

**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 Transportation

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BILL: SB 398

INTRODUCER: Senator Hooper

SUBJECT: Transportation Projects

DATE: November 30, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

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**I. Summary:**

SB 398 revises the current requirement for an annual minimum commitment by the Florida Department of Transportation (FDOT) of at least 15 percent of revenues deposited into State Transportation Trust Fund (STTF) for specified public transportation projects, by imposing a maximum commitment of no more than 25 percent of such revenues, excluding state revenues used for matching federal grants.

The bill also authorizes the FDOT to use moneys in the STTF to pay for work zone speed enforcement by entering into an agreement with the Division of Florida Highway Patrol (FHP) within the Department of Highway Safety and Motor Vehicles (DHSMV).

Further, the bill repeals a current provision of law providing temporary confidential and exempt status from public records requirements for a document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the FDOT. The bill specifies that such a document is public record.

The fiscal impact of the bill is indeterminate. Please see the “Fiscal Impact Statement” for details.

The bill takes effect July 1, 2022.

**II. Present Situation:**

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

## **Use of Moneys in the State Transportation Trust Fund**

Section 339.08(1), F.S., directs the FDOT to expend moneys in the STTF accruing to the department in accordance with its annual budget. The use of such moneys is restricted to a list of enumerated expenses, costs, reimbursements, federal-aid matching funds, loans and credit enhancements, as well as various types of transportation projects. That section includes a “catch-all” authorization to “pay other lawful expenditures of the department.”

## **Public Transportation Funding from the State Transportation Trust Fund (Section 1)**

### ***Present Situation***

Section 206.46(1), F.S., creates the STTF, and all moneys in the trust fund must be used for transportation purposes, as provided by law, under the direction of the FDOT. Subsection (3) of that section requires the FDOT to annually commit from the STTF a minimum of 15 percent of all state revenues deposited into the trust fund for public transportation projects in accordance with chapter 311 (relating to seaport programs and facilities), ss. 332.003-332.007 (relating to airports), chapter 341 (relating to public transit), and chapter 343 (relating to regional transportation), F.S.

Projects eligible for funding under chapter 311, F.S., include, for example, transportation facilities (*e.g.*, roads) within the jurisdiction of a port, under the Florida Seaport Transportation and Economic Development (FSTED) Program.<sup>1</sup> Sections 332.003-332.007, F.S., make up the Florida Airport Development and Assistance Act, which provides funding for projects at public airports such as airport master planning,<sup>2</sup> airport development,<sup>3</sup> and airport discretionary capacity improvements.<sup>4</sup>

Chapter 341, F.S., relating to “public transit” (the transporting of people by conveyances, or a system of conveyances, traveling on land or water, local or regional in nature, and available for use by the public, including paratransit)<sup>5</sup> could include projects such as a public transit capital

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<sup>1</sup> While bus service to and from a port could qualify as an eligible project, a variety of other projects are also eligible, such as dredging or deepening of channels, turning basins, or harbors; acquisition of land to be used for port purposes; and construction of wharves, docks, and cruise terminals. *See* s. 311.07(3)(b), F.S., for a full list of projects eligible for grant funding under the FSTED Program.

<sup>2</sup> Defined to mean “the development, for planning purposes, of information and guidance to determine the extent, type, and nature of development needed at a specific airport.” Section 332.004(3), F.S.

<sup>3</sup> Meaning “any activity associated with the design, construction, purchase, improvements, or repair of a public-use airport or portion thereof...” Section 332.004(4), F.S.

<sup>4</sup> Defined as “capacity improvements which are consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government in which the airport is located and which enhance intercontinental capacity at [specified] airports...” Section 332.004(5), F.S.

<sup>5</sup> Section 341.031(6), F.S.

project,<sup>6</sup> a commuter assistance project,<sup>7</sup> a transit corridor project,<sup>8</sup> or an intercity bus service project.<sup>9</sup>

Chapter 343, F.S., relating to regional transportation, establishes the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, the Northwest Florida Transportation Corridor Authority, and the Tampa Bay Regional Transit Authority. As an example of currently authorized uses of public transportation funding in the context of regional transportation, s. 343.58(4), F.S., requires specified amounts to be transferred from the STTF to the South Florida Regional Transportation Authority, which operates Tri-Rail, a passenger rail service in Broward, Palm Beach, and Miami-Dade Counties. As another example, s. 341.303, F.S., authorizes specified funding from the STTF for SunRail, a passenger rail system currently operating in Volusia, Seminole, Orange, and Osceola Counties.

Various projects under these programs may be eligible for use of state revenues in the STTF to match available federal funds.

