

**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 Fiscal Policy

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BILL: CS/CS/CS/SB 1250

INTRODUCER: Fiscal Policy Committee; Appropriations Committee on Transportation, Tourism, and Economic Development Committee; Transportation Committee; and Senator DiCeglie

SUBJECT: Department of Transportation

DATE: April 26, 2023

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

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION        |
|-------------|----------------|-----------|---------------|
| 1. Price    | Vickers        | TR        | <b>Fav/CS</b> |
| 2. Nortelus | Jerrett        | ATD       | <b>Fav/CS</b> |
| 3. Price    | Yeatman        | FP        | <b>Fav/CS</b> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1250 contains the Florida Department of Transportation's (FDOT's) 2023 legislative proposals. The bill:

- Increases the maximum amount of debt service coverage that may be transferred from the State Transportation Trust Fund to the Right-of-Way Acquisition and Bridge Construction Trust Fund.
- Increases the maximum term of state bonds for federal aid highway construction.
- Provides that the prohibition against use of bond proceeds for acquisition of any building or facility that will be, during the pendency of financing, used by, occupied by, leased to, or paid for by any state, county or municipal agency or entity does not prohibit the use of proceeds from Florida Development Finance Corporation private activity bonds to finance acquisition or construction of a transportation facility under a public-private partnership.
- Authorizes the Florida Development Finance Corporation to issue revenue bonds to finance the costs of acquisition or construction of a transportation facility by a private entity or a consortium of private entities under a specified public-private partnership.
- Authorizes the FDOT to fund up to 100 percent of project costs for eligible intermodal logistics center projects in rural areas of opportunity.
- Authorizes installation, as specified, of automated license plate recognition systems within the rights-of-way of the State Highway System at the discretion of the FDOT when installed at the request of a law enforcement agency for the purpose of collecting active criminal intelligence or investigative information.

- Prohibits the FDOT from requiring an applicant for airport site approval to provide a copy of a written memorandum of understanding or letter of agreement with other airport sites regarding air traffic pattern separation procedures unless such memorandum or letter is required by the Federal Aviation Administration or is deemed necessary by FDOT
- Authorizes the FDOT, subject to availability of appropriated funds, and unless otherwise provided in the General Appropriations Act or the Implementing bill, to fund certain projects at a publicly owned, publicly operated airport located in a rural community which does not have any scheduled commercial service.
- Authorizes the FDOT to purchase promotional items for the promotion of electric vehicle use and charging stations, autonomous vehicles, and context design for electric vehicles and autonomous vehicles.
- Authorizes the FDOT to expend funds, within its discretion, for training, testing, and licensing for full-time employees of the FDOT who are required to have a valid Class A or Class B commercial driver license as a condition of employment with the FDOT.
- Increases from \$250,000 to \$500,000 the cap on entering into contracts for construction and maintenance without advertising and receiving competitive bids for reasons of public concern, economy, improved operations, or safety, and only when circumstances dictate rapid completion of the work.
- Increases from \$120 million to \$200 million the annual cap on the award of contracts using innovative techniques of highway and bridge design, construction, maintenance, and finance.
- Revises requirements for design-build contracts, allowing the FDOT to combine the design and construction phases of any transportation project.
- Authorizes the FDOT to enter into phased design-build contracts under specified conditions, provides requirements for such contracts, and requires the FDOT to adopt rules for administering such contracts.
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- Abolishes the Chairs Coordinating Committee and requires the metropolitan planning organizations (MPOs) serving specified counties to submit a feasibility report by December 31, 2023, exploring the benefits, costs, and process of consolidation into a single MPO serving the contiguous urbanized area, with specified goals.
- Requires that public transit development plans of eligible providers of public transit block grants be consistent, to the maximum extent feasible, with the long-range transportation plans of the metropolitan planning organization in which the provider is located.
- Requires the FDOT to adopt by rule minimum safety standards for certain fixed-guideway transportation systems operating in this state and to conduct structural safety inspections of such systems as specified.
- Removes from annual public transit provider reports a requirement to specifically address potential enhancements to productivity and performance that would have the effect of increasing farebox recovery ratio; and requires each public transit provider to publish on its website, rather than in the local newspaper, the productivity and performance measures established for the year and a report on attainment of such measures.
- Repeals part IV of Chapter 348, F.S., relating to the creation and operation of the Santa Rosa Bay Bridge Authority; transfers governance and control of the Authority and its bridge system and any remaining assets and rights to the FDOT; authorizes the FDOT to assume legal liability for contractual obligations determined to be necessary and authorizes transfer of the bridge system to the Turnpike.

The bill's fiscal impact is indeterminate. See the "Fiscal Impact Statement" heading for additional information.

Except as otherwise provided, the bill takes effect July 1, 2023

## **II. Present Situation:**

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

## **III. Effect of Proposed Changes:**

### **Right-of-Way Acquisition and Bridge Construction Trust Fund – Debt Service Coverage (Section 1)**

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

The FDOT is currently authorized to issue Right-of-Way Acquisition and Bridge Construction bonds to finance or refinance the cost of acquiring real property for state roads or the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, bonds must be authorized by the Legislature and must be issued pursuant to the State Bond Act.<sup>1</sup>

To meet the requirements of outstanding or proposed bond obligations, the FDOT is authorized to transfer up to seven percent of the revenues deposited into the State Transportation Trust Fund (STTF) in each fiscal year to the Right-of-Way Acquisition and Bridge Construction Trust Fund. However, the annual amount transferred may not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service of \$350 million.<sup>2</sup> This amount was most recently increased from \$275 million to \$350 million in 2021.<sup>3</sup>

To further the state's policy of managing the financing of transportation infrastructure in a manner that ensures the fiscal integrity of the STTF, the FDOT is required to manage all levels of debt to ensure that not more than 20 percent of total projected available state and federal revenues from the STTF, together with any local funds committed to FDOT projects, are committed to various identified payments, funding, reimbursements, and loan repayments. Debt service payments on Right-of-Way Acquisition and Bridge Construction bonds are included in the FDOT's annual transportation debt assessment.<sup>4</sup>

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

The bill amends s. 206.46(2), F.S., to increase from \$350 million to \$425 million the fiscal-year cap on the annual amount that may be transferred from the STTF to the Right-of-Way

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<sup>1</sup> Section 216.605, F.S. The State Bond Act is codified in ss. 215.57-215.83, F.S.

<sup>2</sup> Section 206.46(2), F.S.

<sup>3</sup> Ch. 2021-186, Laws of Fla.

<sup>4</sup> See s. 339.139, F.S. This section requires the FDOT to annually provide a debt and debt-like contractual obligations load report.

Acquisition and Bridge Construction Trust Fund for debt service coverage. The increased cap provides the FDOT with additional bonding capacity.

## **Grant Anticipation Revenue Vehicles and State Bonds for Federal Aid Highway Construction (Section 2)**

### ***Present Situation***

According to the Federal Highway Administration (FHWA), a Grant Anticipation Revenue Vehicle, a GARVEE, “is a type of anticipation vehicle, which are securities (debt instruments) issued when moneys are anticipated from a specific source to advance the upfront funding of a particular need. In the case of transportation finance the anticipation vehicles' revenue source is expected Federal-aid grants.”<sup>5</sup> As to highways, a GARVEE is a debt instrument that has a pledge of future federal-aid funding, which is authorized for Federal reimbursement of debt service and related financing costs. States can receive reimbursements for a wide array of debt-related costs incurred in connection with an eligible debt financing instrument, such as a bond, note, certificate, mortgage, or lease. The proceeds are used to fund a project eligible for federal aid. Most often, a bond, which may be issued by a state, political subdivision, or a public authority, is the debt instrument used.<sup>6</sup>

The FHWA notes that “GARVEEs enable a state to accelerate construction timelines and spread the cost of a transportation facility over its useful life rather than just the construction period. The use of GARVEEs expands access to capital markets as an alternative or in addition to potential general obligation or revenue bonding capabilities. The upfront monetization benefit of these techniques needs to be weighed against consuming a portion of future years' receivables to pay debt service. This approach is appropriate for large, long-lived, non-revenue generating assets.”<sup>7</sup>

Under current state law,<sup>8</sup> upon the request of the FDOT, the State Board of Administration's Division of Bond Finance (DBF) is authorized pursuant to s. 11, Art. VII of the State Constitution<sup>9</sup> and the State Bond Act to issue revenue bonds, for and on behalf of the FDOT, for the purpose of financing or refinancing the construction, reconstruction, and improvement of projects that are eligible to receive federal-aid highway funds. The DBF is authorized to consider innovative financing technologies which may include, but are not limited to, innovative bidding and structures of potential financings that may result in negotiated transactions.<sup>10</sup> Any bonds issued are payable primarily from a prior and superior claim on all federal highway aid reimbursements received each year with respect to federal-aid projects undertaken in accordance with federal law.<sup>11</sup> Prior to the issuance of bonds, the FDOT must determine that

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<sup>5</sup> fhwa.dot.gov, [FHWA - Center for Innovative Finance Support - Project Finance - Federal Debt Financing Tools \(dot.gov\)](https://www.fhwa.dot.gov/innovativefinance/support/projectfinance/federaldebtfinancingtools.cfm) (last visited April 22, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 215.616, F.S.

<sup>9</sup> Section 11, Art. VII of the State Constitution relates to state bonds and revenue bonds. Subsection (f) requires each project, building, or facility to be financed or refinanced with revenue bonds to be first approved by the Legislature by and act relating to appropriations or by general law.

<sup>10</sup> Section 215.616(1), F.S.

