter into one or more agreements with the U.S. Secretary of Transportation related to the federal surface transportation project delivery program for the delivery of transportation projects, including highway projects. The FDOT is authorized to adopt implementing rules and to adopt relevant federal environmental standards as the standards for this state for the program. The FDOT advises the delegation allows direct consultation between the FDOT and federal regulatory agencies and maximizes efficiency by consolidating all NEPA reviews under the FDOT.

Sovereign immunity to civil suit in federal court is waived consistent with 23 U.S.C. s. 327 and limited to the compliance, discharge, or enforcement of a responsibility assumed by the FDOT. The FDOT advises its district offices would continue to conduct the PD&E process, with the FHWA's project review, legal sufficiency, and approval authority delegated to the FDOT's Central Office and with the FHWA retaining program level oversight. The waiver of sovereign immunity is limited only to those actions delegated to the FDOT and related to carrying out its NEPA duties on state highway projects. The standard for review is whether the FDOT's action is

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<sup>47</sup> *Supra* note 44.

<sup>48</sup> See the FDOT's 2015 and 2016 Legislative Proposal Forms, *Authorization to Participate in Certain Federal Transportation Programs (NEPA)*. On file in the Senate Transportation Committee

arbitrary and capricious. The remedy for a successful challenge is to require additional review, analysis, and documentation to support the project. Further, a state assuming the NEPA responsibilities may use certain apportioned funds for attorneys' fees directly attributable to eligible activities associated with a project.<sup>49</sup>

### **Airport Zoning/Chapter 333 Re-Write (Sections 5 through 20)**

Chapter 333, Florida Statutes, contains airport zoning provisions relating to the management of airspace and land use at or near airports. Generally, the chapter:

- Addresses permitting for structures exceeding federal obstruction standards;
- Requires adoption of certain airport zoning regulations;
- Provides a process for seeking variances from the zoning regulations;
- Sets out a process for appeal of decisions based on the zoning regulations;
- Requires boards of adjustment to hear and decide appeals;
- Provides for judicial review of any board of adjustment decision; and
- Establishes penalties and remedies for violations.

The FDOT in 2012 created a stakeholder working group to address problems with implementing this chapter. Representatives from airports, local planning and zoning departments, the Florida Defense Alliance, the League of Cities, the Florida Airports Council, the real estate development community, and the FDOT participated in the working group. The FDOT advises the working group determined that ch. 333, F.S., “contains outdated and inconsistent provisions when compared to applicable federal regulations, contains internal inconsistencies, and requires a local government airport protection zoning process that can be cumbersome and confusing.”

The FDOT advises it expects no substantive changes as a result of the bill's proposed revisions; e.g., the existing requirements for issuance of permits are substantively unchanged. The number of permits issued or denied is not expected to change. Rather, the changes are designed to facilitate more uniform permitting, appeals, and review processes applied at the local level and provide clarity and predictability for those subject to airport zoning regulations.<sup>50</sup>

### **Definitions**

#### ***Present Situation***

Section 333.01, F.S., contains definitions related to airport zoning that need updating for internal chapter consistency and for consistency with federal regulations.

#### ***Effect of Proposed Changes***

Section 5 amends s. 333.01, F.S., to provide, revise, and delete definitions to:

- Reflect terminology used in federal regulations;
- Provide for consistency with Federal Aviation Administration (FAA) advisements;
- Remove antiquated terminology;

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<sup>49</sup> 23 U.S.C. s. 327(a)(G) (2013).

<sup>50</sup> Conversation with FDOT Legislative and Legal Staff during joint meeting with Senate and House staff, January 30, 2015.

- Delete variances from definitions to reflect the streamlined permitting process effected in the bill; and
- Otherwise provide clarity through editorial and grammatical changes.

### **Permitting for Structures Exceeding Federal Obstruction Standards**

#### ***Present Situation***

The Code of Federal Regulations (CFR) sets forth standards for structures that present a hazard within an area in an airport due to obstruction of the airspace required for aircraft to take off, maneuver, or land.<sup>51</sup> Section 333.025, F.S., requires a permit from the FDOT for any proposed construction or alteration of a structure that would exceed the federal standards.<sup>52</sup> A permit from the FDOT is not required if a political subdivision<sup>53</sup> has adopted adequate airspace protection regulations and filed them with the FDOT.

