

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

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

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

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BILL: SPB 7054

INTRODUCER: For consideration by the Committee on Infrastructure and Security

SUBJECT: Transportation

DATE: February 7, 2020

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

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

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**I. Summary:**

SPB 7054 proposes to revise a number of transportation-related provisions. Specifically, effective July 1, 2023, the proposed bill:

- Removes the Florida Rail Enterprise (FRE) from within the Florida Department of Transportation's (FDOT) organization, adding responsibility for ensuring general rail safety and coordinating efforts to enhance passenger rail safety to existing duties, and requiring delegation of the current and new rail-related duties to an entity to be named by the FDOT secretary.
- 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 proposed 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.
- Includes provisions modeled after the Move Over Law with respect to road and bridge maintenance or construction vehicles and provides penalties for violations.
- 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 on roads with a posted speed limit of 55 miles per hour to display flashing red and blue lights.

- 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 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 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 liability insurance cap for 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 proposed bill is indeterminate. See the "Fiscal Impact Statement" for additional information.

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

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

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>2</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>3</sup>

Except as provided in the Consultants’ Competitive Negotiation Act,<sup>4</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>5</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>6</sup>

### *Documentary Stamp Tax*

Chapter 201, F.S., provides for the levy of a documentary stamp tax on certain documents, such as deeds; bonds; notes and written obligations to pay money; and mortgages, liens, and other evidence of indebtedness. After required distributions to the Land Acquisition Trust Fund<sup>7</sup> and deducting the General Revenue service charge,<sup>8</sup> the lesser of 24.18442 percent of the remainder of the tax proceeds or \$541.75 million in each fiscal year is deposited in the State Transportation Trust Fund (STTF). From that amount, \$75 million must be deposited into the General Revenue Fund. The remaining amount credited to the STTF must be used for:

- Capital funding for the New Starts Transit Program (New Starts)<sup>9</sup> in the amount of ten percent;
- The Small County Outreach Program (SCOP)<sup>10</sup> in the amount of ten percent;
- The Strategic Intermodal System<sup>11</sup> in the amount of 75 percent after deducting the payments for New Starts and SCOP; and
- The Transportation Regional Incentive Program (TRIP)<sup>12</sup> in the amount of 25 percent after deducting the payments for New Starts and SCOP.

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<sup>2</sup> Section 341.822, F.S.

<sup>3</sup> Section 341.8225, F.S.

<sup>4</sup> The act relates to agency acquisition of professional architectural, engineering, landscape architectural, or survey and mapping services.

<sup>5</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>6</sup> Section 341.303(6)(a), F.S.

<sup>7</sup> Section 201.15(1) and (2), F.S.

<sup>8</sup> Section 215.20, F.S.

<sup>9</sup> See 49 U.S.C. s. 5309 and s. 341.051, F.S. Generally, the federal law authorizes grants to states and local governmental authorities to assist in financing rail transit and bus rapid transit systems.

<sup>10</sup> Section 339.2818, F.S.

<sup>11</sup> Sections 339.61-339.64, F.S.

<sup>12</sup> Section 339.2819, F.S.

Currently, the first \$60 million of the funds allocated to the TRIP are redirected annually to the FRE for the purposes established in s. 341.303(5), F.S.<sup>13</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>14</sup>

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>15</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*

**Section 1** of the proposed bill amends s. 20.23, F.S., effective July 1, 2023, removing the statutory reference 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. The effective date of this and related sections is delayed, consistent with the bill's re-allocation of documentary stamp tax funding, discussed below.

**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 remove reference to the FRE. This section of the proposed bill also removes 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" heading below.

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<sup>13</sup> Section 201.15(4)(a)4., F.S.

<sup>14</sup> Specific Appropriations 1953-1961, 2019 General Appropriations Act, available at <http://www.flsenate.gov/Session/Bill/2019/2500/BillText/er/PDF> (last visited February 1, 2020).

<sup>15</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.

*Documentary Stamp Tax*

**Section 2** of 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, 2020-21, 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.

*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 proposed bill also repeals subsection (6) of that section 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. Project funding authorized under this section of law would be included in the FDOT's budget.

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

Effective July 1, 2023, the proposed 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** amends s. 341.8201, F.S., to repeal the short title, 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 remove 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, to remove references to the FRE, replace all occurrences of the term "enterprise" with "department," and revise a cross-reference. Also removed from this section of law is:
  - 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.

The following sections of the 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 them within a new or existing high-speed rail system.
- **Section 24** amends s. 341.836, F.S., relating to associated development.
- **Section 25** amends s. 341.838, F.S., relating to authority to charge and collect fares, rents, and fees for use of the high-speed rail system.

- **Section 26** amends s. 341.839, F.S., relating to supplemental and additional powers not subject to approval or consent.
- **Section 27** amends s. 341.840, F.S., relating to tax exemptions.