<sup>11</sup> Section 215.616(2), F.S.

annual debt service on all bonds issued pursuant to the authorizing statute does not exceed ten percent of annual apportionments to the FDOT for federal highway aid in accordance with federal law. Currently, the term of the bonds may not exceed 12 years.<sup>12</sup>

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

The bill amends s. 215.616(2), F.S., to increase from 12 to 18 years the maximum term for GARVEE bonds issued by the DBF for or on behalf of the FDOT. This revision may provide the FDOT with additional flexibility in financing transportation projects.

### **Infrastructure Financing/Private Activity Bonds (Section 3)**

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

Generally, a private activity bond (PAB) is a tax-exempt security issued by or on behalf of a local or state government for the purpose of extending special financing benefits for qualified projects. PABs finance projects for a private user, and the governmental issuer's credit usually isn't pledged, but PABs provide a public benefit as well. They are used to attract private investments for projects "that have public or common utility," and result in increased spending on infrastructure."<sup>13</sup>

The federal government controls the amount of private activity bonds that are permitted to be issued in each state. Part VI of ch. 159, F. S., establishes statewide procedures for allocating Florida's share of private activity bonds. Such allocation is statutorily referred to as the allocation of state volume limitation (s. 159.804, F.S.). The Division of Bond Finance of the State Board of Administration is responsible for annually determining the amount of the private activity bonds permitted for statewide allocation under the 1986 Internal Revenue Code, as amended. Generally, "traditional" road and bridge projects are not qualified under state private activity volume caps, but there is a private activity volume cap available at the federal level for such transportation projects, which was recently increased from \$15 to \$30 billion:

According to the United State Department of Transportation:

Section 11143 of Title XI of SAFETEA-LU amended Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds (PABs) may be issued. This change allowed private activity on these types of projects, while maintaining the tax-exempt status of the bonds. The law limited the total amount of the bonds to \$15 billion and directed the Secretary of Transportation to allocate this amount among qualified facilities. The Infrastructure Investment and Jobs Act signed into law on November 15, 2021 increased the available PAB authority from \$15 billion to \$30 billion. Passage of the private activity bond legislation reflects the Federal Government's desire to increase private sector investment in U.S. transportation infrastructure. Providing private developers and operators with access to tax-exempt interest rates lowers the cost of capital

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<sup>12</sup> Section 215.616(3), F.S.

<sup>13</sup> See MunicipalBonds.com, [Understanding Private Activity Bonds \(municipalbonds.com\)](https://municipalbonds.com) (last visited March 7, 2023).

significantly, enhancing investment prospects. Increasing the involvement of private investors in highway and freight projects generates new sources of money, ideas, and efficiency. The \$30 billion in exempt facility bonds is not subject to the state volume caps.<sup>14</sup>

In Florida, access to PABs is provided by the Florida Development Finance Corporation (FDFC),<sup>15</sup> the “conduit issuer” of PABs, with the power to function within the corporate limits of any public agency with which it has entered into an interlocal agreement. The FDFC issues the bonds, which are purchased by a bank or investor(s). The proceeds from the sale are then loaned to finance capital projects. The interest received by the investor, if specific criteria are met, is exempt from federal income tax.<sup>16</sup>

Current law provides that the proceeds of any bonds of the FDFC may not be used, in any manner, to acquire any building or facility that will be, during the pendency of the financing, used by, occupied by, leased to, or paid for by any state, county, or municipal agency or entity.<sup>17</sup>

The FDFC is currently authorized, without authorization from a public agency,<sup>18</sup> to issue revenue bonds to:

- Finance the undertaking of any projects within the state that promotes renewable energy;
- Finance the undertaking of any project within the state that is a project contemplated or allowed under the American Recovery and Reinvestment Act of 2009; or
- If permitted by federal law, finance qualifying improvement projects with the state under s. 163.08, F.S.<sup>19</sup>

Section 334.30, F.S., authorizes the FDOT to enter into public-private partnerships with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities. Such agreements, with associated PAB financing, may result in use of proceeds of the FDFC bonds to acquire a transportation facility that will be, during the pendency of the financing, used by, occupied by, leased to, or paid for by any state, county, or municipal agency or entity.

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

The bill amends s. 288.9606(6), F.S., providing that the prohibition against use of the proceeds of any FDFC bonds to acquire any building or facility that will be, during the pendency of the financing, used by, occupied by, leased to, or paid for by any state, county, or municipal agency

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<sup>14</sup> See [transportation.gov, Private Activity Bonds | Build America \(transportation.gov\)](https://www.transportation.gov/build-america) (last visited March 7, 2023).

<sup>15</sup> Created in s. 288.9604, F.S. The board consists of seven directors. The secretary of Economic Opportunity, or designee, serves as the chair of the board. The director of the Division of Bond Finance, or designee, serves as a director. The Governor appoints the remaining five directors, subject to confirmation by the Senate.

<sup>16</sup> See [fdfcpa.com, Private Activity Bonds | FDFC \(fdfcpa.com\)](https://www.fdfcpa.com/) (last visited March 7, 2023).

<sup>17</sup> Section 288.0606(6), F.S.

<sup>18</sup> Section 163.01(7), F.S., authorizes an interlocal agreement for a separate legal or administrative entity to administer an interlocal agreement authorizing a public agency of this state to exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.

<sup>19</sup> See s. 163.08(2)(b), F.S., for a listing of such improvements, available at [Chapter 163 Section 08 - 2022 Florida Statutes - The Florida Senate \(flsenate.gov\)](https://www.flsenate.gov/chapter-163-section-08-2022-florida-statutes) (last visited March 7, 2023).

or entity, does not prohibit the use of proceeds of the bonds of the FDFC for the purpose of financing the acquisition or construction of a transportation facility under a public-private partnership agreement authorized under s. 334.30, F.S.

The bill also amends s. 288.9606(7), F.S., authorizing the FDFC, without authorization from a public agency under s. 163.01(7), F.S., to issue bonds or other evidence of indebtedness to finance the costs of acquisition or construction of a transportation facility by a private entity or consortium of private entities under a public-private partnership agreement authorized by s. 334.30, F.S.

#### **Intermodal Logistics Center Infrastructure Support Program Projects/Rural Areas of Opportunity (Section 4)**

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

The Intermodal Logistics Center Infrastructure Support Program (ILC Program) is statutorily established within the FDOT,<sup>20</sup> with the purpose of providing funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport, thereby enabling the state to respond to private sector market demands and meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities. 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 facilities for the conveyance or shipment of goods through a seaport to or from an intermodal logistics center.<sup>21</sup>

When evaluating projects for ILC Program assistance, the FDOT must consider, but is not limited to, the following criteria:

- The ability of the project to serve a strategic state interest.
- The ability of the project 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.
- The extent to which the project 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.
- The extent to which the owner has commitments, including memoranda of understanding or memoranda of agreements, with private sector businesses planning to locate operations at the intermodal logistics center.
- Demonstrated local financial support and commitment to the project.<sup>22</sup>

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<sup>20</sup> Section 311.101, F.S.

<sup>21</sup> Section 311.101(1), F.S. The term “intermodal logistics center,” which includes, but is not limited to and “inland port,” is defined to mean 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, goods distribution, consolidation, or value-added activities are carried out and who activities and services are designed to support or be supported by conveyance or shipping through one or more seaports listed in s. 311.09, F.S. Section 311.101(2), F.S.

<sup>22</sup> Section 311.101(3), F.S.

The FDOT must coordinate and consult with the Department of Economic Opportunity in the selection of projects to be funded,<sup>23</sup> and the FDOT must provide up to 50 percent of project costs for eligible projects.<sup>24</sup>

The Rural Economic Development Initiative (REDI) was established by the 1999 Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.<sup>25</sup> The REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities.<sup>26</sup> The REDI works with local governments, community-based organizations, and private organizations that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs.

A rural area of opportunity (RAO) is a rural community,<sup>27</sup> or a region of rural communities, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.<sup>28</sup> The Governor may designate by executive order up to three RAOs, establishing the areas as priority assignments for the REDI. The Governor may waive criteria, requirements, or similar provisions of any economic development incentive for projects located in an RAO.<sup>29</sup> The designated RAOs are:

- The Northwest RAO, comprised of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the area within the city limits of Freeport and north of the Choctawhatchee Bay and intercoastal waterway;
- The South Central RAO, comprised of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County); and
- The North Central RAO, comprised of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.<sup>30</sup>

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<sup>23</sup> Section 311.101(4), F.S.

<sup>24</sup> Section 311.101(6), F.S. The FDOT is also authorized to administer contracts on behalf of the entity selected to receive funding for a project under the ILC Program. Section 311.101(5), F.S.

<sup>25</sup> Section 288.0656, F.S.

<sup>26</sup> Agencies required to participate in the REDI are listed in s. 288.0656(6)(a), F.S.

<sup>27</sup> "Rural community" means: 1. A county with a population of 75,000 or fewer; 2. A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer; 3. A municipality within a county described in 1. or 2.; or 4. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in s. 288.0656(c), F.S. "Economic distress" means conditions affecting the fiscal and economic viability of a rural community, including such factors as low per capita income, low per capita taxable values, high unemployment, high underemployment, low weekly earned wages compared to the state average, low housing values compared to the state average, high percentages of the population receiving public assistance, high poverty levels compared to the state average, and a lack of year-round stable employment opportunities.

<sup>28</sup> Section 288.0656(1)(d), F.S.

<sup>29</sup> Section 288.0656(7)(a), F.S.

<sup>30</sup> Florida Department of Economic Opportunity, *Rural Areas of Opportunity*, <http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited March 17, 2023).



