

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 425 Transportation

**SPONSOR(S):** Infrastructure & Tourism Appropriations Subcommittee, Transportation & Modals Subcommittee, Esposito, Andrade

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	17 Y, 0 N, As CS	Johnson	Hinshelwood
2) Infrastructure & Tourism Appropriations Subcommittee	13 Y, 0 N, As CS	Hicks	Davis
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

The bill addresses matters related to transportation. The bill:

- Requires the Department of Transportation (DOT) to coordinate with certain entities to establish standards by which the State Highway System will be graded according to their compatibility with the operation of autonomous vehicles.
- Codifies the Implementing Solutions from Transportation Research and Evaluating Emerging Technologies (I-STREET) Living Lab within the University of Florida and provides for its duties relating to transportation research, education, workforce development, and related issues.
- Provides that a producer of construction aggregates (gravel, sand, etc.) may not represent that an aggregate is certified for use unless such aggregate complies with DOT rules.
- Provides that a local governmental entity must accept an electronic proof of delivery for construction materials.
- Requires DOT contracts for bridge work over navigable waters to require a marine general liability insurance provision in an amount determined by DOT.
- Requires DOT to implement strategies to reduce project costs while still meeting applicable federal and state standards.
- Authorizes DOT to share up to 10 percent of construction cost savings with design and engineering consultants whose input was involved in realizing the cost savings.
- Provides that stipends paid by DOT to nonselected design-build firms that have submitted responsive proposals for construction contracts, which stipends are contained in DOT's legislatively-approved work program, are not subject to specified documentation and notification requirements.
- Authorizes a contractor who desires to bid exclusively on construction contracts with proposed budget estimates of \$2 million or less (increased from \$1 million) to submit reviewed, rather than audited, annual or interim financial statements.
- Authorizes an applicant for a contractor certificate of qualification to submit a request to keep an existing certificate, with the current maximum capacity rating, in place until the expiration date of the existing certificate.
- Repeals a public records exemption for documents that reveal the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by DOT.
- Authorizes DOT to request legislative approval of a proposed turnpike project regardless of how complete the project's design phase is.
- Authorizes DOT to use existing resources for workforce development and promoting career paths in Florida's road and bridge industry.

The bill has an indeterminate fiscal impact on state and local governments and the private sector.

The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Autonomous Vehicle Grading Standards for the State Highway System**

##### Current Situation

Florida law defines the term “autonomous vehicle” to mean any vehicle with an automated driving system.<sup>1</sup> The term “automated driving system” is defined to mean the hardware and software that are collectively capable of performing the entire dynamic driving task<sup>2</sup> of an autonomous vehicle on a sustained basis, regardless of whether it is limited to a specific operational design domain.<sup>3</sup>

Autonomous vehicles are equipped with advanced sensors, such as radar, LIDAR, or cameras, and computing abilities to perceive surroundings and activate steering, braking, and acceleration actions without operator input.<sup>4</sup>

Currently, Florida roads are not graded or categorized according to their compatibility with autonomous vehicles.

##### Effect of the Bill

The bill requires DOT to coordinate with federal, regional, and local partners, as well as industry representatives, to establish standards by which roads on the State Highway System<sup>5</sup> must be graded according to their compatibility with the operation of autonomous vehicles. In establishing these standards, DOT must consider factors including, but not limited to, the structural adequacy and safety of each road and the particular challenges that the overall driving environment of each road may present to a fully autonomous vehicle operating with the automated driving system engaged. These autonomous vehicle grading standards must be incorporated into standards for transportation projects involving the construction of new roads or maintenance of existing roads on the State Highway System.

#### **Implementing Solutions from Transportation Research and Evaluating Emerging Technologies (I-STREET) Living Lab**

##### Current Situation

Florida law codifies various centers, institutes, and special programs within the State University System, including the Florida Industrial and Phosphate Research Institute at Florida Polytechnic University,<sup>6</sup> the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida,<sup>7</sup> the Louis de la Parte Florida Mental Health Institute at the University of South Florida,<sup>8</sup> the Florida

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<sup>1</sup> S. 316.003(3)(a), F.S.

<sup>2</sup> Section 316.003(3)(b), F.S., defines the term “dynamic driving task” to mean all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within its specific operational design domain, if any, excluding strategic functions such as trip scheduling and selection of destinations and waypoints.

<sup>3</sup> S. 316.003(3), F.S. Section 316.003(3)(d), F.S., defines the term “operational design domain” as a description of the specific operating domain in which an automated driving system is designed to properly operate, including, but not limited to, roadway types, speed ranges, environmental conditions such as weather and time of day, and other domain constraints.