**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 “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>16</sup>

Section 206.46, F.S., authorizes the FDOT to transfer up to seven 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. 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, and that the subject bonds are included in the FDOT’s overall debt assessment, under which the FDOT is required to manage all levels of debt to ensure that no more than 20 percent of total projected available revenues from the STTF.<sup>17</sup> Based on the FDOT’s most recent bond sale and Revenue Estimating Conference projections, the limit on debt service based on the seven-percent-of-revenue threshold would have been \$286.9 million in FY 2019 growing to \$350.6 million in FY 2028 based on revenue of \$5,009.1 million.<sup>18</sup> 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.

#### *Effect of Proposed Changes*

**Section 3** of the proposed 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 seven percent of the revenues deposited into the STTF or \$350 million, whichever is less.

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<sup>16</sup> Sections 215.57-215.83, F.S.

<sup>17</sup> Section 339.139, F.S.

<sup>18</sup> See the FDOT 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).

## **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>19</sup>

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>20</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 that are geographically disbursed around the state.<sup>21</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.

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<sup>19</sup> For purposes of s. 311.101, F.S., creating the program, defines the term “intermodal logistics center” including, but not limited to, an “inland port,” 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.”

<sup>20</sup> Section 311.101(6) and (7), F.S.

<sup>21</sup> See the FDOT’s 2020 Legislative Proposal, *Intermodal Logistics Center (ILC) Infrastructure Support Program* (on file in the Senate Infrastructure and Security Committee).

## 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 events 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>22</sup>

Under the Florida Move Over Law,<sup>23</sup> 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 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>24</sup> 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>25</sup> to provide safety for both workers and others traveling through work zones.<sup>26</sup> However, for short duration work activities that do not require lane or shoulder closures, such as fence repair or tree trimming,<sup>27</sup> advance signs and channeling devices<sup>28</sup> may be omitted due to the risk in setting up the signs and devices.<sup>29</sup>

The FDOT employs additional strategies to reduce work zone fatalities. Among those strategies, the FDOT uses portable radar display units, which are a subset of 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>30</sup>

<sup>22</sup> Centers for Disease Control and Prevention, The National Institute for Occupational Safety and Health, available at <https://www.cdc.gov/niosh/topics/highwayworkzones/default.html> (last visited January 5, 2020).

<sup>23</sup> Section 316.126, F.S.

<sup>24</sup> Section 316.126(1)(b), F.S.

<sup>25</sup> According to the Manual on Uniform Traffic Control Devices, 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 Manual, Chapter 6A, Section 6A.01, available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/part6.pdf> (last visited January 5, 2020).

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

<sup>28</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>29</sup> *Supra* note 26.

<sup>30</sup> Federal Highway Administration, *FDOT’s Work Zone Fatality Reduction Strategies*, available at <https://ops.fhwa.dot.gov/wz/workersafety/wzfrwebinar/fl/index.htm> (last visited February 6, 2020). According to the FDOT,



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 application where traffic speed is expected to drop substantially.<sup>31</sup> Warning lights used in a temporary traffic control zone, in either a steady burn or a flashing mode, are yellow in color as defined by the MUTCD.<sup>32</sup> In addition, the MUTCD provides that “If 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>33</sup>

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>34</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 exist.<sup>35</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>36</sup> However, a search of the MUTCD, the national standard for traffic control devices and current Florida law, and of other relevant state 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 and bridge maintenance and construction vehicles engaged in the performance of maintenance or construction for a governmental entity,<sup>37</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, as soon as it is safe, the driver of every other vehicle is required to vacate the lane closest to the maintenance or construction vehicle when driving on an interstate highway or other highway with two or more lanes traveling in the direction of the maintenance or construction vehicle, except when otherwise directed by a law enforcement officer.

If vacating the closest lane is not safe, the driver of every other vehicle is required to slow to a speed that is 20 miles per hour less than the speed limit when the speed limit is 25 miles per hour

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<sup>31</sup> MUTCD, Section 6F.60, available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf> (last visited February 6, 2020).

<sup>32</sup> MUTCD, Section 1A.13 definition of “warning light” available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf> (last visited February 6, 2020).

<sup>33</sup> MUTCD, Section 2B.13, available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf> (last visited February 6, 2020).

<sup>34</sup> Section 316.2397(2), F.S.

<sup>35</sup> Section 316.2397(4), F.S.

<sup>36</sup> Section 316.2397(5), F.S.

<sup>37</sup> The bill defines “governmental entity” as the FDOT; any transportation authority created under chs. 343, 348, or 349; publicly owned and used airports; seaports; a county; or a municipality. Section 334.27(1), F.S.

or greater; or travel at 5 miles per hours when the posted speed limit is 20 miles per hour or less, when driving on a two-lane road, with the same law enforcement direction exception.

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, unless otherwise directed by a law enforcement officer. Additionally, as is the case in the Move Over Law, the bill provides 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 of 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.

