

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 905 Department of Transportation

SPONSOR(S): State Affairs Committee, Transportation & Tourism Appropriations Subcommittee,
Transportation & Infrastructure Subcommittee, Andrade

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	14 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee	11 Y, 0 N, As CS	Davis	Davis
3) State Affairs Committee	23 Y, 0 N, As CS	Johnson	Williamson

SUMMARY ANALYSIS

The bill amends various statutory provisions relating to the Department of Transportation (DOT). Specifically, the bill:

- Prohibits local governments from adopting standards or specifications for the permissible use of aggregates that are contrary to DOT's standards or specifications and provides an exception for certain special districts.
- Prohibits local governments from adopting standards and specifications that are contrary to DOT's standards or specifications for permissible uses of reclaimed asphalt pavement, and provides that reclaimed asphalt pavement is not solid waste.
- Authorizes the use of certain innovative transportation projects and techniques for highways and bridges.
- Requires any contractor desiring to bid on DOT contracts in excess of \$50 million to have satisfactorily completed certain projects prior to being eligible to bid.
- Provides that certain projects wholly or partially funded by DOT and administered by a local governmental entity may not allow the same entity to perform both design services and construction engineering and inspection services, and provides that the prohibition does not apply to seaports.
- Increases the dollar threshold for certain contract claims that may go before the State Arbitration Board.
- Extends the length of time for DOT to provide funding for the fire station at mile marker 63 on Alligator Alley, and requires a local contribution from the local governmental entity operating the fire station.

The bill has an indeterminate but likely negative fiscal impact on DOT and appears to have an indeterminate, but likely insignificant fiscal impact on local governments. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Transportation Materials Standards and Specifications

Present Situation

To develop and adopt uniform minimum standards and criteria for the design, construction, maintenance, and operation of public roads, the Department of Transportation (DOT) may adopt rules relating to approval of aggregate and other material sources.¹ The term “aggregate” means crushed stone, limestone, dolomite, limerock, shell rock, cemented coquina, sand for use as a component of mortars, concrete, bituminous mixtures, or underdrain filters, and other mined resources providing the basic material for concrete, asphalt, and road base.² DOT has a standardized method for producers of construction aggregates to apply for, receive, and maintain DOT-approval of construction aggregate sources for use on DOT projects. Source and product approval, and maintenance of an on-going effective Quality Control Program, as monitored by DOT, comprise DOT’s primary methods of determining acceptability of aggregate on DOT projects. DOT’s Quality Control Program requires producers³ of construction materials to be responsible for their products; to establish, maintain, and implement their own individualized process control system; and to certify to DOT compliance with applicable standards and contract specifications.⁴

Currently, there is no provision in state law requiring local governments to accept aggregates certified pursuant to DOT’s rules. There have been instances when local governments have not permitted a contractor to use certain DOT-certified materials on the local government’s transportation facilities.⁵

Effect of Proposed Changes

The bill provides that notwithstanding any law, rule, or ordinance to the contrary, a local government may not adopt standards or specifications that are contrary to DOT’s standards or specifications for permissible use of aggregates that have been certified for use. The bill defines the phrase “certified for use” to mean the aggregates and materials have been certified by the producer in accordance with DOT’s rules. The bill exempts multicounty independent special districts created by a special act of the Legislature from this prohibition, which includes approximately 41 special districts.⁶

Recycled Asphalt Pavement

Present Situation

Section 336.044, F.S., declares that it is in the public interest to find alternative ways to use recyclable materials and to determine the feasibility of using certain recyclable materials such as ground tire rubber, ash residue, and construction steel as material in road construction. It requires DOT to review and revise bid procedures and specifications for the purchase or use of products and materials to eliminate any procedures and specifications that explicitly discriminate against such products,⁷ and

¹ Section 334.044(10)(c), F.S.

² Rule 14-103.003(3), F.A.C.

³ The term “producer” means any business or individual seeking to supply aggregate to DOT or its contractors.

⁴ Florida Department of Transportation, Agency Analysis of 2019 Senate Bill 1044, p. 3. (February 14, 2019). *see also* Ch. 14-103, F.A.C.

