

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: SB 7054

INTRODUCER: Infrastructure and Security Committee

SUBJECT: Transportation

DATE: February 24, 2020      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Price	Miller		<b>IS Submitted as Committee Bill</b>
1.	McAuliffe	Hrdlicka	ATD	<b>Pre-meeting</b>
2.			AP	

**I. Summary:**

SB 7054 revises a number of transportation-related provisions. Specifically, effective July 1, 2023, the bill:

- Repeals the Florida Rail Enterprise (FRE) from within the Florida Department of Transportation’s (FDOT), requiring delegation of the current and new rail-related duties to an entity to be named by the FDOT secretary. New rail-related duties include responsibility for ensuring general rail safety and coordinating efforts to enhance passenger rail safety.
- Reallocates to the State Transportation Trust Fund (STTF) \$60 million currently allocated to the FRE from documentary tax stamp funds, to be used for rail projects and rail safety improvements.
- Adds projects necessary to identify or address needed or desirable safety improvements to passenger rail systems in this state to the FDOT’s authorized uses of documentary stamp tax allocations.
- Makes a number of conforming revisions in various sections of law, primarily to replace all occurrences of the term “enterprise” with “department,” meaning the FDOT.

In addition, the bill:

- Increases from \$275 to \$350 million the authorized debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds issued to finance or refinance the cost of acquiring real property for state roads or to finance or refinance the cost of bridge construction.
- Removes the expiration date for the annual \$5 million in funding from the STTF for the Intermodal Logistics Center Infrastructure Support Program.
- Creates provisions modeled after the Move Over Law for road and bridge maintenance or construction vehicles and provides penalties for violations.

- Authorizes portable radar speed display units to display flashing red and blue lights when placed in advance of a work zone where workers are present for the purpose of road or bridge maintenance or construction on roads with a posted speed limit of 55 miles per hour.
- Requires the FDOT to offer a right of first refusal to previous property owners from whom the FDOT acquired property when the FDOT has determined the property is not needed for a transportation facility and in specified instances.
- Revises the date to August 1 for MPO submission of project priorities for purposes of developing the FDOT's tentative work program and MPO transportation improvement programs.
- Removes the expiration date for Legislative Budget Commission (LBC) chair and vice chair authority to approve amendments to the FDOT's work program that transfer fixed capital outlay appropriations between categories or increase an appropriation category.
- Increases from \$200 to \$295 million the amount of liability insurance required to be purchased by the FDOT for coverage of claims against AMTRAK arising out of the FDOT's passenger rail systems, in accordance with federal law.
- Repeals the Economic Development Transportation Project program and makes conforming revisions to related statutes.
- Removes obsolete references to a general revenue service charge from specified collected revenue deposited into the STTF.
- Conforms state law to federal terminology with respect to a required document submitted by each person applying for a permit to construct or alter an airport obstruction, which documents must be reviewed by the FDOT.

The fiscal impact of the bill is indeterminate.

Except as otherwise provided, the bill takes effect July 1, 2020.

## II. Present Situation:

For ease of organization, the present situation is discussed below in conjunction with the effect of proposed changes.

## III. Effect of Proposed Changes:

### **FDOT Organization and the Florida Rail Enterprise (Sections 1, 2, 16, and 17)**

#### *Present Situation*

The FDOT, created in s. 20.23, F.S., as a decentralized agency and headed by the FDOT secretary, is organized into seven geographic districts headed by district secretaries, as well as a turnpike enterprise and a rail enterprise, each of which are headed by an executive director. The FRE executive director reports directly to the FDOT secretary, and the headquarters of the FRE is in Leon County.<sup>1</sup>

As delegated by the FDOT's secretary, the FRE executive director is responsible for developing and operating the high-speed and passenger rail systems established in ch. 341, F.S.; directing

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<sup>1</sup> Section 20.23(4)(a), F.S.

funding for passenger rail systems under s. 341.303, F.S.; and coordinating publicly funded passenger rail operations, including freight rail interoperability issues.<sup>2</sup>

With respect to high-speed rail, the FRE operates pursuant to the Florida Rail Enterprise Act, located in ss. 341.8201-341.842, F.S. The act, among other powers and duties, requires the FRE to “locate, plan, design, finance, construct, maintain, own, operate, and manage the high-speed rail system in this state.”<sup>3</sup> The FDOT is the only governmental entity authorized to acquire, construct, maintain, or operate the high-speed rail system, except upon specific authorization of the Legislature.<sup>4</sup>

Except as provided in the Consultants’ Competitive Negotiation Act,<sup>5</sup> the FRE is exempt from the FDOT’s policies, procedures, and standards, subject to the FDOT secretary’s authority to apply any such policies, procedures, and standards to the FRE as the secretary deems appropriate.<sup>6</sup>

The FRE, a single budget entity, submits its budget to the Legislature along with the FDOT’s budget. All passenger rail funding is included in the FRE’s budget.<sup>7</sup>

### ***Documentary Stamp Tax***

A portion of the documentary stamp tax levied under ch. 201, F.S.,<sup>8</sup> is distributed to the State Transportation Trust Fund (STTF).<sup>9</sup> Funds are allocated and must be used for certain purposes. Of the funds allocated to the Transportation Regional Incentive Program (TRIP),<sup>10</sup> the first \$60 million of the funds are redirected annually to the FRE for the purposes established in s. 341.303(5), F.S.<sup>11</sup>

### ***Rail Funding***

For the 2019-2020 fiscal year, the FRE was authorized one position and a budget of approximately \$266.8 million. Of that amount, \$106.8 million was for public transit development grants, \$154.8 million for rail development grants, and \$3.7 million for intermodal development grants.<sup>12</sup>

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<sup>2</sup> Section 20.23(4)(f), F.S.