A violation of the new section is a noncriminal traffic infraction, punishable pursuant to chapter 318, F.S., as either a moving violation<sup>38</sup> for infractions relating to road or bridge maintenance or construction vehicles, or as a pedestrian violation<sup>39</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>40</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>41</sup>

A sale of unneeded property may not occur at a price less than the FDOT's current estimate of value except that:

- If 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

<sup>38</sup> Section 318.14(3)(a), F.S., generally imposes a \$60 penalty, plus any applicable court costs or fees.

<sup>39</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>40</sup> Section 337.25(1) and (4), F.S.

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

consideration to the original donor or the donor's heirs, successors, assigns, or representatives.<sup>42</sup>

- If the property is to be used for a public purpose, the property may be conveyed without consideration to a governmental entity.<sup>43</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>44</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>45</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>46</sup>

In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing the FDOT to significant liability risks, as described above, 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.<sup>47</sup>

### *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 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, and in cases in which the FDOT determines that a sale to any person other than an abutting property owner would be inequitable.

In cases of property to be used for a public purpose, and in cases of property requiring significant costs to be incurred or exposing the FDOT to significant liability risks, 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.

The proposed 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

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

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

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

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

<sup>46</sup> Section 337.25(4)(e), F.S.

<sup>47</sup> *Supra* note 41.

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 five-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 five-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 five-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>48</sup> Each year, a new fifth year is added for purposes of developing the tentative and adopted work programs.

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>49</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>50</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>51</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>52</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

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<sup>48</sup> Section 339.135(1), F.S.

<sup>49</sup> Section 339.135(4)(c), F.S.

<sup>50</sup> Article III, Section 3(b), Florida Constitution.

<sup>51</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>52</sup> Section 339.175(8), F.S.

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>53</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>54</sup> In 2016, the Legislature repealed the authorization for LBC chair and vice chair approval if the LBC could not meet.<sup>55</sup> In 2019, this authorization was reinstated with an expiration date of July 1, 2020.<sup>56</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>57</sup>

In 1997, Federal law set the limit on passenger rail liability at \$200 million.<sup>58</sup> In 2015, the federal government required the liability cap to be adjusted to reflect changes based on the consumer price index and required the liability cap to be adjusted every five years.<sup>59</sup> In 2016, the liability cap was increased to \$294.3 million.<sup>60</sup>

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<sup>53</sup> Section 339.135(7), F.S.

<sup>54</sup> Section 339.135(7)(g), F.S. (2015).

<sup>55</sup> Chapter 2016-181, L.O.F., Section 16.

<sup>56</sup> Chapter 2019-116, L.O.F., Section 101.

<sup>57</sup> Section 341.302(7)b), F.S.

<sup>58</sup> 49 U.S.C. s. 28103.

<sup>59</sup> As directed by s. 11415 of the FAST Act.

<sup>60</sup> Federal Register, Vol. 81, No. 6, Monday, January 11, 2016, *Adjustment to Rail Passenger Transportation Liability Cap*, 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 6, 2020).

*Effect of Proposed Changes*

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

**Economic Development Transportation Projects (Sections 4, 21, 22, and 29)***Present Situation*

The Economic Development Transportation Project program is an economic incentive program intended to encourage specific businesses to locate, expand, or remain in the state.<sup>61</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 contract with the appropriate governmental body<sup>62</sup> for the direct costs of eligible transportation projects.<sup>63</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>64</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>65</sup>

According to the FDOT, over the recent few years, the program has been underutilized because the Legislature has used a unique budget category for local projects. "Given the local projects are no longer included in and administered under the provision of this program, [FDOT] staff proposes removing [economic development transportation project] requirements from statute. Removal of [the requirements] from statute would release FDOT from having to program associated projects into the 5-year Work Program totaling \$5 million."<sup>66</sup>

*Effect of Proposed Changes*

**Section 14** repeals s. 339.2821, F.S., containing the Economic Development Transportation Project program.

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<sup>61</sup> Section 339.2821, F.S.

<sup>62</sup> Defined in s. 339.2821(1)(b)1., 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 department for the transportation project."

<sup>63</sup> Section 339.2821(1)(b)2., defines "transportation project" to mean "a transportation facility, as defined in s. 334.03, which the department, in consultation with the Department of Economic Opportunity, deems necessary to facilitate the economic development and growth of the state."

<sup>64</sup> Section 339.2821(2), F.S.

<sup>65</sup> FDOT, Economic Development Transportation Fund Fact Sheet (on file in the Senate Infrastructure and Security Committee). *See also* the FDOT's 2020 Legislative Proposal, *Deletion of Road Fund (SED)* (on file in the Senate Infrastructure and Security Committee.)

<sup>66</sup> FDOT 2020 Legislative Proposal, *supra* note 65.

**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.

**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.

### **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 eight-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, 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 section contains minimum requirements for airport protection zoning regulations, including the requirement for documentation showing compliance with the

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

<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.

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.

***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 “This 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 we perform these functions.”<sup>69</sup>

**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:**

None.

**C. Government Sector Impact:**

The FDOT may incur administrative expenses 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 owner 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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 20.23, 201.15, 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 the following sections of the Florida Statutes: 334.275.

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

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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