***Effect of Proposed Changes***

The bill amends s. 311.101(6), F.S., authorizing the FDOT to provide up to 100 percent of project costs for eligible ILC Program projects in rural areas of opportunity designated in accordance with s. 288.0656(7)(a), F.S.

**Automated License Plate Recognition Systems/State Highway System (Section 5)*****Present Situation***

An automated license plate recognition system (ALPRS) is a system of mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.<sup>31</sup> Data obtained from an ALPRS is generally used to check license plates against law enforcement hot lists. Hot lists contain a list of stolen plates and vehicles entered into the National Crime Information Center database, the Florida Crime Information Center database, Driver and Vehicle Information Database, and any information entered manually by the operating member. Examples of manual entries include, but are not limited to: attempt to locate; AMBER/SILVER alerts, child abductions, missing or wanted persons, and registered sexual predators.<sup>32</sup>

Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features.

Florida law requires the Department of State in consultation with the Department of Law Enforcement to establish a retention schedule, including a maximum period that records may be retained, for records containing images and data generated through the use of an ALPRS.<sup>33</sup> The Department of State specifies the retention of license plate recognition records: “Retain until obsolete, superseded, or administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series.”<sup>34</sup>

Images and data containing or providing personal identifying information held by an agency and obtained by an ALPRS, as well as personal identifying information derived from ALPRS data or images is confidential and exempt from public record requirements.<sup>35</sup> Such information may be disclosed under the following conditions:

- By or to a criminal justice agency, as defined in s. 119.011(4), F.S., in performance of the agency’s official duties.

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<sup>31</sup> Section 316.0778(1), F.S.

<sup>32</sup> Florida Department of Highway Safety and Motor Vehicles’ “Florida Highway Patrol Policy Manual” on ALPRS available at: <https://www.flhsmv.gov/pdf/fhp/policies/1725.pdf> (last visited March 17, 2023).

<sup>33</sup> Section 316.0778(2), F.S.

<sup>34</sup> Florida Department of State, General Records Schedule GS2 for Law Enforcement, Correctional Facilities and District Medical Examiners, Effective: February 2021, available at: [GS2 for Law Enforcement \(windows.net\)](#) (last visited March 17, 2023).

<sup>35</sup> Section 316.0777(2), F.S.

- To a license plate registrant requesting his or her own information, unless such information constitutes active criminal intelligence information<sup>36</sup> or active criminal investigative information.<sup>37</sup>

### *Effect of Proposed Changes*

The bill creates a new subsection (2) of s. 316.0777, F.S., defining the term “law enforcement agency” for purposes of that subsection to mean an agency that has a primary mission of preventing and detecting crime and enforcing the state penal, criminal, traffic, and motor vehicle laws and in furtherance of that mission employs law enforcement officers as defined in s. 943.10(1), F.S.<sup>38</sup>

The bill authorizes, at the discretion of the FDOT, installation of ALPRSs within the rights-of-way<sup>39</sup> of any road on the State Highway System when installed at the request of a law enforcement agency for the purpose of collecting active criminal intelligence information or active criminal investigative information. Such installations must be in accordance with placement and installation guidelines developed by the FDOT and be removed within 30 days after the FDOT notifies the requesting law enforcement agency that such removal must occur at the sole expense of the requesting agency. The bill prohibits use of an ALPRS to issue a notice of violation or a traffic citation.

The bill provides that the FDOT is not liable for any damages caused to any person by the requesting law enforcement agency’s operation of an ALPRS, and prohibits retention of records containing images and data generated through use of an ALPR for longer than the maximum period provided in the applicable retention schedule.<sup>40</sup>

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<sup>36</sup> Defined to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(a), F.S. Criminal intelligence information is considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d)1., F.S.

<sup>37</sup> Defined to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Section 119.011(3)(b), F.S. Criminal investigative information is considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d)2., F.S.

<sup>38</sup> As defined in that section, “law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>39</sup> Defined in s. 334.03(21), F.S., to mean land in which the state, the department, a county, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility.

<sup>40</sup> *Supra* note 34.

**FDOT Airport Site Approval Rules/Air Traffic Pattern Separation Procedures (Section 6)*****Present Situation***

The FDOT is responsible for administering and enforcing the provisions of Chapter 330, F.S., relating to the regulation of aircraft, pilots, and airports, including, but not limited to, establishing requirements for airport site approval, licensure, and registration.<sup>41</sup> Aside from exemptions granted in current law,<sup>42</sup> the owner or lessee of any proposed airport must obtain the FDOT's approval of the airport site before site acquisition or construction or establishment of the proposed airport. The FDOT is required to grant site approval upon satisfaction that:

- The site has adequate area allocated for the airport as proposed.
- The proposed airport will conform to licensing or registration requirements and will comply with applicable local government land development regulations or zoning requirements.
- All affected airports, local governments, and property owners have been notified and any comments submitted by them have been given adequate consideration.
- Safe air-traffic patterns can be established for the proposed airport with all existing airports and approved airport sites in its vicinity.<sup>43</sup>

The FDOT, pursuant to statutory direction,<sup>44</sup> has adopted rules relating to airport site approval.<sup>45</sup> Rule 14-60.005, F.A.C., lists supporting documentation that must accompany an application for public airport site approval. With respect to air traffic patterns, an applicant must provide written confirmation, including a graphical depiction, demonstrating that safe air traffic patterns can be established for the proposed airport with all existing and approved airport sites within three miles of the proposed airport site. The applicant must provide a copy of a written memorandum of understanding or letter of agreement, signed by each respective party, regarding air traffic pattern separation procedures between the parties representing the proposed airport and any existing airport(s) or approved airport site(s) located within three miles of the proposed site.<sup>46</sup>

At least one lessee or owner of an existing airport is reportedly refusing to provide the memorandum of understanding or letter of agreement required by the FDOT's rule, reportedly without justification, and such refusal has delayed approval of a Florida hospital's heliport.

***Effect of Proposed Changes***

The bill amends s. 330.30(1), F.S., prohibiting the FDOT from requiring an applicant for airport site approval to provide a copy of a written memorandum of understanding or letter of agreement with other airport sites regarding air traffic pattern separation procedures unless such memorandum or letter is required by the Federal Aviation Administration (FAA) or is deemed necessary by FDOT. In the absence of the FAA requiring the memorandum or letter or of the FDOT's determination of necessity, no such document would be required.

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<sup>41</sup> Section 330.30, F.S.

<sup>42</sup> Section 330.30(3), F.S.

<sup>43</sup> Section 330.30(1)(a), F.S. Emphasis added.

<sup>44</sup> Section 330.29(4), F.S.

<sup>45</sup> Rule Chapter 14-60, F.A.C.

<sup>46</sup> Rule 14-60(5)(j), F.A.C.

## **Airport Projects/Rural Communities (Section 7)**

### ***Present Situation***

Current law requires the FDOT to continuously update an aviation and airport work program based on a collection of local sponsors<sup>47</sup> proposed projects to be included in the FDOT's work program. The airport work program must separately identify "development projects"<sup>48</sup> and "discretionary capacity improvement projects."<sup>49</sup> The aviation and airport work program must be consistent with the statewide aviation system plan<sup>50</sup> and, to the maximum extent feasible, with approved local government comprehensive plans. Projects involving funds administered by the FDOT to be undertaken and implemented by the airport sponsor shall be included in the aviation and airport work program, and assistance may only be provided for projects which are so included.<sup>51</sup>

The annual legislative budget request for aviation and airport development projects must be based on the funding required for development projects in the aviation and airport work program. The FDOT must provide priority funding in support of the planning, design, and construction of proposed projects by local sponsors, with special emphasis on projects for runways and taxiways, including the painting and marking of runways and taxiways, lighting, other related airside activities, and airport access transportation facility projects on airport property.<sup>52</sup>

No single airport may receive airport or aviation development project funds in excess of 25 percent of the total airport or aviation development project funds available in any given budget year. However, any airport which receives discretionary capacity improvement project funds in a

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<sup>47</sup> "Sponsor" means any eligible agency which, either individually or jointly with one or more eligible agencies, submits to the department an application for financial assistance for an airport development project. Section 332.004(15), F.S. Federal funding of individual local airport projects is wholly between the local airport sponsors and the appropriate federal agencies; however, the FDOT is authorized to receive federal grants for statewide projects when no local sponsor is available. Section 332.2007(1), F.S.

<sup>48</sup> "Airport or aviation development project" or "development project" means any activity associated with the design, construction, purchase, improvement, or repair of a public-use airport or portion thereof, including, but not limited to: the purchase of equipment; the acquisition of land, including land required as a condition of a federal, state, or local permit or agreement for environmental mitigation; off-airport noise mitigation projects; the removal, lowering, relocation, marking, and lighting of airport hazards; the installation of navigation aids used by aircraft in landing at or taking off from a public airport; the installation of safety equipment required by rule or regulation for certification of the airport under s. 612 of the Federal Aviation Act of 1958, and amendments thereto; and the improvement of access to the airport by road or rail system which is on airport property and which is consistent, to the maximum extent feasible, with the approved local government comprehensive plan of the units of local government in which the airport is located. Section 332.004(4), F.S.

<sup>49</sup> "Airport or aviation discretionary capacity improvement projects" or "discretionary capacity improvement projects" means 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 airports which: are international airports with United States Bureau of Customs and Border Protection; had one or more regularly scheduled intercontinental flights during the previous calendar year or have an agreement in writing for installation of one or more regularly scheduled intercontinental flights upon the commitment of funds for stipulated airport capital improvements; and have available or planned public ground transportation between the airport and other major transportation facilities. Section 332.004(5), F.S.