⁵ The instances involved the City of Cape Coral and Lee County. Email from John Shoucair, State Aggregate Program Manager, Department of Transportation, FW: HB 905 Aggregate Issue, April 10, 2019 (on file with the Transportation & Infrastructure Subcommittee).

⁶ Department of Economic Opportunity, Special Districts Accountability Program, Official List of Special Districts Online Search, <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (Last visited April 10, 2019).

⁷ Section 336.044(3), F.S.

requires all agencies to cooperate with DOT in expanding the current use of recovered materials in road construction projects.⁸

It is unknown how many, if any, local governmental entities⁹ have adopted standards or specifications for reclaimed asphalt in construction that are contrary to DOT standards or specifications.

Effect of Proposed Changes

The bill prohibits local governmental entities from adopting standards or specifications that are contrary to DOT's standards or specifications for permissible use of reclaimed asphalt in construction. The bill further provides that reclaimed asphalt may not be considered solid waste.

Innovative Transportation Projects and Techniques

Present Situation

DOT may establish a program for highway projects demonstrating innovative techniques of highway construction, maintenance, and finance which have the intended effect of controlling time and cost increases on construction projects.¹⁰ Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway construction and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. DOT may annually enter into up to \$120 million in contracts for innovative transportation projects. However, the annual cap does not apply to turnpike enterprise projects and transportation projects funded by the American Recovery and Reinvestment Act of 2009.¹¹

Effect of Proposed Changes

The bill changes DOT's authorization for innovative highway projects to innovative transportation projects. As such, the expanded authorization specifically includes innovative techniques for bridge design. The bill allows the use of such innovative projects that have the effect of measuring resiliency and structural integrity. The bill also authorizes the use of innovative transportation projects for new and existing bridge design.

Qualifications to Bid on Contracts

Present Situation

Any person¹² desiring to bid on any construction contract in excess of \$250,000 must be certified by DOT.¹³ DOT's rules must address the qualification of persons to bid on construction contracts in excess of \$250,000 and must include 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. DOT may limit the dollar amount of any contract which a person is qualified to bid on or the aggregate total dollar volume of contracts such person is allowed to have under contract at any one time.

⁸ Section 336.044(5), F.S.

⁹ Section 334.03(13), FS., defines the term "local governmental entity" as unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility. The term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

¹⁰ Section 337.025, F.S.

¹¹ Pub. L. 111-5.

¹² Section 334.03(19), F.S., defines "person" to mean any person described in s. 1.01, F.S., or any unit of government in or outside the state. Section 1.01(3), F.S., provides that "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

¹³ Section 337.14, F.S. DOT's rules regarding qualifications to bid on highway projects are in Rule 14-22, F.A.C.

A contractor, or his or her affiliate¹⁴ qualified with DOT may not also qualify to provide testing services, construction, engineering, and inspection services to DOT.¹⁵ This limitation does not apply to any design-build prequalification¹⁶ and does not apply when DOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services, construction, engineering, and inspection services.

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts.¹⁷ The procedure contains a set of matrixes illustrating the variety of scenarios encountered with prime or subcontractors and when DOT would consider the arrangement a conflict.¹⁸

From October 2017 to October 2018, DOT had a separate conflict of interest procedure for the Small County Road Assistance Program, Small County Outreach Program, and County Incentive Grant Program. For projects that did not impact the State Highway System, the procedure allowed a municipality or county to use its own procedures to mitigate conflicts of interest and excluded them from the requirements of DOT's conflict of interest procedures.¹⁹

Effect of Proposed Changes

The bill changes references to "person" or "applicant" to "contractor." The bill also requires any contractor who is not already qualified and in good standing with DOT as of January 1, 2019, and who desires to bid on contracts in excess of \$50 million, to have satisfactorily completed two projects, each in excess of \$15 million, for DOT or any other state department of transportation.