The 15-percent public transportation requirement does not apply to certain STTF revenues. Current law contains a number of provisions exempting certain revenue from the 15-percent public transportation requirement, such as those from rental car surcharges under s. 212.0606, F.S.; from initial registration fees under s. 320.072, F.S.; and from local option fuel taxes under s. 215.211, F.S. The FDOT advises that while state revenues in Fiscal Year 2023 are projected at over \$4.7 billion, more than \$1.4 billion (30 percent) of that revenue is exempt.

In addition, while some revenue streams are exempt from the 15-percent requirement, a requirement for use of a given revenue stream for public transportation may still be present.<sup>10</sup> For example, s. 201.15, F.S., requires ten percent of documentary tax proceeds deposited in the STTF to be used for the New Starts Program, and s. 339.0801, F.S., requires \$10 million annually from tag and title fees to be used for the Seaport Investment Program.

The FDOT advises, “It is important to note that some of the state funds allocated for public transportation are allocated to comply with the 15% requirement specified in s. 206.46(3), F.S., while other state funds are allocated to comply with statutory use requirements for documentary stamp taxes, tag and title fees, and initial registration fees.”<sup>11</sup>

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<sup>6</sup> Defined to mean “a project undertaken by a public agency to provide public transit to its constituency, and is limited to acquisition, design, construction, reconstruction, or improvement of a governmentally owned or operated transit system.” Section 341.031(7), F.S.

<sup>7</sup> Meaning “financial and technical assistance by the department to promote alternatives to the use of automobiles by a single commuter.” The term includes ridesharing, transportation demand management, and transportation management association projects. *See* s. 341.031(9), F.S.

<sup>8</sup> Defined to mean “a project that is undertaken by a public agency and designed to relieve congestion and improve capacity within an identified transportation corridor by increasing people-carrying capacity of the system through the use and facilitated movement of high-occupancy conveyances.” *See* s. 341.031(10), F.S., for additional definitional requirements.

<sup>9</sup> Defined as “regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity...” *See* s. 341.031(11), F.S., for additional definitional requirements.

<sup>10</sup> *E.g.*, s. 201.15, F.S., requires ten percent of documentary tax proceeds deposited in the STTF to be used for the New Starts Program, and s. 339.0801, F.S., requires \$10 million annually from tag and title fees to be used for the Seaport Investment program.

<sup>11</sup> *See* the FDOT’s analysis of SB 398, p. 3 (on file in the Senate Transportation Committee).

The FDOT reports public transportation programming as of July 1, 2021 (in millions), as follows:<sup>12</sup>

### State Funds Programmed for Public Transportation

FY	Total	Part of the 15-Percent Requirement	Percent Programmed Subject to the 15-Percent Requirement
17	\$648.0	\$487.6	16.8
18	\$783.6	\$530.3	17.7
19	\$878.9	\$598.8	20.0
20	\$844.0	\$568.8	19.4
21	\$852.0	\$545.0	18.4
22	\$1,060.2	\$568.0	18.0
23	\$893.7	\$619.6	18.9
24	\$862.9	\$568.9	16.8
25	\$770.8	\$551.9	15.9
26	\$877.1	\$587.3	16.6

#### *Effect of Proposed Changes*

Section 1 of the bill amends s. 206.46(3), F.S., revising the current requirement for an annual minimum commitment by the FDOT of at least 15 percent of revenues deposited into the STTF for specified public transportation projects, by imposing a maximum commitment of no more than 25 percent of such revenues, excluding state revenues used for matching federal grants. The FDOT would be required to annually commit at least 15 percent, but not more than 25 percent of revenues deposited into the STTF, for the identified public transportation projects, excluding state revenues used for matching federal grants. The calculation for purposes of determining the allowable funding range for the specified projects would not include the amount of state revenues used for federal grant matching.

#### **Road Construction Work Zone Safety Funding from the State Transportation Trust Fund (Section 3)**

##### *Present Situation*

According to national data, 135 workers were killed in highway work zones in 2019, up from 124 in 2018, and 26 percent of those involved incidents in which speeding was a factor.<sup>13</sup> In Florida, 62 fatal crashes occurred in work zones in 2019, involving 68 fatalities, but only five of those fatalities involved workers, down from 21 in 2018.<sup>14</sup> The 2019 number of worker fatalities in Florida for the first time showed a reduction in a number that had trended upward since 2010.

<sup>12</sup> *Id.*

<sup>13</sup> See *FHWA-HOP-21-027*, April 2021, p. 2, available at [National Work Zone Awareness Week \(windows.net\)](https://www.fhwa.gov/ohp/2021/027) (retrieved October 18, 2021).

<sup>14</sup> National Work Zone Safety Information Clearinghouse, *2019 Florida Work Zone Fatal Crashes & Fatalities*, available at [Work Zone Fatal Crashes and Fatalities — The National Work Zone Safety Information Clearinghouse](https://www.nwzsc.org/2019-florida-work-zone-fatal-crashes-and-fatalities) (retrieved October 18, 2021).