<sup>50</sup> The FDOT is required to develop and periodically update a statewide aviation system plan that summarizes 5-year, 10-year, and 20-year airport and aviation needs within the state, per s. 332.006, F.S.

<sup>51</sup> Section 332.007(1)-(3), F.S.

<sup>52</sup> Section 332.007(4)(a), F.S.

given fiscal year may not receive greater than ten percent of total aviation and airport development project funds appropriated in that fiscal year.<sup>53</sup>

Subject to the availability of appropriated funds, the FDOT may generally participate in the capital cost of eligible public airport and aviation development projects in accordance with the following rates, unless otherwise provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act:

- Up to 50 percent of the portion of eligible project costs which are not funded by the Federal Government, except that the FDOT may initially fund up to 75 percent of the cost of land acquisition for a new airport or for the expansion of an existing airport which is owned and operated by a municipality, a county, or an authority. The FDOT must be reimbursed when federal funds become available or within ten years after the date of acquisition, whichever is earlier.<sup>54</sup>
- Up to 50 percent of the nonfederal share for land acquisition when such land is needed for airport safety, expansion, tall structure control, clear zone protection, or noise impact reduction, which the FDOT may retroactively reimburse to cities, counties, or airport authorities.<sup>55</sup>
- Up to 80 percent of master planning and eligible aviation development projects at publicly owned, publicly operated airports when federal funds are not available, and up to 80 percent of the nonfederal share when federal funds are available. This funding is limited to general aviation airports<sup>56</sup> or commercial service airports<sup>57</sup> that have fewer than 100,000 passenger boardings per year as determined by the Federal Aviation Administration.<sup>58</sup>
- Up to 100 percent of the cost of an eligible project that is statewide in scope or that involves more than one county where no other governmental entity or appropriate jurisdiction exists.<sup>59</sup>

Subject to the availability of appropriated funds in addition to aviation fuel tax revenues,<sup>60</sup> the FDOT may participate in the capital cost of eligible public airport and aviation discretionary

<sup>53</sup> Section 332.007(4)(c), F.S.

<sup>54</sup> Section 332.007(6)(a), F.S. Such projects must be contained in the Federal Government's Airport Capital Improvement Program, and the Federal Government must fund, or have funded, the first year of the project. The national Airports Capital Improvement Plan (ACIP) is an internal FAA document that serves as the primary planning tool for identifying and prioritizing critical airport development and associated capital needs for the National Airspace System. It also serves as the basis for the distribution of grant funds under the Airport Improvement Program. *See* [faa.gov, Airports Capital Improvement Plan | Federal Aviation Administration \(faa.gov\)](https://www.faa.gov/airports-capital-improvement-plan) (last visited March 19, 2023). The Airport Improvement Program provides grants to public agencies — and, in some cases, to private owners and entities — for the planning and development of public-use airports. *See* [faa.gov, Overview: What is AIP & What is Eligible? | Federal Aviation Administration \(faa.gov\)](https://www.faa.gov/airports-capital-improvement-plan) (last visited March 19, 2023).

<sup>55</sup> Section 332.007(6)(b), F.S. However, no land purchased prior to July 1, 1990, or purchased prior to executing the required FDOT agreements shall be eligible for reimbursement.

<sup>56</sup> A general aviation airport is a public-use airport that does not have scheduled service or has scheduled service with less than 2,500 passenger boardings each year. *See* [faa.gov, Airport Categories | Federal Aviation Administration \(faa.gov\)](https://www.faa.gov/airports-capital-improvement-plan) (last visited March 19, 2023).

<sup>57</sup> A commercial service airport is a publicly owned airport with at least 2,500 annual enplanements and schedule air carrier service. *Id.*

<sup>58</sup> Section 332.007(6)(c), F.S.

<sup>59</sup> Section 332.007(6)(d), F.S.

<sup>60</sup> The aviation fuel tax is imposed in accordance with s. 206.9825, F.S. Aviation fuel tax revenues are initially deposited in the Fuel Tax Collection Trust Fund. After deducting the service charges imposed by s. 215.20, F.S., the refunds granted pursuant to s. 206.9855, F.S., and the administrative costs incurred by the Department of Revenue in collecting,

capacity improvement projects. The annual legislative budget request must also be based on the funding required for discretionary capacity improvement projects in the aviation and airport work program.<sup>61</sup> The FDOT is required to provide priority funding in support of:

- Land acquisition that provides additional capacity at the qualifying international airport or at that airport's supplemental air carrier airport,
- Runway and taxiway projects that add capacity or are necessary to accommodate technological changes in the aviation industry,
- Airport access transportation projects that improve direct airport access and are approved by the airport sponsor,
- International terminal projects that increase international gate capacity.<sup>62</sup>

No single airport may receive discretionary capacity improvement project funds in excess of 50 percent of the total discretionary capacity improvement project funds available in any given budget year.<sup>63</sup>

The FDOT may fund up to 50 percent of the portion of eligible project costs which are not funded by the Federal Government, except that the FDOT may initially fund up to 75 percent of the cost of land acquisition for a new airport or for the expansion of an existing airport which is owned and operated by a municipality, a county, or an authority. The FDOT must be reimbursed when federal funds become available or within 10 years after the date of acquisition, whichever is earlier.<sup>64</sup>

The FDOT is authorized in s. 339.2821, F.S., to expend funds and contract with the appropriate governmental body<sup>65</sup> for the direct costs of "transportation projects"<sup>66</sup> which the FDOT, in consultation with the Florida Department of Economic Opportunity (FDEO), deems necessary to facilitate the economic development and growth of the state. When reviewing projects for approval and funding, the FDOT, in consultation with the FDEO, must consider:

- The cost per job created or retained considering the amount of transportation funds requested and the average hourly rate of wages for jobs created;
- The reliance on any program as an inducement for determining the transportation project's location;
- The amount of capital investment to be made by a business and the demonstrated local commitment;

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administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, are distributed monthly to the State Transportation Trust Fund per s. 206.9845, F.S.

<sup>61</sup> Section 332.007(7), F.S.

<sup>62</sup> Section 332.007(7)(a), F.S.

<sup>63</sup> Section 332.007(7)(b), F.S.

<sup>64</sup> Section 332.007(7)(d), F.S.

<sup>65</sup> Defined 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. Section 339.2821(1)(b)2., F.S.

<sup>66</sup> Defined to mean a "transportation facility," which is any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place. Section 334.03(30), F.S.

- The location of the transportation project in an enterprise zone as designated in s. 290.0055, F.S.,<sup>67</sup> or in a spaceport territory defined in s. 331.304, F.S.;
- The unemployment rate of the surrounding area; and
- The poverty rate of the community.<sup>68</sup>

The FDOT must approve a transportation project if it determines that it will:

- Attract new employment opportunities to the state or expand or retain employment in existing companies operating within the state.
- Allow for the construction or expansion of a state or federal correctional facility in a county having a population of 75,000 or fewer which creates new employment opportunities or expands or retains employment in the county.<sup>69</sup>

Current law requires inclusion of specific clauses in a contract between the FDOT and a governmental body for economic development transportation projects.<sup>70</sup> Each governmental body receiving funds must submit to the FDOT a financial audit conducted by an independent certified public accountant. The FDOT must monitor the construction or building site for each transportation project.

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

The bill creates subsection (10) of s. 332.007, F.S. Subject to the availability of appropriated funds, and unless otherwise provided in the General Appropriations Act or the substantive bill implementing the General Appropriations act, the bill authorizes the FDOT to fund at a publicly owned, publicly operated airport located in a rural community<sup>71</sup> as defined in s. 288.0656, F.S.:

- The capital cost of runway and taxiway projects that add capacity, prioritized based on the amount of available nonstate matching funds; and
- Economic development transportation projects pursuant to s. 339.2821, F.S.

Any remaining funds must be allocated for development projects per s. 332.007(6), F.S., discussed above. The bill makes no such appropriation.

## **Promotional Items/Public Information and Education Campaigns (Section 8)**

### ***Present Situation***

The FDOT is currently authorized to purchase, lease, or otherwise acquire property and materials, including the purchase of promotional items, as part of public information and education campaigns for the promotion of scenic highways, traffic and train safety awareness, alternatives to single-occupant vehicle travel, and commercial motor vehicle safety.<sup>72</sup>

<sup>67</sup> Florida's Enterprise Zone Program provides state and local incentives to induce private investment in specific geographic areas targeted for economic revitalization. To qualify, these areas must meet specified criteria, including suffering from pervasive poverty, unemployment, and general distress. See the Florida Enterprise Zone Act, ss. 290.001-290.016, F.S.

<sup>68</sup> Section 339.2821(2), F.S.

<sup>69</sup> Section 339.2821(3)(a), F.S.

<sup>70</sup> Section 339.2821(4), F.S.

<sup>71</sup> *Supra* note 27.

<sup>72</sup> Section 334.044(5), F.S.

The FDOT recently published Florida’s Electric Vehicle Infrastructure Deployment Plan,<sup>73</sup> deemed as the “framework for implementing the National Electric Vehicle Infrastructure Program (NEVI) to invest funding for EV infrastructure improvements to address charging gaps identified in the market,” which will serve “as a guide for how EV funds will be invested across the State over the five-year timeline of the NEVI program.” Florida reportedly will receive approximately \$198 million in NEVI formula funds through the federal 2026 fiscal year to grow the state’s network of EV chargers.