The bill provides that, notwithstanding any other provision of law to the contrary, for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and construction engineering and inspection services. This provision does not apply to seaports.²⁰

State Arbitration Board

Present Situation

The State Arbitration Board facilitates the prompt settlement of claims²¹ for additional compensation arising out of construction and maintenance contracts between DOT and its various contractors.²² Every contractual claim in an amount up to \$250,000 per contract or, at the claimant's option, up to \$500,000 per contract or, upon agreement of the parties, up to \$1 million per contract that cannot be resolved by negotiation between DOT and the contractor must be arbitrated by the State Arbitration Board after DOT's acceptance of the project. However, in lieu of arbitration, either party to the dispute

¹⁴ Section 337.165(1)(a), F.S., defines the term "affiliate" as 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 "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

¹⁵ Section 337.14, F.S.

¹⁶ Design-build prequalification is pursuant to s. 337.11(7), F.S.

¹⁷ Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts.

¹⁸ Email from Jay Ferrin, Director of Legislative Affairs, Department of Transportation, RE: Amendment to 905, March 27, 2019 (on file with the Transportation & Infrastructure Subcommittee).

¹⁹ *Id.*

²⁰ Section 311.09, F.S., lists the following seaports: Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

²¹ For the purpose of s. 337.185, F.S., the term "claim" means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract.

²² Section 337.185, F.S.

may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of such a claim until the State Arbitration Board process has been exhausted.²³

Effect of Proposed Changes

The bill increases the dollar value of contracts that may be arbitrated using the State Arbitration Board at the claimant's option to up to \$1 million per contract, or upon agreement of the parties to up to \$2 million per contract. The existing requirement that all claims of up to \$250,000 be arbitrated by the State Arbitration Board remains unchanged.

Alligator Alley Toll Road

Present Situation

Use of Alligator Alley Toll Revenues to Fund Fire Station

Section 338.26, F.S., establishes Alligator Alley 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." It is a 78-mile toll road connecting Naples and Fort Lauderdale. Collier County provides fire, rescue, and emergency management services along Alligator Alley through a fire station located at mile marker 63 (MM 63) on Alligator Alley.

Current law sets forth required uses of the revenues generated from tolls for the use of Alligator Alley, which are deposited into the State Transportation Trust Fund. Revenues must be used to reimburse outstanding contractual obligations and to operate and maintain the highway and toll facilities, including reconstruction and restoration. With regard to the fire station on Alligator Alley, the revenues must be used:

- To design and construct the fire station at MM 63, which may be used by a county or other local governmental entity to provide services to the public on Alligator Alley; and
- To reimburse a county or other local governmental entity for the direct actual costs of operating the fire station. Reimbursement occurs through an interlocal agreement effective July 1, 2014, through no later than June 30, 2019.²⁴

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.²⁵ Upon termination of the interlocal agreement for the fire station, DOT would be authorized to use the excess revenues for such environmental projects.

According to DOT's 2018 Annual Report for its Enterprise Toll Operations,²⁶ for Fiscal Year (FY) 2017-2018, Alligator Alley had \$32.8 million in gross toll revenue, with operating and maintenance expenses of \$10.0 million and annual debt service payments of \$2.8 million. The maintenance expenses include funding for rest area improvements, fire station operations, and interchange lighting projects.

Interlocal Agreement

On May 9, 2014, DOT and the Collier County Board of County Commissioners entered into an interlocal agreement providing the terms and conditions under which DOT would "provide funding to the County for the County's expenses in purchasing equipment, compensating County employees, and otherwise providing fire, rescue, and emergency services utilizing the fire station."²⁷

²³ Section 337.185(1), F.S.

²⁴ S. 338.26(3)(a), F.S.

²⁵ S. 338.26(3)(b), F.S.

²⁶ The 2018 report is the latest posted to DOT's Turnpike Enterprise webpage and is available

at:http://www.floridasturnpike.com/documents/reports/Toll%20Operations%20Annual%20Report/3_Department%20Owned.pdf (Last visited March 4, 2019).

²⁷ Department-Collier County Interlocal Agreement, CSFA No. 55.036, May 9, 2014, at pp. 2-3.