Current Florida law defines the phrase “work zone area” to mean the area and its approaches on any state-maintained highway, county-maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes are closed to traffic.”<sup>15</sup>

The Florida Legislature has taken steps to improve work zone safety, including provisions such as:

- Requiring the FDOT’s adopted uniform system of traffic control devices<sup>16</sup> to provide for the use of regulatory speed signs in work zone areas.<sup>17</sup>
- Prohibiting the driver of a vehicle from exceeding the posted maximum speed limit in a work zone area,<sup>18</sup> a violation of which is a noncriminal traffic infraction, and the penalty for which ranges from a warning up to \$250, depending upon the number of miles per hour in excess of the posted speed limit.<sup>19</sup> However, a person cited for exceeding the speed limit in a posted construction zone<sup>20</sup> (when workers are present or operating equipment on or immediately adjacent to the road under construction) must pay a fine that is double the amount specified for a given range.<sup>21, 22</sup>
- Authorizing the display of certain lighting on construction equipment in roadway work zones during periods when workers are present.<sup>23</sup>
- Prohibiting a person from operating a motor vehicle while using a wireless communications device in a handheld manner in work zone areas.<sup>24</sup>
- Requiring each road or bridge construction or maintenance contract let by the FDOT to contain a traffic maintenance plan showing the appropriate regulatory speed signs and traffic control devices for the subject work zone area.<sup>25</sup>

Additionally, the FDOT is authorized to enforce on all the streets and highways of this state all laws applicable within its authority;<sup>26</sup> and the FHP, along with other specified law enforcement

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<sup>15</sup> Section 316.003(105), F.S.

<sup>16</sup> Known as the Manual on Uniform Traffic Control Devices, the manual ““is a compilation of national standards for all traffic control devices, including road markings, highway signs, and traffic signals.” States are currently required to adopt the 2009 edition of the MUTCD (which includes revisions and interim approvals) as the legal state standard for traffic control devices. U.S. Department of Transportation, Federal Highway Administration, *Manual on Uniform Traffic Control Devices*, available at [Manual on Uniform Traffic Control Devices \(MUTCD\) - FHWA \(dot.gov\)](https://www.fhwa.dot.gov/mutcd/) (retrieved October 18, 2021). Florida law requires the FDOT to adopt the MUTCD as the uniform system of traffic control devices for use on the streets and highways of this state. Section 316.0745, F.S.

<sup>17</sup> Section 316.0745(2)(b), F.S.

<sup>18</sup> Section 316.183(6), F.S.

<sup>19</sup> Section 318.18(3)(b), F.S.

<sup>20</sup> The term “construction zone” is not separately defined from the term “work zone area,” but the latter definition, as noted, includes “where construction, repair, maintenance, or other street-related or highway-related work is being performed.”

<sup>21</sup> Section 318.18(3)(d), F.S.

<sup>22</sup> If a person elects to appear for a hearing and a violation is proven, the person making the election waives the right to the civil penalty provisions of s. 318.18, F.S., and a civil penalty of no more than \$1,000 may be imposed. Section 318.14(5), F.S.

<sup>23</sup> Section 316.2397(5), F.S.

<sup>24</sup> Section 316.306(3)(a)1., F.S.

<sup>25</sup> Section 337.11(14), F.S.

<sup>26</sup> Section 316.640(1)(b)1., F.S.

entities, is authorized to enforce all of the traffic laws of this state on all the streets and highways, wherever the public has a right to travel by motor vehicle.<sup>27</sup>

According to information provided by the DHSMV, the process that occurs when the FDOT requests additional speed enforcement from the FHP involves a review by the relevant local trooper commander to determine whether the FHP has sufficient staffing available to meet the request. In cases where staffing is sufficient, “a Letter of Authorization is issued and forwarded to the FHP Hireback coordinator in the FHP budget office.” The budget office evaluates the Letter of Authorization with a focus on the hourly rate and coverage and staffing requirements. These requirements are compared against the FHP’s available budget authority, as well as projected expenditures, to determine whether the FHP can accommodate the additional request. If the request can be met without exceeding the available budget authority, the FHP accepts the FDOT’s request and performs the speed enforcement.<sup>28</sup>

The information provided by the DHSMV reflects that for the approximate four-month period beginning June 25 through October 14 of this year, payment for speed enforcement at various locations throughout the state (including toll enforcement, security at rest areas, and suicide watch, in addition to work zones) amounted to approximately \$816,000.<sup>29</sup>

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

Section 3 of the bill amends s. 339.08(1), F.S., to further clarify the FDOT’s and the DHSMV’s current authority to enforce the traffic laws of this state by expressly authorizing the FDOT to use moneys in the STTF to pay for work zone speed enforcement by entering into an agreement with the FHP.