The FDOT must issue or deny a permit within 30 days of receipt of an application for any structure that would exceed the federal obstruction standards. The FDOT is prohibited from approving a permit unless the applicant submits both documentation showing compliance with federal notification requirements and a valid aeronautical evaluation.

#### ***Effect of Proposed Changes***

Section 6 amends s. 333.025, F.S., to replace the term “geographic center” with “airport reference point,” which is located at the approximate geometric center of all usable runways and to update references to current federal regulations.

If a political subdivision has adopted adequate airport protection zoning regulations, placed the regulations on file with the FDOT, *and* the political subdivision has established a permitting process, a permit from the FDOT is not required for construction or alteration of an obstruction. Upon receipt of a complete permit application, the local government must provide a copy of the application to the FDOT. The bill provides a 15-day FDOT review period following receipt of the application, which must run concurrently with the established local permitting process.

The FDOT is required to review permit applications in conformity with s. 120.60, F.S., relating to licensing. The list of factors to be considered by the FDOT is revised to remove ambiguity and duplication, and to provide clarity. The FDOT must require the owner of a permitted obstruction to install, operate, and maintain marking and lighting in conformance with FAA standards, at the owner’s expense. The denial of a permit is subjected to the administrative review provisions of the Administrative Procedures Act.

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<sup>51</sup> See 14 C.F.R. part 77, subpart C (2015).

<sup>52</sup> Public airports are licensed under the provisions of ch. 330, F.S.

<sup>53</sup> Generally, a local governmental entity, see section 333.01(9), F.S.

## Adoption of Airport Zoning Regulations

### *Present Situation*

Section 333.03, F.S., requires political subdivisions with an airport hazard area<sup>54</sup> to adopt, administer, and enforce airport zoning regulations for the area. If the airport is owned or controlled by a political subdivision and has a hazard area outside of its territorial limits, the political subdivision and the political subdivision within which the hazard area is located must either adopt zoning regulations by interlocal agreement or create a joint airport zoning board with the power to do so. The airport zoning regulations must, at a minimum, require:

- A variance for any structure that would exceed the federal obstruction standards;
- Obstruction marking and lighting per s. 333.07(3);
- Documentation of compliance with federal proposed construction notification and a valid aeronautical evaluation submitted by each person applying for a variance;
- Consideration of the same factors when determining whether to issue or deny a variance as required of the FDOT when considering permit applications; and
- No variance be approved solely on the basis that a structure will not exceed the federal obstruction standards.

The FDOT is required to issue copies of the federal obstruction standards in the CFR to each political subdivision with an airport hazard area, and issue certain airport zoning maps at no cost.

Interim land use compatibility zoning regulations must be adopted and must consider whether sanitary landfills are located within certain areas and whether any landfill will attract or sustain hazardous bird movements. If a public-use airport has conducted a federal noise study, residential construction and educational facilities are prohibited within the area. If no study is conducted, the same construction is prohibited within a certain distance.

Airport zoning regulations restricting new incompatible uses within runway clear zones must be adopted. Certain limited exceptions for construction of educational facilities in specified areas are authorized.

### *Effect of Proposed Changes*

Section 7 amends s. 333.03, F.S., to eliminate the duplicative requirement for obtaining a variance for structures that would exceed federal obstruction standards, in favor of a local permitting process. Every political subdivision having an airport hazard area is required to adopt airport *protection* zoning regulations. In addition to editorial and grammatical revisions, this section revises language to:

- Replace citations to the federal obstruction standards contained in the CFR with terminology used in the CFR; *i.e.*, permits for the “construction or alteration of any obstruction.”

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<sup>54</sup> The bill redefines “airport hazard” to mean an obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities. The definition of “obstruction” is revised, also to reflect terminology used in the federal standards for determining obstructions. “Airport hazard area” is redefined in the bill to mean any area of land or water upon which an airport hazard might be established.