DOT included the fire station in its construction project when it rebuilt the rest area at MM 63 and the fire station opened in early 2015.²⁸ The fire station was built for the exclusive use of Collier County for the duration of the interlocal agreement.²⁹ DOT owns the fire station and leases it to Collier County,³⁰ however, under the agreement, all equipment, personal property, vehicles, apparatus, and supplies acquired by the County with funding provided by DOT remain the property of the County.³¹

For the term of the agreement, DOT agreed to provide up to \$1,761,235 for direct actual capital costs and up to \$1,498,100 for the County's direct actual costs of operating the fire station.³² The County agreed to bear all expenses in excess of DOT's specified participation.³³ The agreed-upon funding includes various annual operating items such as hired paramedics and firefighters, expenses for administrative and building maintenance, and expenses for bulk fuel and various types of search and rescue equipment. Capital costs include items such as vehicles, radios, and breathing air compressors.³⁴

Information regarding DOT's Adopted Five-Year Work Program for 2014-2019 reflects the following funding for the MM 63 fire station:³⁵

Fiscal Year	Amount
2013 - 2014	\$1,761,235
2014 - 2015	\$1,498,100
2015 - 2016	\$1,522,070
2016 - 2017	\$1,522,070
2017 - 2018	\$1,498,100
2018 - 2019	\$1,574,225

The fire station is currently staffed and equipped by the Greater Naples Fire District with three firefighters, one heavy rescue fire apparatus, one water tender, and one brush truck.³⁶

Effect of Proposed Changes

The bill provides that by interlocal agreement effective July 1, 2019, through no later than June 30, 2027, DOT must reimburse a local governmental entity for the direct actual costs of operating the fire station at MM 63 on Alligator Alley. The reimbursement must be used to provide fire, rescue, and emergency management services exclusively to the public on Alligator Alley. The bill requires the local governmental entity to contribute 10 percent of the fire station's direct actual operating cost, and provides that the amount of DOT's 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 bill transfers

²⁸ Department-Collier County Interlocal Agreement at p. 2 and 3. Marco Eagle, *New fire/EMS station opens on Alligator Alley*, April 5, 2015, available at <http://www.marconews.com/story/news/2015/04/03/new-fully-staffed-fireems-station-opens-alligator-alley/25238329/> (Last visited January 25, 2019).

²⁹ Department-Collier County Interlocal Agreement at p. 3. The agreement provides that state or local law enforcement may station officers, agents, or response teams at the fire station, based on space and availability.

³⁰ Department-Collier County Interlocal Agreement at p. 12.

³¹ Department-Collier County Interlocal Agreement at p. 13.

³² The Agreement also authorizes the County to request a Consumer Price Index adjustment of the total operating amount 30 days prior to July 1 for each year after the first covered by the Agreement. Department-Collier County Interlocal Agreement at p. 10.

³³ Department-Collier County Interlocal Agreement at p. 11.

³⁴ Department-Collier County Interlocal Agreement at Exhibit B.

³⁵ FDOT, Web Application, Office of Work Program and Budget, *Five Year Work Program – Project Summary for Transportation System: Intrastate Interstate, Description: Alligator Alley Fire Station @ MM63*, updated January 11, 2019, available at <https://fdotewp1.dot.state.fl.us/fmsupportapps/workprogram/Support/WPIItemRept.ASPX?RF=HIS&D=01&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM> and <https://fdotewp1.dot.state.fl.us/fmsupportapps/workprogram/Support/WPIItemRept.ASPX?RF=WP&D=01&CD=03&SD=FIRE%20STATION&FY=FALSE|FALSE|FALSE|FALSE|FALSE|FALSE&ITM=435389~1&RP=ITEM> (Last visited March 4, 2019).

³⁶ E-mail from Lisa Hurley, HB 6011-Alligator Alley EMS Station: Follow up, (February 8, 2019).

to the state the ownership and title of all fire, rescue, and emergency equipment used at the fire station during the term of the interlocal agreement.

B. SECTION DIRECTORY:

Section 1 creates s. 334.179, F.S., relating to DOT standards or specifications for permissible use of aggregates.

Section 2 amends s. 336.044, F.S., relating to the use of recycled material in construction.