<sup>3</sup> Section 341.822, F.S.

<sup>4</sup> Section 341.8225, F.S.

<sup>5</sup> Section 287.055, F.S. The act relates to agency acquisition of professional architectural, engineering, landscape architectural, or survey and mapping services.

<sup>6</sup> Section 20.23(4)(f)2., F.S. Florida’s Turnpike Enterprise (FTE) is likewise exempt, subject to the FDOT secretary’s same authority, under s. 20.23(4)(e)2., F.S.

<sup>7</sup> Section 341.303(6)(a), F.S.

<sup>8</sup> The tax is levied on certain documents, such as deeds; bonds; notes and written obligations to pay money; and mortgages, liens, and other evidence of indebtedness.

<sup>9</sup> Section 201.15(4)(a), F.S.

<sup>10</sup> Section 339.2819, F.S.

<sup>11</sup> Section 201.15(4)(a)4., F.S.

<sup>12</sup> Specific Appropriations 1953-1961, s. 5, ch. 2019-115, L.O.F.

Section 341.303(5), F.S., authorizes the FDOT, through the FRE, to use funds allocated to the FRE from documentary stamp taxes to fund:

- Up to 50 percent of the nonfederal share of the costs of any eligible<sup>13</sup> passenger rail capital improvement project.
- Up to 100 percent of planning and development costs related to the provision of a passenger rail system.
- The high-speed rail system.
- Projects necessary to identify or address anticipated impact of increased freight rail traffic resulting from the implementation of passenger rail systems.

### *Effect of Proposed Changes*

The bill repeals the FRE and assigns the responsibilities, powers, and duties of the FRE back to the FDOT. The effective date of these sections of the bill is delayed until July 1, 2023, consistent with the bill's reallocation of documentary stamp tax funding, discussed below.

**Section 1** bill amends s. 20.23, F.S., effective July 1, 2023, to repeal references to the FRE within the FDOT's organization, as well as references to an FRE executive director, its headquarters, and its exemption from FDOT policies, procedures, and standards. Rather than delegating responsibility for rail systems, passenger rail funding, and publicly-funded passenger rail operations to the FRE executive director, the bill authorizes the FDOT secretary to delegate those responsibilities, including responsibility for rail safety, to a departmental entity to be named by the FDOT secretary.

**Section 16** amends s. 341.302, F.S., effective July 1, 2023, relating to the FDOT's development and implementation of a statewide rail program in conjunction with other governmental entities, to repeal reference to the FRE. This section also repeals the FDOT duty to promote and facilitate the implementation of advanced rail systems, including high-speed rail and magnetic levitation systems, and replaces it with the duty to coordinate the development, general rail safety, and operation of publicly funded passenger rail systems in this state. Responsibility for the high-speed rail system would remain with the FDOT. See the "Conforming Revisions" subheading below.

### *Documentary Stamp Tax*

**Section 2** amends s. 201.15(4)(a)4., F.S., continuing the current reallocation to the FRE of the first \$60 million of funds allocated to the TRIP for three fiscal years, 2020-2021, 2021-2022, and 2022-2023. This reallocation to the FRE expires on July 1, 2023. Beginning in the 2023-2024 fiscal year, the bill annually transfers the same \$60 million to the State Transportation Trust Fund to be used for rail projects and rail safety improvements as provided in s. 341.303(5), F.S.

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<sup>13</sup> Any project necessary to carry out the FDOT's duties and responsibilities provided in s. 341.302, F.S., that is consistent with the approved local government comprehensive plan of the unit of government of the areas served by the rail service, and that is contained in the adopted work program, is eligible for funding in accordance with the identified participation rates, per s. 341.303(2), F.S.

### ***Rail Funding***

**Section 17** amends s. 341.303(5), F.S., effective July 1, 2023, adding to the FDOT's currently authorized uses of the documentary stamp tax allocations projects necessary to identify or address needed or desirable safety improvements to passenger rail systems in this state. The bill repeals s. 341.303(6), F.S., to remove designation of the FRE as a single budget entity, direction to submit the FRE budget along with the FDOT's, inclusion of all passenger rail funding in the FRE budget entity, and provisions relating to unexpended funds appropriated or provided for the FRE. Funding for projects and activities authorized under s. 341.303(5), F.S., would be included in the FDOT's budget.