- Remove the FDOT's duty to provide copies of the federal obstruction standards contained in the CFR and to issue maps, and replace it with making the FDOT available to provide assistance with respect to the standards.
- Update citations to the CFR.
- Eliminate the reporting requirements related to birds at airports near landfills in favor of requiring the landfill operator to incorporate bird management techniques.
- Include substantial modification of existing incompatible uses in the required adopted regulations restricting such uses within runway *protection* zones.
- Remove the limited exceptions for construction of educational facilities when a noise study has been conducted in accordance with the federal regulations;
- Delete outdated language.
- Authorize an airport authority, local government, or other governing body operating a public-use airport to adopt more restrictive airport protection zoning regulations, per the FDOT, to allow restrictions appropriate to the local context of the airport.<sup>55</sup>

### **Guidelines Regarding Land Use Near Airports**

#### ***Present Situation***

Section 333.065, F.S., requires the FDOT, after consultation with the Department of Economic Opportunity, local governments, and other interested persons, to adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports. The guidelines must use certain acceptable and established quantitative measures.

#### ***Effect of Proposed Changes***

Section 11 repeals s. 333.065, F.S. The FDOT advises the deletion reflects completion of the FDOT's Airport Compatible Land Use Guidebook.<sup>56</sup>

### **Permits, Variances, and Appeals**

#### ***Present Situation***

Section 333.07, F.S., authorizes any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired. All such regulations must require a permit before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted.

If a nonconforming use, structure, or tree has been abandoned or is more than 80 percent torn down or deteriorated, a permit may not be issued under certain conditions. The owner of a nonconforming structure or tree may be compelled, at the owner's expense, to undergo certain actions to conform.

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<sup>55</sup> See the FDOT document provided to staff, *Proposed ch. 333, F.S. Amendments and Legislative Support Documentation*. On file in the Senate Transportation Committee.

<sup>56</sup> *Id.*

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the adopted airport zoning regulations is authorized to apply to a board of adjustment for a variance from the regulations. Conditions for allowance of variations are provided. The FDOT is authorized to appeal any variance granted and to apply for judicial relief.

As a condition of any granted permit or variance, the administrative agency or board of adjustment must require the structure or tree owner to install, operate, and maintain at the owner's expense marking and lighting necessary to indicate to aircraft pilots the presence of an obstruction.

Section 333.08, F.S., authorizes any affected person or taxpayer; or any governing body of a political subdivision, the FDOT, or any joint airport zoning board, to appeal any decision of an administrative agency in its administration of adopted airport zoning regulations to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

### ***Effect of Proposed Changes***

Section 12 amends s. 333.07, F.S., to streamline the permitting process, repeal the duplicative variance process, and facilitate implementation of the permitting process by local entities. More specifically, rather than authorizing any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired, the bill simply requires a permit to construct, alter, or allow an airport obstruction in an airport hazard area in violation of the adopted airport protection zoning regulations.

The political subdivision or its administrative agency must consider virtually the same standards as must be considered by the FDOT when issuing or denying a permit for structures exceeding federal obstruction standards. All variance provisions are removed in favor of the permitting process. In addition, provisions relating to a lien resulting from an owner's failure to take action to bring a nonconforming structure or tree into regulatory compliance are removed. The FDOT's 45-day comment period is removed in favor of the shortened 15-day period of review for technical consistency described above. Obstruction marking and lighting is required in conformance with specific standards established by the FAA. Outdated language is repealed.

Section 13 repeals s. 333.08, F.S., authorizing and providing requirements for appeals of zoning regulation decisions, in favor of relocated, modified appeals language in s. 333.09, F.S.

### **Administration of Airport Zoning Regulations**

#### ***Present Situation***

Section 333.09, F.S., requires all adopted airport zoning regulations to provide for administration and enforcement by an administrative agency; by any official, board, or other existing agency of the political subdivision adopting the regulations; or by one of the subdivisions that participated in creating a joint airport zoning board adopting the regulations. The duties of any such

administrative agency include hearing and deciding all permits under s. 333.07, F.S., but not any of the powers delegated to the board of adjustment.

Section 333.10, F.S., currently requires all adopted airport zoning regulations to provide for a board of adjustment to hear and decide appeals and variances.