The Federal Highway Administration views public engagement activities as enabling “a more inclusive, accessible, and transparent process to gain input from communities,” and NEVI funds can be used for public engagement.<sup>74</sup> The FDOT advises that public engagement activities include “briefings, meetings, venues, social media, interactive displays, kiosks, visual materials, etc.”<sup>75</sup> However, the FDOT has no state statutory authority to purchase promotional items relating to electric vehicles or electric vehicle charging stations, nor for autonomous vehicles (which may be electrically powered), or context design for each.<sup>76</sup>

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

The bill amends s. 334.044(5), F.S., to authorize the FDOT to purchase promotional items as part of public information and education campaigns for the promotion of electric vehicle use and charging stations, autonomous vehicles, and context design for electric vehicles and autonomous vehicles.

## **Employee Training, Testing, and Licensing/Commercial Driver Licenses (Section 8)**

### ***Present Situation***

The FDOT notes that truck drivers licensed to drive commercial motor vehicles “are the Department’s heaviest need right now. This can also extend to heavy equipment drivers such as bridge snoopers<sup>77</sup> and dump trucks, all of which also require a [commercial driver license] as a condition of employment.”<sup>78</sup>

The 2022 General Appropriations Act contained proviso authorizing the FDOT to expend \$500,000 for training, testing, and licensing for full-time employees of the FDOT who are required to have a valid Class A or Class B commercial driver license as a condition of employment with the FDOT.<sup>79</sup>

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<sup>73</sup> See FDOT, *Florida’s Electric Vehicle Infrastructure Deployment Plan*, p. 3 of 55, available at [florida's-evidp\\_2022-07-29\\_final\\_v2.pdf \(windows.net\)](#) (last visited February 10, 2023).

<sup>74</sup> See FHWA, [National Electric Vehicle Infrastructure \(NEVI\) Formula Program Q&A \(dot.gov\)](#) (last visited February 10, 2023).

<sup>75</sup> See the FDOT’s responses to committee staff questions, Question 2 (on file in the Senate Transportation Committee).

<sup>76</sup> According to the FDOT, context design relates to the various design needs in different communities as electric vehicle and autonomous vehicle technology continues to evolve. *Supra* note 754, Question 4.

<sup>77</sup> Bridge snoopers are designed for under-bridge access inspections and bridge maintenance work. See [paxton-mitchell.com](#), *The Original Snooper Underbridge Inspection Truck*, for a picture of a snooper, available at [Bridge Inspection Equipment | \(paxton-mitchell.com\)](#) (last visited February 10, 2023).

<sup>78</sup> *Supra* note 75, Question 1 (on file in the Senate Transportation Committee).

<sup>79</sup> Ch. 2022-156, L.O.F., p. 319 of 518, available at [156 \(flrules.org\)](#) (last visited February 10, 2023).



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

The bill creates s. 334.044(36), F.S., authorizing the FDOT, within its discretion, to expend funds for training, testing, and licensing for full-time employees of the FDOT who are required to have a valid Class A or Class B commercial driver license as a condition of employment with the FDOT.

### **Design-Build, Phased Design-Build, and Innovative Contracting (Sections 9 and 10)**

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

The FDOT is generally authorized to enter into construction and maintenance contracts and must ensure that all project descriptions, including design plans, “are complete, accurate, and up to date prior to the advertisement for bids on such projects.”<sup>80</sup> Current law also authorizes the FDOT, if it determines that doing so is in the public interest, to combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, referred to as a “design-build” contract.<sup>81</sup>

The FDOT is also authorized to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must intend to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and techniques that have the potential to reduce project life cycle costs.<sup>82</sup>

To the maximum extent practical, the FDOT must use existing processes to award and administer construction and maintenance contracts. If the FDOT intends to use specific innovative techniques, it must document the need for any exceptions to current law that would otherwise prohibit use of the techniques.

The FDOT is limited to \$120 million annually for the purposes of contracting for innovative transportation projects. However, the annual cap currently does not apply to:

- Turnpike Enterprise projects, and
- Low-bid design-build milling and resurfacing contracts.<sup>83</sup>

According to the Design-Build Institute of America (DBIA), design-build projects enable the project owner to manage only one contract, with the designer and contractor working together from the beginning and providing consensus project recommendations to fit the owner’s schedule and budget. The entire team addresses any necessary changes, which leads “to collaborative problem-solving and innovation....” This method of project delivery, the DBIA asserts, creates an inherent “culture of collaboration.”<sup>84</sup> As described by the DBIA, the “progressive” type of design-build contract “uses a qualifications-based or best value selection,

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<sup>80</sup> Section 337.11(1) and (2), F.S.

<sup>81</sup> Section 337.11(7)(a), F.S.

<sup>82</sup> Section 337.025(1), F.S.

<sup>83</sup> Section 337.025(2), F.S.

<sup>84</sup> See DBIA, *What is Design-Build*, available at <https://dbia.org/what-is-design-build/> (last visited December 19, 2022).

followed by a process whereby the owner then ‘progresses’ towards a design and contract price with the team (thus the term ‘Progressive’).”<sup>85</sup>

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

The bill amends s. 337.025, F.S., relating to the FDOT’s authority to undertake innovative transportation projects, increasing from \$120 million to \$200 million the annual cap on the award of contracts using innovative techniques of highway and bridge design, construction, maintenance, and finance.

The bill amends s. 337.11(7), F.S., F.S., relating to the FDOT’s authority to engage in design-build contracting, to allow the FDOT to combine the design and construction phases of any project into a single contract. Though the bill repeals the exemption for low-bid design-build milling and resurfacing contracts from the new cap on innovative transportation projects, by removing the limitation on design-build contracting to the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project, “traditional” low-bid design-build milling and resurfacing contracts would not be subject to the cap. The FDOT would be authorized to use “traditional” design-build contracting for any type of project, including low-bid design-build milling and resurfacing contracts.

The bill authorizes the FDOT, if it determines that doing so is in the best interests of the public, to combine the design and construction phases of a project fully funded in the work program into a single contract and select the design-build firm in the early stages of a project to ensure that the firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. The bill refers to such a contract as a *phased* design-build contract.

Selection and award of such contracts must include a two-phase process. For phase one, the FDOT must competitively award the contract to a design-build firm based upon the firm’s qualifications. In phase two, the selected firm must competitively bid construction trade subcontractor packages and, based upon these bids, negotiate with the FDOT for a fixed firm price or guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

The bill includes phased design-build contracts in current law authorizing the advertisement and award of design-build contracts, notwithstanding provisions prohibiting such before title and all necessary rights-of-way and easements for a project have vested. The bill also includes phased design-build contracts in current law requiring the FDOT to adopt by rule procedures for administering such contracts.

### **Fast Response Contracting (Section 10)**

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

Generally, the FDOT is authorized to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System, the State Park Road System, or of

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<sup>85</sup> See DBIA, *Progressive Design-Build, Design-Build Procured with a Progressive Design & Price*, at p. 3, available at <https://dbia.org/wp-content/uploads/2018/05/Primer-Progressive-Design-Build.pdf> (last visited December 19, 2022).

any roads placed under its supervision by law. This authorization includes construction and maintenance contracts for rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities. With certain exceptions, these contracts must be advertised for competitive bidding, and such contracts generally must be awarded to the lowest responsible bidder.<sup>86</sup>

One of the exceptions to the competitive bidding requirement currently authorizes the FDOT, under certain conditions, to enter into construction and maintenance contracts, up to the amount of \$250,000, without advertising and receiving competitive bids. The FDOT may exercise this authority when the FDOT determines that doing so is in the best interest of the public for reasons of public concern, economy, improved operations, or safety, and only when circumstances dictate rapid completion of the work:

- To ensure timely completion of projects or avoidance of undue delay for other projects;
- To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or
- To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.<sup>87</sup>

The FDOT is required to make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract and give consideration to disadvantaged business enterprise participation. If, however, the work exists within the limits of an existing contract, the FDOT must make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract. These contracts fund projects such as sinkhole repairs that protect roadways and other infrastructure, traffic railing and guardrail repairs needed to protect the safety of the traveling public, and drainage and inlet work that prevents roadway flooding during heavy rain.

When first enacted in 1999, the dollar amount was capped at \$60,000.<sup>88</sup> The Legislature increased that amount to \$120,000 in 2002.<sup>89</sup> In 2017, the cap was increased to \$250,000 at the request of the FDOT, citing increased construction costs due to inflation.<sup>90</sup>

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

The bill amends s. 337.11(6)(c), F.S., to increase the threshold amount on fast response contracting from \$250,000 to \$500,000. The FDOT advises that increasing the cap to \$500,000 “will account for increased construction costs and extend the Department’s ability to quickly respond to construction and maintenance needs that are in the best interest of safety and the economy.”<sup>91</sup>

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<sup>86</sup> Section 337.11, F.S.

<sup>87</sup> Section 337.11(6)(c), F.S.

<sup>88</sup> Ch. 99-385, L.O.F.

<sup>89</sup> Ch. 2002-20, L.O.F.

<sup>90</sup> See the FDOT’s 2017 Legislative Proposal, *Rapid Response Contracts-Price Cap Increase* (on file in the Senate Transportation Committee), and Ch. 2017-42, L.O.F.

<sup>91</sup> See Florida Department of Transportation, *2023 Legislative Proposals*, Number 2 (on file in the Senate Transportation Committee).

### **Chairs Coordinating Committee/Metropolitan Planning Organizations (Section 11)**

Federal law and regulations give significant responsibility for transportation planning to metropolitan planning organizations (MPOs),<sup>92</sup> in coordination with the FDOT and others. To carry out the MPO planning process, federal<sup>93</sup> and state<sup>94</sup> law require an MPO to be designated for each urbanized area<sup>95</sup> of more than 50,000 individuals, by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as determined by the Bureau of the Census), or in accordance with procedures established by applicable state or local law.<sup>96</sup>

To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous areas.<sup>97</sup> Under both federal<sup>98</sup> and state law,<sup>99</sup> more than one MPO may be designated within an existing urbanized area *only* if the Governor and the existing MPO determine that the size and complexity of the area make designation of more than one MPO for the area appropriate.