### ***Conforming Revisions (Section 18-20 and 23-28)***

Effective July 1, 2023, the bill revises the following sections of the Florida Rail Enterprise Act relating to high-speed rail to conform to the repeal of the FRE and the revised documentary stamp tax funding:

- **Section 18** repeals s. 341.8201, F.S., which is the short title for the act, citing ss. 341.8201-341.842, F.S., as the "Florida Rail Enterprise Act."
- **Section 19** amends s. 341.8203, F.S., relating to definitions for purposes of ss. 341.822-341.842, F.S., to repeal the definition of "enterprise" (meaning the FRE), replace all occurrences of the term "enterprise" with "department", and revise a cross-reference.
- **Section 20** amends s. 341.822, F.S., relating to powers and duties of the FRE, to repeal references to the FRE, replace all occurrences of the term "enterprise" with "department," and revise a cross-reference. The following provisions of the statute related to the FRE are also repealed:
  - FRE authority to employ procurement methods available to the FDOT;
  - FRE executive director authority to appoint staff; and
  - Reference to the FRE's conferred powers as supplemental to the existing powers of the FDOT.

Effective July 1, 2023, the following sections of the Florida Rail Enterprise Act are also amended to replace all occurrences of the term "enterprise" with "department" and to revise cross-references:

- **Section 23** amends s. 341.825, F.S., relating to communication facilities and permits to construct such facilities within a new or existing high-speed rail system.
- **Section 24** amends s. 341.836, F.S., relating to associated development of a high-speed rail system.
- **Section 25** amends s. 341.838, F.S., relating to authority to charge and collect fares, rents, and fees for use of a high-speed rail system.
- **Section 26** amends s. 341.839, F.S., relating to supplemental and additional powers not subject to approval or consent of other governing bodies.
- **Section 27** amends s. 341.840, F.S., relating to tax exemptions for tangible personal and real property related to a high-speed rail system.

**Section 28** amends s. 343.58(4), F.S., effective July 1, 2023, relating to FDOT funding for the South Florida Regional Transportation Authority, to prohibit such funding from documentary stamp tax funds dedicated to the "State Transportation Trust Fund" rather than to the FRE.

### **Debt Service Cap on Right-of-Way Acquisition and Bridge Construction Bonds (Section 3)**

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

Section 215.605, F.S., authorizes the issuance of state bonds to finance or refinance the cost of acquiring real property for state roads or to finance or refinance the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, the Legislature must authorize bonds, which must be issued pursuant to the State Bond Act.<sup>14</sup>

Section 206.46, F.S., authorizes the FDOT to transfer up to 7 percent of the revenues deposited into the STTF in each fiscal year into the Right-of-Way Acquisition and Bridge Construction Trust Fund to meet outstanding or proposed bond obligations; or, at a minimum, an amount sufficient to pay for the debt service coverage of outstanding bonds.<sup>15</sup> The annual transfer amount, however, may not exceed that which is necessary to provide the required debt service coverage levels for a maximum debt service of \$275 million. Thus, debt service may not exceed seven percent of the revenues deposited into the STTF or \$275 million, whichever is less.

The FDOT notes that no adjustment has been made to the \$275 million cap since 2007. The FDOT provided information that based on the FDOT's most recent bond sale and Revenue Estimating Conference projections, the limit on debt service based on the 7-percent-of-revenue threshold would have been \$287 million in Fiscal Year 2019-2020 (based on revenues of \$4.1 billion), growing to \$350 million in Fiscal Year 2028-2029 (based on revenues of \$5 billion). Additionally, the FDOT advises that under the current statutory limit, the \$275 million cap leaves the FDOT with only about \$100 million of available bonding capacity.<sup>16</sup>

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

**Section 3** of the bill amends s. 206.46, F.S., to increase the maximum debt service coverage level from \$275 million to \$350 million. Thus, under the bill, debt service could not exceed 7 percent of the revenues deposited into the STTF or \$350 million, whichever is less.

### **Intermodal Logistics Center (ILC) Infrastructure Support Program (Section 7)**

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

The ILC Infrastructure Support Program within the FDOT provides funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport. The FDOT is authorized to provide funds to assist with local government projects or projects performed by private entities that meet the public purpose of enhancing transportation for the conveyance or shipment of goods through a seaport to or from an intermodal logistics center.<sup>17</sup>

<sup>14</sup> Sections 215.57-215.83, F.S.

<sup>15</sup> The transfer is required to be payable primarily from the motor and diesel fuel taxes transferred to the STTF.

<sup>16</sup> See the FDOT's 2020 Legislative Proposal, *Change the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap* (on file in the Senate Infrastructure and Security Committee).

<sup>17</sup> Section 311.101, F.S. The term "intermodal logistics center" is defined as "a facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport where activities relating to transport, logistics, good distribution, consolidation, or value-added activities and services are designed to support or be supported by conveyance or shipping through one or more seaports listed in s. 311.09." The term includes an "inland port."

Section 311.101(3), F.S., provides the following criteria that the FDOT must consider when evaluating projects:

- The ability of the project to serve a strategic state interest and to facilitate the cost-effective and efficient movement of goods.
- The extent to which the project contributes to economic activity, including job creation, increased wages, and revenues, and efficiently interacts with and supports the transportation network.
- A commitment of a funding match; the amount of investment or commitments made by the owner or developer of the existing or proposed facility; and the extent to which the owner has commitments, including agreements, with private sector businesses planning to locate operations at the ILC.
- Demonstrated local financial support and commitment to the project.