## **Public Records Exemption/Confidentiality of Identities of Bidders (Section 2)**

### ***Present Situation***

Section 336.168(1) and (3), F.S., establish confidential and exempt status from public records requirements of s. 119.07(1), F.S., for:

- A document or electronic file revealing the FDOT’s official cost estimate of a project until the contract for the project has been executed or until the project is no longer under active consideration, and for
- The FDOT’s bid analysis and monitoring system, including all system documentation, input, computer processes and programs, electronic data files, and output, but does not apply to the actual source documents, unless otherwise exempted under other provisions of law.

Section 337.168(2), F.S., currently provides that a document<sup>30</sup> revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to

<sup>27</sup> Section 316.640(1)(a)1.a., F.S.

<sup>28</sup> See email to committee staff, November 15, 2021 (on file in the Senate Transportation Committee).

<sup>29</sup> *Id.*

<sup>30</sup> The FDOT advises that many documents submitted by contractors contain both exempt and non-exempt information. Telephone conversation with FDOT staff, November 24, 2021. In accordance with s. 119.07(1)(d), F.S., the FDOT would be required to redact any information contained in a document that reveals the identity of persons who have requested or obtained bid packages if the information is exempt under any other provisions of law.

be let by the department is confidential and exempt from the provisions of s. 119.07(1), F.S., for the period which begins two working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity before the two working days before the deadline for obtaining bid packages, plans, or specifications remains a public record.

The FDOT maintains a website that lists the identity of those who have requested or obtained bid packages for a given project.<sup>31</sup> The lists contain for each person a vendor identification number, an indication of the name of the entity that ordered the documents, and a shipping address and phone number for each. The lists do not appear to contain any information which would be exempt other any other provisions of law. The FDOT advises the lists are published daily, except for during the two-day confidential period defined in current law, and a comprehensive list is then published after the letting occurs.<sup>32</sup>

The issue appears to relate to small contractors, who use the identities of potential bidders for the purpose of submitting sub-contract bids to general contractors for their use in preparing bids for FDOT projects.<sup>33</sup>

### *Effect of Proposed Changes*

Section 2 of the bill amends s. 337.168(2), F.S., to remove the temporary public records exemption for a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the FDOT and specify that such a document remains a public record.

### **III. Constitutional Issues:**

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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

None.

<sup>31</sup> See e.g., FDOT, *Contractors ordering Plans and Specs by Letting Report*, available at <https://fdotwp2.dot.state.fl.us/ContractProposalProcessing/CPA> and *Contractors ordering Proposals by Letting Report*, available at <https://fdotwp2.dot.state.fl.us/ContractProposalProcessing/CPA> (last visited November 24, 2021). Enter “guest” for the user name and select “Sign in.”

<sup>32</sup> See FDOT email to committee staff, November 24, 2021 (on file in the Senate Transportation Committee).

<sup>33</sup> Telephone conversation with FDOT staff, November 24, 2021.

E. Other Constitutional Issues:

None identified.

**IV. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The traveling public and FDOT contractors may benefit from increased safety and reduced incidents of accident or death relating to potentially-increased speed enforcement in work zones.

C. Government Sector Impact:

The impact on current funding levels, if any, of imposing a maximum commitment of no more than 25 percent of state revenues in the STTF for the identified public transportation projects, excluding those used for matching federal grants, as well as any effect on other projects in the work program, is dependent on funding levels selected by the FDOT within the authorized range. To the extent that funding for public transportation projects is increased above currently programmed levels within the cap, other projects in the work program may be impacted.

The fiscal impact of clarifying the FDOT's and the DHSMV's current authority to enforce the traffic laws of this state by expressly authorizing the FDOT to use moneys in the STTF to pay for work zone speed enforcement by contracting with the FHP is dependent on available funds and budget authority for such purpose and is therefore currently unknown.

The FDOT may experience an indeterminate but likely insignificant negative fiscal impact associated with responding to requests for documents that reveal the identity of a potential bidder on a transportation project.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

The FDOT has raised concerns regarding the 25-percent public transportation funding cap imposed by the bill, relating to decreased long-term flexibility in preparing the work program.<sup>34</sup>

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<sup>34</sup> *Supra* note 11 at pp. 8-9.



The FDOT has also expressed concerns regarding the repeal of the temporary public records exemption for the identity of persons who have requested bid packages, relating to a potential negative impact on the procurement process.<sup>35</sup>

**VII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 206.46, 337.168, and 339.08.

**VIII. 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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<sup>35</sup> *Supra* note 11 at p. 6.