### ***Effect of Proposed Changes***

Section 14 amends s. 333.09, F.S., to remove the list of entities that may be an administrative agency, per the FDOT, to reflect correct community planning terminology.<sup>57</sup> Administration and enforcement is left to the affected political subdivision or its administrative agency. Also removed is the prohibition against an administrative agency exercising the powers delegated to the board of adjustment.

Political subdivisions required to adopt airport zoning regulations must establish a process to:

- Issue or deny permits consistent with s. 333.07, F.S.;
- Provide the FDOT with a copy of a complete permit application; and
- Enforce the issuance or denial of a permit or other determination made by the administrative agency with respect to airport zoning regulations.

Appeals must be taken within a reasonable time provided by the political subdivision or its administrative agency by filing a notice of appeal. An appeal stays all proceedings in the underlying action, unless the entity from which the appeal is taken certifies that a stay would cause imminent peril to life or property.

The political subdivision or its administrative agency must set a reasonable time for the hearing of appeals and decide appeals within a reasonable time. A party may appear in person, by agent, or by attorney. The subdivision or agency may affirm, reverse, or modify the decision on the permit or other determination from which the appeal is taken.

Section 15 repeals s. 333.10, F.S., currently requiring all adopted airport zoning regulations to provide for a board of adjustment to hear and decide appeals and variances, in favor of the local government permitting and appeals process established by the bill in revised s. 333.09, F.S.

## **Judicial Review**

### ***Present Situation***

Section 333.11, F.S., authorizes any person aggrieved or any taxpayer affected by a decision of a board of adjustment, any governing body of a political subdivision, the FDOT, any joint airport zoning board, or any administrative agency to apply for judicial relief in the judicial circuit court where the board of adjustment is located. The section provides procedural provisions related to the board of adjustment, describes the court's authorized review of a decision by a board of adjustment, and prohibits judicial review in provisions related to a board of adjustment.

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<sup>57</sup> *Supra* note 54.

### ***Effect of Proposed Changes***

Section 16 amends s. 333.11, F.S., to allow any person, political subdivision, or joint airport zoning board affected by a decision of a political subdivision or its administrative agency to apply for judicial relief and to remove references to the board of adjustment, but otherwise leaves the authorization to apply for judicial review in place. The judicial review prohibition is revised. An appellant is required to exhaust all remedies through application for local government permits, exceptions, and appeals before seeking judicial review.

### **Transition Provisions**

Section 19 of the bill creates s. 333.135, F.S., to:

- Provide that any airport zoning regulation in effect on July 1, 2016, and in conflict with the revised ch. 333, F.S., must be amended to conform by July 1, 2017.
- Require any political subdivision with an airport that has not adopted airport zoning regulations to do so by July 1, 2017, consistent with the chapter.
- Require the FDOT to administer the permitting process as provided in s. 333.025, F.S., for political subdivisions that have not yet adopted the required regulations.

### **Technical Revisions**

Sections 8, 9, 10, 17, 18, and 20, amending ss. 333.04, 333.05, 333.06, 333.12, 333.13, and 333.14, F.S., respectively, primarily make grammatical and editorial revisions to existing language and modify sections of the chapter for internal consistency with definitions.

### **Commercial Motor Vehicles/Port of Entry/Operating Credentials (Sections 3 and 4)**

#### ***Present Situation***

Interstate operators of commercial motor vehicles (CMVs) are required to obtain a number of credentials. Generally, for example, interstate operators of CMVs are required to obtain an International Fuel Tax Agreement (IFTA) license and decal<sup>58</sup> and, in some cases, to obtain overweight or over-dimensional permits.<sup>59</sup> Some states allow the purchase of some or all necessary credentials at weigh stations located close to routes entering their borders and at other locations, and these states are known as “port of entry” or “POE” states.<sup>60</sup> Because these credentials must be obtained prior to entering Florida, the state is known as a “non-POE” state.<sup>61</sup> If a CMV enters the state without proper credentials and the operator seeks to purchase them at

<sup>58</sup> See ss. 207.004 and 316.545(4), F.S. The International Fuel Tax Agreement (IFTA) is an agreement among the states and the Canadian provinces to simplify the reporting of interstate fuel taxes. The motor carrier’s base jurisdiction issues the IFTA license and decals, allowing the carrier to file one quarterly tax return reflecting the net tax and any refund due on fuel used in all jurisdictions.