Section 3 amends s. 337.025, F.S., relating to innovative transportation projects.

Section 4 amends s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 5 amends s. 337.185, F.S., relating to the State Arbitration Board.

Section 6 amends s. 338.26, F.S., relating to the Alligator Alley toll road.

Section 7 provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. DOT may see a reduction in litigation costs associated with the eligibility for additional claims to go before the State Arbitration Board for settlement³⁷

The bill requires DOT to fund 90 percent of a local governmental entity's direct actual costs for operating the MM 63 fire station from toll revenues collected on Alligator Alley. However, the bill caps DOT's contribution at \$1.4 million per state fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

A local governmental entity has until June 30, 2027, to receive up to \$1.4 million in funding, per state fiscal year, from DOT for operating a fire station on Alligator Alley.

2. Expenditures:

Indeterminate. The provisions of the bill prohibiting local governments from adopting certain standards and specifications contrary to DOT's for aggregates or recycled asphalt pavement are indeterminate, but likely insignificant.

The bill requires a local governmental entity to pay 10 percent of the direct actual operating costs for a fire station on Alligator Alley. Based on the annual operating costs for prior years, this will be approximate \$160,000 per fiscal year.

³⁷ Florida Department of Transportation, Agency Analysis of 2019 Senate Bill 1044, p.6. (February 14, 2019).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For certain projects wholly or partially funded by DOT and administered by local governmental entities, the bill prohibits the same entity from providing both design services and construction engineering and inspection services for the same project. As such, the bill may result in a reduction in contracts for design-build contractors, but could result in an increase in contracts for other contractors due to the prohibition. The bill also prohibits certain contractors from bidding on construction contracts in excess of \$50 million, unless certain requirements are met, which may limit the pool of eligible contractors, thereby decreasing competition. In addition, DOT contractors may see a reduction in expenditures with the authorization for additional claims to go before the State Arbitration Board.

D. FISCAL COMMENTS:

Extending DOT's funding of the fire station on Alligator Alley reduces the toll revenues that could be used for other statutorily established purposes, such as Everglades restoration. If DOT needs to issue future bonds supported from Alligator Alley toll revenues, the bill would restrict the amount of toll revenues available to pay the bonds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2019, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed provisions relating to:

- The establishment of policies by DOT's central office and the carrying out of policies by DOT districts.
- The nomination of the Secretary of Transportation by the Florida Transportation Commission.
- The calculation of mileage for official state travel.
- The requirement that 80 percent of the pavement in each DOT district meets DOT standards.
- The assessment of liquidated damages for transportation projects.
- The allocation of transportation capacity funds to the Strategic Intermodal System.
- The prioritization of certain projects on Strategic Intermodal System Highway Corridors.

The strike-all amendment also revised provisions in the bill regarding the qualifications for the Secretary of Transportation and revised provisions regarding local government use of aggregates.

On March 26, 2019, the Transportation & Tourism Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment prohibits a DOT district office or the Florida Turnpike Enterprise from contracting with the same entity under certain circumstances.

On April 10, 2019, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed a provision providing qualifications for the Secretary of Transportation.
- Provided an exception to certain special districts regarding the prohibition on local governments adopting certain standards or specifications for aggregates.
- Added a prohibition preventing local governments from adopting standards or specifications contrary to DOT standards or specifications or permissible uses of reclaimed asphalt pavement, and provided that reclaimed asphalt pavement is not considered solid waste.
- Revised provisions regarding the requirement to have satisfactorily completed two projects prior to contracting with DOT for a project in excess of \$50 million to provide that a contractor must have satisfactorily completed two projects, each in excess of \$15 million, instead of two projects, each in excess of \$25 million.
- Revised the prohibition on contracting with the same entity to provide design services and construction engineering and inspection services to provide that the prohibition applies to projects wholly or partially funded by DOT and administered by local governmental entities. It also clarified that the prohibition does not apply to seaports.
- Extended the length of time for DOT to provide funding for a fire station on Alligator Alley, and required a local contribution from the local governmental entity operating the fire station at MM 63.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.