At least \$5 million per year must be made available from the STTF to fund the program, and the FDOT is directed to provide up to 50 percent of project costs for eligible projects.<sup>18</sup> The minimum funding requirement is currently set to expire on July 1, 2020. The FDOT points to the ILC program as having leveraged local and private funding, enabling completion of 12 unique projects since 2013 that are geographically dispersed around the state.<sup>19</sup>

### *Effect of Proposed Changes*

**Section 7** amends s. 311.101(7), F.S., to remove the July 1, 2020, expiration date for the required minimum annual \$5 million from the STTF to fund the ILC program, thereby making the minimum annual funding permanent.

## **Road and Bridge Maintenance and Construction Vehicles: Worker and Traveler Safety (Section 10)**

### *Present Situation*

According to the Centers for Disease Control and Prevention, from 2003 to 2017, 1,844 workers lost their lives at road construction sites. Over that period of time, Texas had the most work deaths at road construction sites with 218, followed by Florida with 132 deaths. Additionally, transportation incidents accounted for 76 percent of roadway work zone fatal occupational injuries during the period from 2011-2017. In 60 percent of these cases, a vehicle struck a worker in the work zone.<sup>20</sup>

Under the Florida Move Over Law, if an emergency vehicle, a sanitation vehicle, a utility service vehicle, or a wrecker is working along the roadside, every other driver must vacate the lane closest to the vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce speed to 20 miles per hour less than the posted speed limit when the posted speed limit is

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<sup>18</sup> Section 311.101(6) and (7), F.S.

<sup>19</sup> See the FDOT's 2020 Legislative Proposal, *Intermodal Logistics Center (ILC) Infrastructure Support Program* (on file in the Senate Infrastructure and Security Committee).

<sup>20</sup> Centers for Disease Control and Prevention, The National Institute for Occupational Safety and Health, *Highway Work Zone Safety*, page last reviewed October 3, 2019, available at <https://www.cdc.gov/niosh/topics/highwayworkzones/default.html> (last visited February 17, 2020).

25 miles per hour or greater; or travel at five miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road.<sup>21</sup> Every pedestrian using the road right-of-way must yield the right-of-way until the authorized emergency vehicle has passed. However, the Move Over Law does not currently apply to road and bridge maintenance or construction vehicles.

The FDOT advises that maintenance and construction activities on roadways generally require temporary traffic control<sup>22</sup> to provide safety for both workers and others traveling through work zones.<sup>23</sup> However, for short duration work activities that do not require lane or shoulder closures, such as fence repair or tree trimming,<sup>24</sup> advance signs and channeling devices<sup>25</sup> may be omitted due to the risk for accident when setting up the signs and devices.<sup>26</sup>

The FDOT employs additional strategies to reduce work zone fatalities. Among those strategies, the FDOT uses portable radar speed display units, which are a subset of portable changeable message signs and are trailer-mounted regulatory speed limit signs with flashing lights used to inform motorists of a new speed limit for a work zone.<sup>27</sup>

The Manual on Uniform Traffic Control Devices (MUTCD), adopted by the FDOT pursuant to direction in s. 316.0745, F.S., describes portable changeable message signs as temporary traffic control devices installed for temporary use with the flexibility to display a variety of messages, including advising drivers when traffic speed is expected to drop substantially.<sup>28</sup> As defined by the MUTCD, warning lights used in a temporary traffic control zone, in either a steady burn or a flashing mode, are yellow in color.<sup>29</sup> In addition, the MUTCD provides that “[i]f a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX MPH or such similar legend should be displayed. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors.”<sup>30</sup>

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<sup>21</sup> Section 316.126(1)(b), F.S.

<sup>22</sup> According to the Manual on Uniform Traffic Control Devices (MUTCD), adopted by the FDOT pursuant to direction in s. 316.0745, F.S., “temporary traffic control” refers to the needs and control of all road users, including motorists, bicyclists, and pedestrians within the highway or on private roads open to public travel, and is an essential part of highway construction, utility work, maintenance operations, and the management of traffic incidents. Temporary traffic control “provides for continuity of the movement of motor vehicle, bicycle, and pedestrian traffic (including accessible passage); transit operations; and access to property and utilities.” See the MUTCD, Part 6, Chapter 6A, Section 6A.01, available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/part6.pdf> (last visited February 17, 2020).

<sup>23</sup> See the FDOT’s 2020 Legislative Proposal, *Move Over Law*, (on file in the Senate Infrastructure and Security Committee).

<sup>24</sup> See the FDOT email to House Transportation & Infrastructure Committee staff, January 31, 2020 (on file in the Senate Infrastructure and Security Committee).

<sup>25</sup> The FDOT notes that “Channelizing devices for temporary traffic control are cones, drums, barricades, etc.” *Id.* A search of the FDOT’s website reveals that these devices are referred to as both “channeling” and “channelizing” devices.

<sup>26</sup> See the FDOT’s 2020 Legislative Proposal, *Move Over Law* (on file in the Senate Infrastructure and Security Committee).

<sup>27</sup> Federal Highway Administration, Work Zone Mobility and Safety Program, *FDOT’s Work Zone Fatality Reduction Strategies*, slide 9, available at <https://ops.fhwa.dot.gov/wz/workersafety/wzfrwebinar/fl/index.htm> (last visited February 17, 2020).