<sup>59</sup> See s. 316.550, F.S.

<sup>60</sup> See the *Florida Port of Entry Feasibility Study*, September 2014, prepared for the FDOT, at 3.1 and 3.2: [http://www.dot.state.fl.us/trafficoperations/Traf\\_Incident/Projects\\_CVO/Presentation/FL%20POE%20Technical%20Study%20Final.pdf](http://www.dot.state.fl.us/trafficoperations/Traf_Incident/Projects_CVO/Presentation/FL%20POE%20Technical%20Study%20Final.pdf). According to the study, 28 states are non-POE states, and 22 states and the District of Columbia consider themselves to be POE jurisdictions. Alabama is a POE state; Georgia is not. Further, the definitions of “POE” vary greatly by state.

<sup>61</sup> *Id.* at 1.1.

any weigh station, any applicable fine is assessed depending on the type of credential at issue. Only then is the operator allowed to purchase the necessary credential.<sup>62</sup>

Another credential required before entering Florida is registration under the International Registration Plan (IRP). The IRP<sup>63</sup> is a plan for registering vehicles that are operated in two or more IRP-member jurisdictions while displaying just one registration license plate for each vehicle.<sup>64</sup>

A “Full Reciprocity Plan” was instituted effective January 1, 2015, under which registrants are billed only for jurisdictions in which actual miles were accrued during the reporting period. If no miles were accrued during the reporting period, registrants are billed based on Florida’s Average Per Vehicle distance chart. The miles reflected on the distance chart is the average distance of all registrants in each jurisdiction. Upon registration, the cab cards will reflect all jurisdictions.<sup>65</sup>

Section 320.0715(1), F.S., requires all apportionable vehicles<sup>66</sup> domiciled in this state to register under the International Registration Plan and to display the apportioned license plate. If a CMV domiciled elsewhere could be lawfully operated in this state because IRP registration had been obtained prior to entering Florida, but was not, a ten-day Florida trip permit may be obtained for \$30. The permit allows the vehicle to be operated in interstate or intrastate commerce for the ten-day period.

A CMV not registered under the application provisions of ch. 320, F.S., is subject to a penalty of five cents per pound on the weight that exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen CMV.<sup>67</sup> Operators of CMVs that fail to obtain the temporary trip permit prior to entering Florida are fined accordingly and then allowed to purchase the temporary trip permit. All such penalties and permit fees are credited to the STTF to be used for repair and maintenance of Florida’s roads and for enforcement purposes.<sup>68</sup>

### ***Effect of Proposed Changes***

The bill defines “port-of-entry” and reduces the existing penalty for IRP registration violations.

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<sup>62</sup> See the FDOT 2016 Legislative Proposal Form, *Port-of-Entry*. On file in the Senate Transportation Committee.

<sup>63</sup> Section 320.01(23), F.S., defines the IRP to mean “a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of fleet miles operated in various jurisdictions.”

<sup>64</sup> See the Florida Department of Highway Safety and Motor Vehicles *International Registration Plan Trucking Manual*, beginning at p. 1, for additional detail. On file in the Senate Transportation Committee.

<sup>65</sup> *Id.*

<sup>66</sup> Section 320.01(24), F.S., defines “apportionable vehicle” to mean “any vehicle [with certain exceptions] which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and: (a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds; (b) Is a power unit having three or more axles, regardless of weight; or (c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.”

<sup>67</sup> Section 316.545(2)(b), F.S.

<sup>68</sup> Section 316.545(6), F.S.

Section 3 amends s. 316.003, F.S., to define “port-of-entry” as a designated location that allows drivers of commercial motor vehicles to purchase temporary registration permits necessary to operate legally within Florida, and to direct the FDOT to determine the locations and the designated routes to such locations.

Section 4 amends s. 316.545(2)(b), F.S., to provide that if a CMV enters the state at a designated POE or is operating on an FDOT-designated route to a POE, and if the ten-day IRP trip permit is obtained at the POE, the penalty is limited to the difference between the CMV’s gross weight and the declared gross vehicle weight at five cents per pound.

Existing penalties for failure to obtain other required credentials remain unchanged, including, but not limited to, IFTA violations and overweight and over-dimensional permit violations.