The jurisdictional boundaries of an MPO are determined by agreement between the Governor and the applicable MPO. Such boundaries must include at least the metropolitan planning area,<sup>100</sup> which, under s. 339.175(2)(c), F.S., is the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period, and may encompass the entire metropolitan statistical area<sup>101</sup> or the consolidated metropolitan statistical area.<sup>102</sup> In those cases where two or more MPOs serve the same urbanized area, the MPOs shall establish official,

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<sup>92</sup> An MPO is the policy board of an organization created and designated to carry out the MPO transportation planning process, as a condition for receipt of Federal aid for planned transportation projects. 23 C.F.R. § 450.104.

<sup>93</sup> 23 U.S.C. § 134.

<sup>94</sup> Section 339.175, F.S.

<sup>95</sup> According to the Federal Highway Administration (FHWA), the Census definition of “urbanized area” and that of the FHWA differ. For the 2020 Decennial Census, the Census Bureau designated all qualifying areas as “urban areas” and did not distinguish any urban areas as an “urbanized area.” The term “urbanized area” under the FHWA definition means an area with a population of 50,000 or more designated by the Census Bureau, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Census Bureau. See [\(fhwa.dot.gov, FAQ Topic 1: Definitions - FAQ - Census Urbanized Areas and MPO/TMA Designation - Census Issues - Planning - FHWA \(dot.gov\)\)](https://www.fhwa.dot.gov/FAQ/Topic1/Definitions-FAQ-CensusUrbanizedAreasandMPO/TMADesignation-CensusIssues-Planning-FHWA(dot.gov)) (last visited April 5, 2023). For a table listing all 2020 Census urban areas, including those in Florida, see the Federal Register, Vol. 87, No. 249, December 29, 2022, available at [2022-28286.pdf](https://www.govinfo.gov/2022-28286.pdf) (govinfo.gov) (last visited April 5, 2022).

<sup>96</sup> Florida law generally mirrors federal law with respect to MPO designation, as well as other provisions relating to MPOs.

<sup>97</sup> Section 339.175(2)(a)2., F.S.

<sup>98</sup> 23 U.S.C. § 134(d)(7).

<sup>99</sup> Section 339.175(2)(a)2., F.S. Each designated MPO operates under the provisions of s. 339.175, F.S., pursuant to an interlocal agreement.

<sup>100</sup> The geographic area determined by agreement between the MPO for the area and the Governor. 23 U.S.C. § 134(b)(1).

<sup>101</sup> Defined by the Office of Management and Budget (OMB) as a core based statistical area associated with at least one urban area that has a population of at least 50,000, comprising the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting. FHWA, *supra* note 101.

<sup>102</sup> The OMB defines a *combined* statistical area as a geographic entity consisting of two or more adjacent core based statistical areas with certain employment interchange measures. FHWA, *supra* note 101.

written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among the MPOs.<sup>103</sup>

Current federal regulations provide that “an existing MPO may be redesignated only by agreement between the Governor and units of general purpose local government that together represent at least 75% of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).”<sup>104, 105</sup>

The federal regulations require redesignation of an existing MPO when that MPO proposes to make:

- A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State; or
- A substantial change in the decision-making authority or responsibility of the MPO, or in decision-making procedures established under MPO bylaws.<sup>106</sup>

While MPO coordination is clearly contemplated in current law, of Florida’s 27 MPOs<sup>107</sup> (the most of any state in the country), most are not multi-jurisdictional; and each has its own priorities.

Following a number of legislative revisions to transportation and transit authorities and related entities in the area,<sup>108</sup> the Sun Coast Transportation Planning Alliance (SCTPA) continues serving the West Central Florida area covered by the MPOs and transportation planning organizations in the same counties as the statutory CCC.

The Sun Coast Transportation Planning Alliance (SCTPA), formerly the MPO Chairs Coordinating Committee (CCC), of West Central Florida is the longest-standing regional transportation planning compact among MPOs in the State of Florida, and its members are Hernando/Citrus, Hillsborough, Pasco, Pinellas, Polk, and Sarasota/Manatee. The group also includes advisors from the Tampa Bay Area Regional Transit Authority (TBARTA), the Florida Department of Transportation (FDOT), the Tampa Bay Regional Planning Council (TBRPC), Pinellas Suncoast Transit Authority (PSTA), and Hillsborough Area Regional Transit (HART).<sup>109</sup>

A review of the SCTPA’s website suggests it is actively engaged in regional transportation planning.<sup>110</sup> Among other relevant information such as transit and trails visions, the Regional

<sup>103</sup> Section 339.175(2)(d), F.S.

<sup>104</sup> 23 C.F.R. 450.310(h) (2017).

<sup>105</sup> For purposes of redesignation, units of general purpose local government may be defined as elected officials from each unit of general purpose local government located within the MPA served by the existing MPO. 23 C.F.R. 450.310(i) (2017).

<sup>106</sup> 23 C.F.R. 450.310(j) (2017).

<sup>107</sup> See mpoac.org, [MPOs – MPOAC](#) for a listing of the 27 Florida MPOs (last visited April 5, 2023).

<sup>108</sup> See the Florida Senate Staff Analysis for CS/SB 198 dated March 7, 2023, available at [2023 S0019 ATD \(flsenate.gov\)](#) (last visited April 11, 2023).

<sup>109</sup> Suncoasttpa.org, [Alliance Members – Sun Coast TPA](#) (last visited April 11, 2023).

<sup>110</sup> Suncoasttpa.org, [Our Board – Sun Coast TPA](#) (last visited April 11, 2023).

Long-Range Transportation Plan, and funding priorities, the website offers items such as assistance relating to public involvement with the SCTPA's activities and services such as an interactive Tri-County Trails Map reflecting trails and bike lanes throughout the Tampa Bay Region.<sup>111</sup>

The CCC's minimum statutory duties remain as follows:

- Coordinate transportation projects deemed to be regionally significant by the committee;
- Review the impact of regionally significant land use decisions on the region;
- Review all proposed regionally significant transportation projects in the respective transportation improvement programs<sup>112</sup> which affect more than one of the MPO's represented on the committee; and
- Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

### *Effect of Proposed Changes*

The bill amends s. 339.175(6)(i), F.S., abolishing the CCC. By December 31, 2023, the bill requires the MPOs serving Hillsborough, Pasco, and Pinellas counties (not including current CCC member counties Citrus, Hernando, Manatee, Polk and Sarasota) to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a feasibility report exploring the benefits, costs, and process of consolidation into a single MPO serving the contiguous urbanized area,<sup>113</sup> the goal of which is to:

- Coordinate transportation projects deemed to be regionally significant.
- Review the impact of regionally significant land use decisions on the region.
- Review all proposed regionally significant transportation projects in the transportation improvement programs.

Requiring a feasibility report does not appear to run afoul of federal law and regulations relating to MPOs. Nothing in the bill directs the affected MPOs to enter into any agreement, and nothing in the bill precludes the voluntary coordination of regional transportation planning by any MPOs.

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<sup>111</sup> Suncoasttpa.org, [Sun Coast TPA – Sun Coast Transportation Planning Alliance \(SCTPA\)](#) (last visited April 11, 2023).

<sup>112</sup> The transportation improvement program is used to initiate federally aided transportation facilities and improvements to be funded from the State Transportation Trust Fund and must also be consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government whose boundaries are within the metropolitan area of the MPO. Section 339.175(8), F.S.

<sup>113</sup> According to the Federal Highway Administration (FHWA), the Census definition of “urbanized area” and that of the FHWA differ. For the 2020 Decennial Census, the Census Bureau designated all qualifying areas as “urban areas” and did not distinguish any urban areas as an “urbanized area.” The term “urbanized area” under the FHWA definition means an area with a population of 50,000 or more designated by the Census Bureau, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Census Bureau. See [fhwa.dot.gov, FAQ Topic 1: Definitions - FAQ - Census Urbanized Areas and MPO/TMA Designation - Census Issues - Planning - FHWA \(dot.gov\)](#) (last visited April 5, 2023).

## Public Transportation Development Plan Consistency (Section 12)

### *Present Situation*

The federal Surface Transportation Block Grant Program apportions funding for each state<sup>114</sup> that may be used by states and localities for projects to preserve and improve the conditions and performance on any Federal-aid highway, bridge, and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects,<sup>115</sup> including intercity bus terminals.<sup>116</sup> The FDOT and local governmental entities are authorized to receive federal grants or apportionments for public transit<sup>117</sup> and intercity bus service projects<sup>118</sup> in this state.<sup>119</sup>

Section 341.052, F.S., establishes a public transit block grant program which is administered by the FDOT. Block grant funds may only be provided to “Section 9” providers<sup>120</sup> and “Section 18” providers,<sup>121</sup> as specified. Eligible providers must establish public transportation development plans consistent, to the maximum extent feasible, with approved local government comprehensive plans of the units of local government in which the provider is located.<sup>122</sup> Section 341.051(4)(b), F.S., provides that expenditures for public transit and intercity bus service programs are subject to approval by the FDOT as being consistent with the Florida Transportation Plan and regional transportation goals and objectives.