<sup>28</sup> MUTCD, Part 6, Chapter 6A, Section 6F.60.

<sup>29</sup> MUTCD, Section 1A.13, definition of “warning light” at 251, available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/part2b.pdf> (last visited February 17, 2020).

<sup>30</sup> MUTCD, Section 2B.13, available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf> (last visited February 17, 2020).



Florida law expressly prohibits any vehicle *or equipment*, except police vehicles, to show or display blue lights, with the exception of Department of Corrections vehicles when responding to emergencies.<sup>31</sup> Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles are authorized to display amber lights when in operation or a hazard exists.<sup>32</sup> Additionally, road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.<sup>33</sup> However, a search of the MUTCD, the national standard for traffic control devices and current Florida law, and of other relevant Florida statutes, reveals no authorization for the display of flashing red and blue lights on portable radar speed display units.

### *Effect of Proposed Changes*

**Section 10** creates s. 334.275, F.S., specific to road or bridge maintenance or construction vehicles engaged in the performance of maintenance or construction for a governmental entity,<sup>34</sup> tracking the current Move Over Law. Notwithstanding any other provision of law, if a road or bridge maintenance or construction vehicle displaying warning lights is on the roadside without advanced signs or channeling devices, every other driver must vacate the lane closest to the maintenance or construction vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce speed to 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater; or travel at five miles per hour when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road vehicles.

Every pedestrian using the road right-of-way is required to yield the right-of-way to an authorized road or bridge maintenance or construction vehicle. Additionally, as is the case in the Move Over Law, the bill provides that the new section of law does not:

- Diminish or enlarge any rules of evidence or liability in any case involving the operation of a road or bridge maintenance or construction vehicle.
- Relieve the driver of an authorized road or bridge maintenance or construction vehicle from the duty to drive with due regard for the safety of all persons using the highway.

In addition, the bill authorizes portable radar speed display units, in advance of a work zone where workers are present for the purpose of road or bridge maintenance or construction and with a posted speed limit of 55 miles per hour or more, to show or display flashing red and blue lights. This provision appears to be inconsistent with MUTCD requirements adopted pursuant to s. 316.0745, F.S.

The bill requires the Department of Highway Safety and Motor Vehicles to include the requirements of the new section of law in its educational awareness campaign relating to the Move Over Act and in all newly printed driver license educational materials.

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<sup>31</sup> Section 316.2397(2), F.S.

<sup>32</sup> Section 316.2397(4), F.S.

<sup>33</sup> Section 316.2397(5), F.S.

<sup>34</sup> The bill defines “governmental entity” as the FDOT; any transportation authority created under chs. 343, 348, or 349, F.S.; publicly owned and used airports; seaports; a county; or a municipality. Section 334.27(1), F.S.

Similar to the Move Over Law, a violation of the new section of law is a noncriminal traffic infraction, punishable pursuant to ch. 318, F.S., as either a moving violation<sup>35</sup> for driver infractions or as a pedestrian violation<sup>36</sup> for pedestrian infractions.

### **Disposal of Real Property (Section 11)**

#### *Present Situation*

The FDOT is authorized to convey any land, building, or other real or personal property it acquired if the FDOT determines the property is not needed for a transportation facility.<sup>37</sup> In such cases, the FDOT may dispose of the property through negotiations, sealed competitive bids, auctions, or any other means the FDOT deems to be in its best interest. The FDOT must advertise the disposal of property valued by the FDOT at greater than \$10,000.<sup>38</sup>

If the FDOT determines the property requires significant costs to be incurred or that continued ownership of the property exposes the FDOT to significant liability risks, the FDOT may use the projected maintenance costs over the next ten years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.<sup>39</sup>

If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.<sup>40</sup> The FDOT is authorized, but not required, to first offer the property ("right of first refusal") to the local government or other political subdivision in whose jurisdiction the property is situated except in the following situations:

- If the property was donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, a governmental entity in whose jurisdiction the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.<sup>41</sup>
- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the FDOT may negotiate for the sale of such property as replacement housing.<sup>42</sup>
- If in the FDOT's discretion a sale to a person other than an abutting property owner would be inequitable, the property may be sold to the abutting owner for the FDOT's current estimate of value.<sup>43</sup>

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<sup>35</sup> Section 318.18(3)(a), F.S., generally imposes a \$60 penalty, plus any applicable court costs or fees.

<sup>36</sup> Section 318.18(1)(a), F.S., imposes a \$15 penalty for all infractions of pedestrian regulations, plus any applicable court costs or fees.

<sup>37</sup> Section 337.25(1) and (4), F.S.

<sup>38</sup> Section 337.25(4), F.S.

<sup>39</sup> Section 337.25(4)(d), F.S.

<sup>40</sup> Section 337.25(4)(b), F.S.

<sup>41</sup> Section 337.25(4)(a), F.S.

<sup>42</sup> Section 337.25(4)(c), F.S.

<sup>43</sup> Section 337.25(4)(e), F.S.