The FDOT advises three potential POE locations are under consideration:

- I-10 at the first eastbound weigh station entering the state;
- I-75 at the first southbound weigh station entering the state; and
- I-95 at the first southbound weigh station entering the state.<sup>69</sup>

## **Turnpike Tolls/Dormant Prepaid Accounts (Section 25)**

### ***Present Situation***

SunPass is the Florida Turnpike’s electronic, prepaid tolls program. SunPass is accepted on all Florida toll roads and nearly all toll bridges. The system uses electronic devices, called transponders, which are attached to the inside of a vehicle’s windshield. The transponder sends a signal when the vehicle goes through a tolling location, and the toll is deducted from the customer’s pre-paid account. The pre-paid accounts may be set up and replenished with a credit card or with cash.<sup>70</sup>

Under current law, any prepaid toll account of any kind which has been inactive for three years is presumed unclaimed. The Department of Financial Services (DFS) is required to process any such inactive account in accordance with applicable provisions of ch. 717, F.S., relating to the disposition of unclaimed property, and the FDOT is directed to close such accounts.<sup>71</sup>

### ***Effect of Proposed Changes***

Section 25 amends s. 338.231(3)(c), F.S., to increase the period after which a dormant prepaid toll account is presumed unclaimed from three years to ten years, thereby delaying disposition by the DFS and closing of the account by the FDOT. The FDOT advises:

[T]he deletion is desired because, with multi-state toll interoperability already implemented, and national toll interoperability mandated by federal law,<sup>72</sup> prepaid customers may live outside Florida and use their

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<sup>69</sup> See the FDOT email to committee staff on October 12, 2015. On file in the Senate Transportation Committee.

<sup>70</sup> See the SunPass website, *Frequently Asked Questions*: <https://www.sunpass.com/faq>. Last visited October 12, 2015.

<sup>71</sup> Section 338.231(3)(c), F.S.

<sup>72</sup> The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) requires implementation of technologies or business practices that provide for the interoperability of electronic toll collection on all Federal-aid highway toll facilities by October

Florida prepaid toll account only when vacationing or otherwise visiting the state.

We believe that the affected citizens and businesses would react positively to the proposal as funds on a prepaid toll account continue to be managed by the Department. This provides the customers that have had no activity on a prepaid toll account for the 10 year time with continued direct access to the same agency with whom they established the account.<sup>73</sup>

### **Obsolete References/Beeline-East Expressway and Navarre Bridge (Section 24)**

#### ***Present Situation***

The Beeline-East Expressway (renamed the Beachline East Expressway) became part of the Turnpike Enterprise on July 1, 2012, pursuant to ch. 2012-128, L.O.F.<sup>74</sup> The Navarre Bridge is now county-owned and no longer a state toll facility. The references to each facility in s. 338.165(4), F.S., are now obsolete.

#### ***Effect of Proposed Changes***

Section 24 amends s. 338.165(4), F.S., to remove obsolete references to the Beeline-East Expressway and the Navarre Bridge within the FDOT's authority to request issuance of bonds secured by toll revenues from certain toll facilities, as the expressway and bridge are no longer owned by the FDOT.

The bill takes effect July 1, 2016.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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1, 2016. See the FHWA website, *Investment* heading, *Tolling [1512]* subheading: <http://www.fhwa.dot.gov/map21/summaryinfo.cfm>. Last visited October 12, 2015.

<sup>73</sup> See the FDOT 2015 Legislative Proposal, *Dormant Accounts/Tolls/SunPass*. On file in the Senate Transportation Committee.

<sup>74</sup> See s. 338.165(10), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The following sections of the bill are expected to have the indicated impact on the private sector:

**Sections 1 and 2:** The increase in FSTED funding from \$15 to \$25 million is an increase in the required *minimum* annual funding. The FDOT advises this increases the total statutorily required seaport program funding, along with the Strategic Port Investment Initiative and the Intermodal Logistics Center Infrastructure Support Program, from an annual minimum of \$55 million to \$65 million. The FDOT advises that its proposed 5-year work program for Fiscal Years 2017-2021 already designates between \$82 and \$114 million in annual seaport program funding for each fiscal year.<sup>75</sup>

**Sections 3 and 4:** The trucking industry is expected to experience an indeterminate positive fiscal impact due to the decreased fines assessed for IRP violations.