<sup>114</sup> See the Surface Transportation Block Grant Fact Sheet available at [Bipartisan Infrastructure Law - Surface Transportation Block Grant \(STBG\) Fact Sheet | Federal Highway Administration \(dot.gov\)](https://www.bipartisaninfrastructure.com/wp-content/uploads/2021/07/STBG-Fact-Sheet-Federal-Highway-Administration-dot.gov.pdf) (last visited February 13, 2023).

<sup>115</sup> Florida law defines “public transit capital project” as 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>116</sup> See FHWA, [STBG - Federal-aid Programs - Federal-aid Programs and Special Funding - Federal Highway Administration \(dot.gov\)](https://www.fhwa.dot.gov/STBG/Federal-aid-Programs-Federal-aid-Programs-and-Special-Funding-Federal-Highway-Administration-dot.gov.pdf) (last visited February 13, 2023).

<sup>117</sup> “Public transit” means the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Section 341.013(6), F.S.

<sup>118</sup> “Intercity bus service” means 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; has the capacity for transporting baggage carried by passengers; makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available; maintains scheduled information in the National Official Bus Guide; and provides package express service incidental to passenger transportation. Section 341.031(11), F.S.

<sup>119</sup> Section 341.051(1), F.S.

<sup>120</sup> This is historical federal terminology. A “Section 9” provider is now referred to as a Section 5307 provider, one eligible to receive funds from the Urbanized Area Formula Grants program under 49 U.S.C. 5307. The program makes federal resources available to urbanized areas (50,000 population or more) and to governors for transit capital and operating assistance in urbanized areas and for transportation-related planning. Designated recipients that are public bodies with the legal authority to receive and dispense federal funds are eligible. For a long list of eligible activities, see Federal Transit Administration, [Urbanized Area Formula Grants - 5307 | FTA \(dot.gov\)](https://www.federaltransitadmin.com/Urbanized-Area-Formula-Grants-5307-FTA-dot.gov) (last visited February 13, 2023).

<sup>121</sup> Again, this is historical federal terminology. A “Section 18” provider is now referred to as a Section 5311 provider, one eligible to receive funds from the Formula Grants for Rural Areas under 49 U.S.C. 5311. The grants provide capital, planning, and operating assistance to states to support public transportation in rural areas with populations of less than 50,000, where many residents often rely on public transit to reach their destinations. The program also provides funding for state and national training and technical assistance through the Rural Transportation Assistance Program. Eligible recipients include states and federally recognized Indian Tribes. Sub recipients may include state or local government authorities, nonprofit organizations, and operators of public transportation or intercity bus service. Eligible activities include planning, capital, operating, job access and reverse commute projects, and the acquisition of public transportation services. See Federal Transit Administration, [Formula Grants for Rural Areas - 5311 | FTA \(dot.gov\)](https://www.federaltransitadmin.com/Formula-Grants-for-Rural-Areas-5311-FTA-dot.gov) (last visited February 13, 2023).

<sup>122</sup> Section 341.052(1), F.S.



The FDOT already requires that transportation development plans be consistent with the Florida Transportation Plan, local government comprehensive plans, and the local metropolitan planning organization's long-range transportation plan.<sup>123</sup>

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

The bill amends s. 341.052(1), F.S., to statutorily require provider transportation development plans to also be consistent, to the maximum extent feasible, with the long-range transportation plans of the metropolitan planning organization in which the provider is located.

### **Fixed-Guideway Transportation System Safety Standards and Inspections (Section 13)**

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

The FDOT is currently required to adopt by rule minimum safety standards for governmentally owned fixed-guideway transportation systems (FGTSs) and privately owned or operated FGTSs operating in this state which are financed wholly or partly by state funds. Standards must be site-specific and developed jointly by the FDOT and representatives of the affected systems, giving full consideration to nationwide industry safety norms relating to the development and operation of such systems.<sup>124</sup>

The FDOT's Procedure 850-010-030-k<sup>125</sup> sets out provisions governing inspection and reporting relating to bridges and other structures. The primary objective of the FDOT's Bridge and Other Structures Inspection Program is to protect the safe and welfare of the motoring public and safeguard the public's investment. The program identifies bridge deficiencies and other deficiencies that are critical enough to endanger public safety. Non-critical deficiencies are also identified.<sup>126</sup> The FDOT advises that the focus of this procedure is on structural integrity.<sup>127</sup> The FDOT's rule<sup>128</sup> incorporates by reference the FDOT's Fixed Guideway Transportation Systems State Safety and Security Oversight (SSO) Program Standard, May 2018. According to this document:

The FDOT SSO program fulfills the Federal Transit Administration (FTA) State Safety Oversight Rule (49 CFR Part 674), which requires states to oversee the safety of Rail Fixed-Guideway Transit Systems through a designated oversight agency. This FTA rule implement enhanced oversight requirements precipitated by the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) of 2012. Pursuant to Section 341.061(1), Florida Statutes, and Rule 14-15.017, Florida Administrative Code, FDOT is designated as the State Safety Oversight Agency responsible for safety and security oversight of Rail Fixed Guideway Transit Systems operated

<sup>123</sup> The FDOT's *TDP Handbook, FDOT Guidance for Preparing & Reviewing Transit Development Plans*, Version III, 2022 Update, p. 107 of 178, available at [2022-transit-development-plan-handbook.pdf \(windows.net\)](https://www.floridadot.com/2022-transit-development-plan-handbook.pdf), provides that "At a minimum, TDPs must be consistent with the Florida Transportation Plan, local government comprehensive plans, and the local MPO's LRTP." Emphasis added. (Last visited February 13, 2023).

<sup>124</sup> Section 341.061, F.S.

<sup>125</sup> On file in the Senate Transportation Committee.

<sup>126</sup> *Id.* at p. 3.

<sup>127</sup> Telephone conversation with FDOT staff April 24, 2023.

<sup>128</sup> Rule 14-15.017, F.A.C.



in the State of Florida, which are financed wholly or partly by state funds.<sup>129</sup>

The FDOT advises that the focus in carrying out the federal requirement for state oversight is on *systems* safety, as opposed to structural integrity.

The SSO Program document makes the following distinction:

- “The FGTS<sup>130</sup> subject to the FTA regulations [49 CFR Part 674] and the provisions in Part 1 of this SSO Manual as of August 2018 are: Miami-Dade Department of Transportation and Public Works (DTPW) Metrorail and Metromover, Jacksonville Transportation Authority (JTA) Skyway, and Hillsborough Area Regional Transit Authority (HART) – TECO Line Streetcar.”
- “Other FGTS in the state are subject to Section 341.061(1), but not 49 U.S.C. 5329 and 49 CFR Part 674. These systems are subject to Part 2 of this Manual. As of August 2018, these systems are: the Miami International Airport automated people movers, the Orlando International Airport automated people movers, the SunRail commuter rail system, the Tampa International Airport automated people movers, and the South Florida Regional Transportation Authority Tri Rail commuter rail system.”<sup>131</sup>

Current Florida law does not require the FDOT to inspect fixed-guideway transportation systems that are privately funded and operated, even when open to the public.<sup>132</sup> Further, the FDOT advises that neither the procedure nor the rule currently address a fixed-guideway transportation system operating in this state, which is located within an independent special district created by local act and with boundaries within two contiguous counties.<sup>133</sup> The FDOT will need to revise the identified procedure, and may need to revise other relevant documents, including, but not limited to, the SSO Program document.<sup>134</sup>

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

The bill amends s. 341.061(1)(a), F.S., requiring the FDOT to adopt by rule minimum safety standards for any governmentally or privately owned fixed-guideway transportation systems operating in this state which are located within an independent special district created by local act which have boundaries within two contiguous counties.

The bill requires the FDOT to conduct structural safety inspections in adherence with s. 335.074, F.S., for any fixed-guideway transportation systems that are raised or have bridges, as appropriate. Inspectors must follow FDOT safety protocols during safety inspections, including requiring the suspension of system service to ensure safety and welfare of inspectors and the traveling public during such inspections.

<sup>129</sup> See the FDOT’s *Fixed Guideway Transportation Systems State Safety and Security Oversight Program Standard* (on file in the Senate Transportation Committee).

<sup>130</sup> “FGTS” means fixed-guideway transportation systems.

<sup>131</sup> *Supra* note 135, p. 17.

<sup>132</sup> Note, however, that the procedure does call for inspection of public or privately-owned bridge structures, generally when the structures pass over a state-maintained highway.

<sup>133</sup> *Supra* note 133.

<sup>134</sup> *Id.*

These provisions allow for inspection of a fixed-guideway transportation system that is open to the public, regardless of the nature of its ownership or funding, thereby ensuring the safety and welfare of the public using such systems.

### **Public Transit Provider Productivity and Performance Measures (Section 12)**

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

Section 341.071(2), F.S., requires each public transit provider to establish productivity and performance measures and, by January 31 of each year, to report to the FDOT relative to these measures. The report must specifically address potential enhancements to productivity and performance which would have the effect of increasing farebox recovery. Each provider must publish in the local newspaper of its area the productivity and performance measures established for the year and a report which provides quantitative data relative to the attainment of established productivity and performance measures.

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

The bill amends s. 341.071(2), F.S., to remove from the annual report requiring providers to specifically addressing potential enhancements to productivity and performance measures having the effect of increasing farebox recovery. The bill would require the report to include the farebox recovery.

According to the FDOT, “This language is targeted to positive changes in ridership behavior following the pandemic. Localities across Florida have moved to a ‘free fare’ ridership model which has actually increased their ridership levels – the exact concept targeted with reporting their productivity and performance measures. Updating this language allows the localities to better tailor their reporting to reflect current state.”<sup>135</sup>

The bill amends s. 341.071(3), F.S., to authorize public transit providers to publish on its website (or on the city/county websites if those agencies are the managing agency for reporting requirements, according to the FDOT<sup>136</sup>) the productivity and performance measures established for the year, as well as the required report providing quantitative data relative to the attainment of those established measures.