### *Effect of Proposed Changes*

**Section 11** amends s. 337.25(4), F.S., requiring the FDOT, notwithstanding any provision of that section to the contrary, to afford a right of first refusal to the previous property owner (the owner from whom the FDOT originally acquired the property) for the FDOT's current estimate of value except in the following situations:

- If the property was donated for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor, a governmental entity in whose jurisdiction the property lies may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.<sup>44</sup>
- If the property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects, the FDOT may negotiate for the sale of such property as replacement housing.<sup>45</sup>

In cases of property to be used for a public purpose, in cases of property requiring significant costs to be incurred or exposing the FDOT to significant liability risks, or in cases in which the FDOT determines that a sale to any person other than an abutting property owner would be inequitable, the FDOT would be required to offer a right of first refusal to the previous property owner before being authorized to offer the property to the local government or other political subdivision in whose jurisdiction the property is located or to the abutting property owner.

The bill requires the FDOT to offer the previous property owner the right of first refusal in writing, by certified mail or hand delivery, and the offer of the right is effective upon the property owner's receipt. The offer must provide the previous owner a minimum of 30 days to exercise the right. The previous owner must send notice of exercise of the right to the FDOT by certified mail or hand delivery, effective upon dispatch. Once the right is exercised, the previous owner has 90 days to close on the property.

### **Metropolitan Planning Organization Project Priority Submissions to the FDOT (Sections 12 and 13)**

#### *Present Situation*

The FDOT's adopted work program is the 5-year work program adopted by the FDOT pursuant to s. 339.135, F.S. In developing the adopted work program, each of the FDOT districts submits an annual district work program, which is the 5-year listing of transportation projects planned for each fiscal year, to the FDOT's central office for review and development of the tentative work program. The tentative work program is the 5-year listing of all transportation projects planned for each fiscal year which is developed by the FDOT's central office based on the district work programs.<sup>46</sup> Each year, a new fifth year is added for purposes of developing the tentative and adopted work programs.

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<sup>44</sup> Section 337.25(4)(a), F.S.

<sup>45</sup> Section 337.25(4)(c), F.S.

<sup>46</sup> Section 339.135(1), F.S.

With respect to development of the tentative work program, as outlined in s. 339.135(4), F.S., the district work program is developed cooperatively with the various metropolitan planning organizations (MPOs) around the state and must include, to the maximum extent feasible, the project priorities submitted by the MPOs to the FDOT's districts by October 1 of each year. The FDOT and an MPO may agree in writing to vary the submission date.<sup>47</sup>

The FDOT advises that during a "normal" work program development cycle, submission of MPO project priorities by October 1 allows sufficient time for development of the tentative work program cycle. However, because the Legislature meets beginning in January in even-numbered years,<sup>48</sup> the tentative work program cycle is "compressed" by two months, creating a need for earlier submission of project information. The FDOT notes that no failure to submit a priority list has occurred, but earlier submission has been provided as a courtesy, rather than a mandate.<sup>49</sup>

The MPOs are also required, in cooperation with the state and affected public transportation operators, to develop a transportation improvement program for the area within the jurisdiction of the MPO. Similar to work program development, each MPO is required to submit to the appropriate FDOT district a list of project priorities by October 1 of each year. Again, the FDOT and an MPO may agree in writing to vary the submission date. The MPO-approved lists must be used by the FDOT districts in developing the district work programs.<sup>50</sup>

### *Effect of Proposed Changes*

**Section 12 and Section 13**, respectively, amend s. 339.135(4)(c) and s. 339.175(8)(b), F.S., to revise from October 1 to August 1 the deadline for MPOs to submit their project priority lists for purposes of developing the FDOT's tentative work program and for purposes of development of MPO transportation improvement programs.

### **Work Program Amendments (Section 12)**

#### *Present Situation*

Current law authorizes the FDOT to amend its adopted work program and provides procedures for such amendments.<sup>51</sup> However, any work program amendment that transfers fixed capital outlay appropriations between categories or increases an appropriation category is subject to approval by the Legislative Budget Commission (LBC).

Prior to 2016, if a meeting of the LBC could not be held within 30 days after the FDOT submitted an amendment, the chair and vice chair of the LBC could approve the amendment.<sup>52</sup> In 2016, the Legislature repealed the authorization for LBC chair and vice chair approval if the

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<sup>47</sup> Section 339.135(4)(c)2., F.S.

<sup>48</sup> Article III, s. 3(b), Florida Constitution.

<sup>49</sup> See the FDOT's 2020 Legislative Proposal, *Advance MPO Deadline to Submit Project Priorities* (on file in the Senate Infrastructure and Security Committee).

<sup>50</sup> Section 339.175(8), F.S.

<sup>51</sup> Section 339.135(7), F.S.

<sup>52</sup> Section 339.135(7)(g), F.S. (2015).

LBC could not meet.<sup>53</sup> In 2019, this authorization was reinstated with an expiration date of July 1, 2020.<sup>54</sup>

### *Effect of Proposed Changes*

**Section 12** amends s. 339.135(7)(g), F.S., to remove the expiration of authorization for LBC chair and vice chair approval of the identified amendments to the FDOT's adopted work program, thereby making the provision permanent.