**Section 21:** The private sector is expected to experience an indeterminate but positive fiscal impact from the FDOT's assumption of NEPA responsibilities due to faster delivery of needed transportation projects at reduced costs.

**Section 23:** Small businesses participating in the BDI would experience indeterminate but positive fiscal impacts associated with gaining contracting experience on projects of the FDOT. The traveling public may experience indeterminate but reduced costs related to transportation projects as a result of greater competition.

**Section 26:** To the extent that the issuance of debt to fund transportation projects is accomplished at a lower cost by virtue of the corporation's ability to participate in the municipal bond market at reduced rates, the state's traveling public may experience an indeterminate but positive fiscal impact.

**C. Government Sector Impact:**

The following sections of the bill are expected to have the indicated impact on the government sector:

**Section 1 and 2:** The increase in the annual minimum FSTED funding does not appear to require any adjustment of FSTED projects in the work program.

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<sup>75</sup> See the November 4, 2015, FDOT email to Transportation Committee staff. On file in the Senate Transportation Committee.

**Sections 3 and 4:** The FDOT advises it expects a negative annual fiscal impact of approximately \$1.6 million due to a decrease in the fines assessed for IRP violations. A portion of the decrease, approximately \$500,000, is attributed to the revised IRP Full Reciprocity Plan.<sup>76</sup>

**Section 21:** The FDOT anticipates significant savings in project delivery times. The Department advises, based on a random sampling of projects over the last 10 years, federal review of federalized projects has taken 1.8 to 3.5 times longer than state projects. The expected timeframe for projects subject to FHWA review as compared to anticipated timeframes for review by the state following NEPA assignment is as follows:

Class of Action Type	Existing Federal Review Time (months)	Expected State Review Time (months)
Minor projects with minimal or no impact	47	18
Minor projects that require supporting analysis	82	24
Projects that require environmental assessments	121	30
Projects that require environmental impact statements	127	40

The FDOT also anticipates significant project cost savings associated with the elimination of FHWA review. The Department determined the potential savings over a two-year period would be \$44 million for PD&E and \$30 million for Design project expenditures.<sup>77</sup>

The FDOT further advises, with respect to the limited waiver of sovereign immunity, three NEPA lawsuits have occurred in the past ten years. No increase in the number of lawsuits is currently expected. The FDOT advises it prevailed on the three challenges. However, potential exposure over ten years would be approximately \$1.5 million. As noted, a state assuming the NEPA responsibilities for a specific project may use funds apportioned to the State under section 104(b)(2) of 23 U.S.C. for attorneys' fees directly attributable to eligible activities associated with the project.<sup>78</sup>

**Section 23:** The FDOT may experience indeterminate but reduced costs associated with transportation projects due to increased competition resulting from small business participation in the BDI.

**Section 26:** The FDOT may be able to accomplish faster delivery of transportation projects at reduced costs through participation of the FDOT Financing Corporation in the municipal bond market.

<sup>76</sup> See the October 13, 2015, FDOT email to Transportation Committee staff. On file in the Senate Transportation Committee.

<sup>77</sup> Ibid

<sup>78</sup> Ibid.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 311.07, 311.09, 316.003, 316.545, 333.01, 333.025, 333.03, 333.04, 333.05, 333.06, 333.07, 333.09, 333.11, 333.12, 333.13, 334.044, 334.30, 338.165, and 338.231.

This bill creates the following sections of the Florida Statutes: 333.135, 337.027 and 339.0809.

The bill repeals the following sections of the Florida Statutes: 333.065, 333.08, 333.10, and 333.14.

**IX. Additional Information:**

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

**CS by Transportation on December 3, 2015:**

The CS modifies the bill by:

- Substantially revising the provisions of ch. 333, F.S., relating to airport zoning regulations; and
- Requiring the FDOT to consult with and provide information to the Division of Bond Finance in connection with a proposal to finance or refinance a transportation facility through the FDOT's authority to enter into public-private partnerships, and authorizes the division to make an independent recommendation.

- B. **Amendments:**

None.