### **Santa Rosa Bay Bridge Authority and Bridge System (Sections 13 and 14)**

The Santa Rosa Bay Bridge Authority (SRBBA) was created in 1984 under part IV of ch. 348, F.S., with the right to acquire, hold, construct, improve, maintain, operate, own, and lease all or any part of the Santa Rosa Bay Bridge System, including the Garcon Point Bridge and related infrastructure. Toll revenues fell short of projections, and payment of debt service on the bonds issued to construct the system went into default. A planned 2014 toll increase was never implemented, the SRBBA board ceased to function, and the bondholders then demanded that the FDOT increase the toll in amounts recommended by their consultant. The FDOT disputed its

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<sup>135</sup> See the FDOT’s responses to committee staff questions, Question 6 (on file in the Senate Transportation Committee).

<sup>136</sup> See the FDOT’s document, “Florida Department of Transportation 2023 Legislative Proposals” (on file in the Senate Transportation Committee.)

legal obligation to increase the tolls, litigation ensued, and subsequent Legislative efforts to resolve the matter were unsuccessful.

The on-going litigation between UMB Bank (for the bondholders) and the FDOT has been settled. The settlement called for the FDOT to pay \$134 million lump sum to UMB on June 17, 2022 (two days after toll reductions were announced) and, by July 29, 2022, to pay any previously unremitted tolls or revenues collected for use of the bridge through the lump sum payment date. According to the FDOT, the underlying bonds were paid in full on June 30, 2022, which effectuated transfer of title to the bridge system to the FDOT.<sup>137</sup> Given the recent settlement, part IV of Ch. 348, F.S., appears to be a candidate for repeal.

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

The bill repeals part IV of ch. 348, F.S.,<sup>138</sup> relating to the creation and operation of the SRBBA. The SRBBA is abolished. The bill creates an undesignated section of law, effective upon the act becoming law, transferring governance and control of the SRBBA, as well as any remaining assets, facilities, tangible and intangible property, and any rights in such property, and other legal rights of the authority, to the FDOT. The FDOT succeeds to all powers of the authority.

The bill authorizes the FDOT to review other contracts, financial obligations, and contractual obligations and liabilities of the authority, and to assume legal liability for such obligations the FDOT determines to be necessary for continued operation of the bridge system.

The bill also authorizes the FDOT to transfer the bridge system, or any portion thereof, to become part of the turnpike system under the Florida Turnpike Enterprise Law.<sup>139</sup>

### **Effective Date (Section 15)**

Except as otherwise provided, the bill takes effect July 1, 2023.

## **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

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<sup>137</sup> See FDOT email to committee staff, February 7, 2023 (on file in the Senate Transportation Committee).

<sup>138</sup> Consisting of ss. 348.965, 348.966, 348.967, 348.968, 348.969, 348.97, 348.971, 348.972, 348.973, 348.974, 348.9751, 348.9761, 348.9771, and 348.9781, F.S.

<sup>139</sup> Sections 338.22-338.241, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Increasing the maximum amount of debt service coverage that may be transferred from the STTF to the Right-of-Way Acquisition and Bridge Construction Trust Fund will provide the FDOT with additional bonding capacity. However, the resulting fiscal impact of the additional bonding capacity is indeterminate, as the details of any projects to be funded using the additional bonding capacity is unknown.

The authorization for the use of proceeds from Florida Development Finance Corporation private activity bonds to finance the acquisition or construction of a transportation facility under a public-private partnership presents an indeterminate fiscal impact, as it is unknown how many public-private partnerships the FDOT will enter into or the amount of such bonds that would be issued for each such partnership.

The fiscal impact to the STTF of authorizing the FDOT to provide up to 100 percent of projects costs for eligible ILC Program projects in rural areas of opportunity is indeterminate, as the details of projects to be funded, and at what percentage, are unknown.

The authorization for installation of automated license plate recognition systems within the rights-of-way of the State Highway System in accordance with FDOT placement and installation guidelines may result in expenses for the FDOT and for any law enforcement agency that requests such installation in indeterminate but likely insignificant amounts. The bill provides that the FDOT is not liable for any damages caused to any person by the requesting law enforcement agency's operation of an ALPRS.

The FDOT may incur indeterminate expenses associated with revising its rule relating to airport site approval, which expenses are expected to be absorbed within existing resources.

The fiscal impact of authorizing the FDOT to engage in design-build contracting for any type of project, not just for a building, a major bridge, a limited access facility, or a rail corridor project, and to undertake phased design-build contracting, is indeterminate, as the extent to which the FDOT will employ such contracting and the details of any project covered by such contracting are unknown.

The authorization to purchase promotional items for the promotion of electric vehicles and autonomous vehicles, and context design for each, is likely to produce an insignificant negative impact that would be absorbed within existing resources, but may be covered by NEVI funds.

The authorization for the FDOT to expend funds within its discretion for training, testing, and licensing for full-time employees of the FDOT is indeterminate but expected to be absorbed within existing resources.

The fiscal impact of the increased fast-response contracting cap is indeterminate, as it is unknown how many such contracts the FDOT will enter into or the cost of such contracts, but such contracting is capped at \$500,000 and is expected to be absorbed within existing resources.

The MPOs serving Hillsborough, Pasco, and Pinellas counties may incur indeterminate expenses associated with conducting and submitting the feasibility report. The bill makes no appropriation in support of those expenses, which presumably will be absorbed by the identified MPOs.

The FDOT is expected to incur indeterminate expenses associated with adopting minimum safety standards for the specified fixed-guideway systems, with necessary revision of its bridge inspection procedure and possibly other related documents, and with conducting the required structural safety inspections. The bill makes no appropriation in support of those expenses, which presumably will be absorbed within the FDOT's existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 206.46, 215.616, 288.9606, 311.101, 316.0777, 330.30, 332.007, 334.044, 337.025, 337.11, 339.175, 341.052, 341.061, and 341.071.

This bill repeals the following sections of the Florida Statutes: 348.965, 348.966, 348.967, 348.968, 348.969, 348.97, 348.971, 348.972, 348.973, 348.974, 348.9751, 348.9761, 348.9771, and 348.9781.

The bill creates an undesignated section of Florida law.

## **IX. Additional Information:**

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

#### **CS by Fiscal Policy Committee on April 25, 2023:**

The committee substitute:

- Increases the maximum amount of debt service coverage that may be transferred from the STTF to the Right-of-Way Acquisition and Bridge Construction Trust Fund.
- Increases the maximum term of state bonds for federal aid highway construction.
- Increases from \$120 million to \$200 million the annual cap on the award of contracts using innovative techniques of highway and bridge design, construction, maintenance, and finance.
- Revises requirements for design-build contracts, allowing the FDOT to combine the design and construction phases of any transportation project.
- Authorizes the FDOT to enter into phased design-build contracts under specified conditions, provides requirements for such contracts, and requires the FDOT to adopt rules for administering such contracts.
- Requires the FDOT to adopt by rule minimum safety standards for certain fixed-guideway transportation systems operating in this state and to conduct structural safety inspections of such systems as specified.
- Removes from the bill extension of the expiration date of a provision allowing the chair and vice chair of the Legislative Budget Commission to authorize an FDOT work program amendment if the Commission does not meet or consider the amendment within 30 days after its submittal.

#### **CS by Appropriations Committee on Transportation, Tourism and Economic Development on April 12, 2023:**

The committee substitute:

- Removes from the bill exclusion of rating agency services from the list of contractual services and commodities that are not subject to the competitive solicitation requirements.
- Revises the authorization for installation of automated license plate recognition systems within the rights-of-way of a road on the State Highway System by prohibiting use of such systems to issue a notice of violation or a traffic citation.
- Relocates and revises the language relating to applications for airport site approvals, providing that the FDOT may not require an applicant to provide an agreement with other airport sites regarding traffic pattern separation procedures unless required by the FAA or deemed necessary by the FDOT.

- Clarifies that the FDOT may fund up to 100 percent of eligible project costs of specified projects at a publicly owned, publicly operated airport located in a rural community which has no scheduled commercial service.
- Abolishes the Chair's Coordinating Committee and requires the MPOs serving Hillsborough, Pasco, and Pinellas counties to submit a feasibility report exploring the benefits, costs, and process of consolidation into a single MPO serving the contiguous urbanized area.

**CS by Transportation on March 20, 2023:**

The committee substitute:

- Authorizes installation, as specified, of automated license plate recognition systems within the rights-of-way of the State Highway System at the discretion of the FDOT when installed at the request of a law enforcement agency for the purpose of collecting active criminal intelligence or investigative information.
- Authorizes the FDOT to fund up to 100 percent of project costs for eligible intermodal logistics center projects in rural areas of opportunity.
- Authorizes the FDOT, subject to availability of appropriate funds, and unless otherwise provided in the General Appropriations Act or the Implementing bill, to fund certain projects at a publicly owned, publicly operated airport located in a rural community which does not have any scheduled commercial service.
- Requires the FDOT's rules governing public airport site approval to include a requirement that an applicant provide a copy of a written memorandum of understanding or letter of agreement regarding air traffic pattern separation procedures between the parties representing a proposed airport and any existing airport or any approved airport site located within three miles of the proposed site, signed by each of the respective parties, but only if required by a final Federal Aviation Administration airspace determination letter or deemed necessary by the FDOT .

**B. Amendments:**

None.