### **Passenger Rail Insurance Limits (Section 15)**

#### *Present Situation*

Current law authorizes the FDOT to purchase liability insurance for its rail program, which may not exceed \$200 million and which may include coverage for the FDOT, certain freight rail operators, the National Railroad Passenger Corporation (AMTRAK), commuter rail service providers, governmental entities, or any ancillary development.<sup>55</sup>

In 1997, federal law set the amount of passenger rail liability coverage for AMTRAK at \$200 million.<sup>56</sup> In 2015, the federal government required the liability coverage amount to be adjusted to reflect changes based on the consumer price index and required the adjustment every five years.<sup>57</sup> In 2016, the liability coverage amount was increased to \$294.3 million.<sup>58</sup>

### *Effect of Proposed Changes*

**Section 15** amends s. 341.302(17)(b), F.S., increasing the required liability insurance coverage amount for the FDOT's passenger rail systems from \$200 to \$295 million, consistent with the currently required federal rail liability insurance coverage amount.

### **Economic Development Transportation Projects (Sections 14, 21, 22, and 29)**

#### *Present Situation*

The Economic Development Transportation Project program (also known as the "Road Fund") is an incentive program intended to encourage specific businesses to locate, expand, or remain in the state.<sup>59</sup> Under this program, the FDOT, in consultation with the Department of Economic Opportunity (DEO) and Enterprise Florida, Inc., may make and approve expenditures and

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<sup>53</sup> Section 16, ch. 2016-181, L.O.F.

<sup>54</sup> Section 101, ch. 2019-116, L.O.F.

<sup>55</sup> Section 341.302(17)(b), F.S.

<sup>56</sup> 49 U.S.C. s. 28103.

<sup>57</sup> As directed by s. 11415 of the FAST Act, Pub. L. No. 114-94 (114th Congress). Codified at 49 U.S.C. s. 28103 note.

<sup>58</sup> Federal Register, Vol. 81, No. 6, Monday, January 11, 2016, *Adjustment to Rail Passenger Transportation Liability Cap*, FR 2016-301, available at [https://www.apta.com/wp-content/uploads/Resources/gap/fedreg/Documents/DOT-OST\\_Adjustment%20to%20Rail%20Passenger%20Transportation%20Liability%20Cap\\_Noticef.pdf](https://www.apta.com/wp-content/uploads/Resources/gap/fedreg/Documents/DOT-OST_Adjustment%20to%20Rail%20Passenger%20Transportation%20Liability%20Cap_Noticef.pdf) (last visited February 17, 2020).

<sup>59</sup> Section 339.2821, F.S.

contract with the appropriate governmental body<sup>60</sup> for the direct costs of eligible transportation projects.<sup>61</sup>

The FDOT, in consultation with the DEO, reviews each transportation project for approval and funding, and the FDOT must approve a project for it to be eligible for funding. The criteria the FDOT must consider in reviewing projects include: the cost per job created or retained, average wages for jobs created, capital investment by the business, local commitment, and local unemployment and poverty rates.<sup>62</sup>

The program is appropriated on a non-recurring basis in the STTF and, according to the FDOT, in the absence of appropriation, the projects have to be deferred or deleted, causing a disruption in the tentative work program.<sup>63</sup> Recently, the FDOT has only programmed \$5 million for this program in its tentative work program. In the past 3 years, the General Appropriations Act has not appropriated any funds to the program; instead, individual local projects were appropriated in the budget.<sup>64</sup> According to the FDOT, the program has been underutilized because the Legislature has used a unique budget category for local projects.<sup>65</sup>

### *Effect of Proposed Changes*

**Section 14** repeals s. 339.2821, F.S., containing the Economic Development Transportation Project program (“Road Fund”).

The bill also removes references to the program in the following statutes to conform to the repeal of the program:

- **Section 21** amends s. 288.0656(7)(a), F.S., relating to the Rural Economic Development Initiative, to remove reference to “transportation projects under s. 339.2821.”
- **Section 22** amends s. 339.08(1), F.S., relating to use of moneys in the STTF, to remove authorization to pay the cost of economic development transportation projects in accordance with s. 339.2821, F.S.
- **Section 29** amends s. 377.809(4)(a), F.S., relating to the Energy Economic Zone Pilot Program, to remove a reference to business eligibility for priority funding under s. 339.2821, F.S.

The FDOT has stated that if the program is repealed, then this “would release FDOT from having to program associated projects into the 5-year Work Program totaling \$5 million.”<sup>66</sup>

<sup>60</sup> Defined in s. 339.2821(1)(b)1., F.S., to mean “an instrumentality of the state or a county, municipality, district, authority, board, or commission, or an agency thereof, within which jurisdiction the transportation project is located and which is responsible to the [FDOT] for the transportation project.”

<sup>61</sup> Section 339.2821(1)(b)2., F.S., defines “transportation project” to mean “a transportation facility, as defined in s. 334.03, F.S., which the [FDOT], in consultation with the Department of Economic Opportunity, deems necessary to facilitate the economic development and growth of the state.”

<sup>62</sup> Section 339.2821(2), F.S.

<sup>63</sup> FDOT, Economic Development Transportation Fund Fact Sheet. *See also* the FDOT’s 2020 Legislative Proposal, *Deletion of Road Fund (SED)*. (Both documents on file in the Senate Infrastructure and Security Committee).

<sup>64</sup> *See* Specific Appropriation 1921A, s. 5, ch. 2017-70, L.O.F.; Specific Appropriation 1906A, s. 5, ch. 2018-9, L.O.F.; and Specific Appropriation 1989A, s. 5, ch. 2019-115, L.O.F.

<sup>65</sup> *See* the FDOT’s 2020 Legislative Proposal, *Deletion of Road Fund (SED)*.

<sup>66</sup> *Id.*

## **Obsolete References to the General Revenue Service Charge (Sections 4, 5, 6, and 8)**

### ***Present Situation***

Section 215.20(1), F.S., appropriates from revenue deposited into most state trust funds<sup>67</sup> an 8 percent service charge, which represents the estimated pro rata share of the cost of general government. All such appropriations are deposited into the General Revenue Fund.

Section 215.211(1), F.S., however, eliminated the service charge beginning July 1, 2000, for taxes distributed under:

- Section 206.606(1), F.S., relating to the distribution of motor and diesel fuel taxes;
- Section 212.0501(6), F.S., relating to taxes on diesel fuel used in self-propelled off-road equipment for business purposes; and
- Section 319.32(5), F.S., relating to the disposition of fees from certificate of title transactions.

Additionally, s. 215.211(2), F.S., eliminated the service charge beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.

Although the service charge on the specified taxes has been eliminated, references to the service charge remain in statute for the described taxes or fees.

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

**Sections 4, 5, 6, and 8**, respectively, remove the obsolete references to the General Revenue service charge that remain in ss. 206.606(1), 206.608, 212.0501(6), and 319.32(5), F.S.

## **Airport Zoning Regulations – Technical Revision (Section 9)**

Section 333.03, F.S., requires every political subdivision having an airport hazard area<sup>68</sup> within its territorial limits to adopt, administer, and enforce airport protection zoning regulations for such airport hazard area. That statute contains minimum requirements for airport protection zoning regulations, including the requirement for documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and “a valid aeronautical study” submitted by each person applying for a permit for the construction or alteration of any obstruction.

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<sup>67</sup> Section 215.22, F.S., sets out a list of items and trust funds that are exempt from the service charge, including trust funds administered by the Department of Transportation.

<sup>68</sup> An “airport hazard” is “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.” Section 333.01(3), F.S. An “airport hazard area” is “any area of land or water upon which an airport hazard might be established.” Section 333.01(4), F.S.

***Effect of Proposed Changes***

**Section 9** amends s. 333.03(1)(c), F.S., to replace the reference to “a valid aeronautical study” with the federal terminology, “a final valid determination of the Federal Aviation Administration.”

The FDOT advises “[t]his revision will advance the agency’s mission by clarifying the federal document to be provided to the FDOT for review and comment on the local government permit application. This is a technical change in language only. It will not change the manner in which [FDOT] perform[s] these functions.”<sup>69</sup>

**Effective Date**

The bill is effective July 1, 2020, except as otherwise provided.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None. The 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 revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

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<sup>69</sup> See the FDOT’s 2020 Legislative Proposal, *Airport Determination Terminology* (on filed in the Senate Infrastructure and Security Committee.)



**B. Private Sector Impact:**

Drivers and pedestrians who violate the new Move Over Law related to road or bridge maintenance or construction vehicles engaged in the performance of maintenance or construction for a governmental entity may be subject to a noncriminal traffic infraction.

**C. Government Sector Impact:**

The FDOT may incur administrative expenses in Fiscal Year 2023-2024 associated with the removal of the FRE from the FDOT's organization and with the FDOT secretary's naming of a departmental entity to which the secretary must delegate rail responsibilities. However, the amount of any such expenses should be minimal, as the FDOT currently funds the expenses of both the FRE and its Rail Office.

Local governments may lose opportunities to receive conveyance of surplus property from the FDOT without consideration if the previous owners exercise the right of first refusal provided in the bill.

The FDOT may incur unknown expenses associated with purchasing additional rail liability insurance. However, the cost of any such additional insurance is unknown and, under current law, the costs to the FDOT would be shared with any covered freight rail operator, AMTRAK, commuter rail service providers, governmental entities, or ancillary development.

The FDOT has stated that the repeal of the Economic Development Transportation Project ("Road Fund") program "would release FDOT from having to program associated projects into the 5-year Work Program totaling \$5 million" for each year of the work program.<sup>70</sup> These funds would instead be programmed into the work program in other categories.

The Department of Highway Safety and Motor Vehicles will incur costs to include the requirements of the new Move Over Law for road or bridge maintenance or construction vehicles in the department's educational awareness campaign relating to the Move Over Act and in all newly printed driver license educational materials.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>70</sup> *Id.*

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 20.23, 201.15, 206.46, 206.606, 206.608, 212.0501, 288.0656, 311.101, 319.32, 333.03, 337.25, 339.08, 339.135, 339.175, 341.302, 341.303, 341.8203, 341.822, 341.825, 341.836, 341.838, 341.839, 341.840, 343.58, and 377.809.

This bill creates section 334.275 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 339.2821 and 341.8201.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.