<sup>4</sup> Department of Transportation, *Florida’s Connected and Automated Vehicle (CAV) Initiative*, <https://www.fdot.gov/traffic/teo-divisions.shtm/cav-ml-stamp/connected-vehicles> (last visited Feb. 15, 2023).

<sup>5</sup> S. 334.03(24), F.S., defines the term “State Highway System” to mean the interstate system and all other roads within the state which were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state’s jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state’s jurisdiction. These facilities shall be facilities to which access is regulated.

<sup>6</sup> S. 1004.346, F.S.

<sup>7</sup> S. 1004.43, F.S.

<sup>8</sup> S. 1004.44, F.S.

Institute for Child Welfare at Florida State University,<sup>9</sup> and the Center for Urban Transportation Research at the University of South Florida.<sup>10</sup>

### *Center for Urban Transportation Research*

Florida law establishes the Center for Urban Transportation Research (CUTR) at the University of South Florida (USF), which is administered by the Board of Governors. CUTR's responsibilities include, but are not limited to, conducting and facilitating research on issues related to urban transportation problems in this state and serving as an information exchange and depository for the most current information pertaining to urban transportation and related issues.<sup>11</sup>

CUTR serves as a continuing resource for the Legislature, DOT, local governments, the nation's metropolitan regions, and the private sector in the area of urban transportation and related research and must generate support in addition to its state-funded support. CUTR must promote intercampus transportation and related research activities among Florida's universities in order to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.<sup>12</sup>

CUTR's advisory board must periodically and objectively review and advise the center concerning its research program. Except for projects mandated by law, CUTR may not undertake state-funded base projects without advisory board approval. CUTR's advisory board consists of nine experts in transportation-related areas, including the secretaries of DOT, the Department of Environmental Protection, and the Department of Economic Opportunity, or their designees, and a member of the Florida Transportation Commission.<sup>13</sup> The remaining members of the board are nominated by the President of USF, as submitted by USF's College of Engineering, and these appointments are reviewed and approved by the Florida Transportation Commission and confirmed by the Board of Governors.<sup>14</sup>

### *I-STREET Living Lab*

The University of Florida (UF) College of Engineering's Transportation Institute aims to advance transportation, disseminate research results, and provide educational opportunities related to transportation. The institute is an umbrella organization housing several transportation-related centers.<sup>15</sup>

UF's Transportation Institute, DOT, the City of Gainesville, and others have partnered to create the Implementing Solutions from Transportation Research and Evaluating Emerging Technologies (I-STREET) Living Lab. I-STREET's principal objective is to make significant improvements to transportation safety and mobility, utilizing a real-world testbed environment that has been created on and surrounding the UF campus and the expanding set of diverse technology installed on Florida segments of the Interstate Highway System.<sup>16</sup>

DOT has invited transportation industry leaders to participate in the UF I-STREET program. According to DOT:

I-STREET is designed to assist in implementing emerging technologies aimed at safety and mobility improvements. DOT will develop requests for proposals utilizing the emerging technologies and will select vendors through a competitive bidding process. The selected

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<sup>9</sup> S. 1004.615, F.S.

<sup>10</sup> S. 334.065, F.S.

<sup>11</sup> S. 334.065(1), F.S.

<sup>12</sup> S. 334.065(2), F.S.

<sup>13</sup> The Florida Transportation Commission is a citizen's advisory board for the Department of Transportation. Florida Transportation Commission, *About Us*, <http://www.ftc.state.fl.us/aboutus.shtm> (last visited Feb. 15, 2023). See also s. 20.23(2), F.S.

<sup>14</sup> S. 334.065(3), F.S.

<sup>15</sup> University of Florida Transportation Institute, *Overview*, <https://www.transportation.institute.ufl.edu/overview/> (last visited Feb. 15, 2023).

<sup>16</sup> UF, *I-Street Living Lab*, <https://www.transportation.institute.ufl.edu/i-street-living-lab/> (last visited Feb, 15, 2023).

vendor for each project will deploy technology solutions. UF will conduct before-and-after evaluations of implemented projects. After evaluation, DOT will consider whether to expand the successful I-STREET projects elsewhere in the state.

DOT has allocated funding for these innovative projects each fiscal year from Fiscal Year 2020-2021 until Fiscal Year 2024-2025. DOT plans to fund multiple projects each year based on the projects' merits and safety and mobility improvement potential. The number of awards will vary depending on the project type and scope.<sup>17</sup>

### Effect of the Bill

The bill codifies in statute the I-STREET Living Lab within UF. The bill requires I-STREET, at a minimum, to:

- Conduct and facilitate research on issues related to innovative transportation mobility and safety technology development and deployment in Florida and serve as an information exchange and depository for the most current information pertaining to transportation research, education, workforce development, and related issues.
- Be a continuing resource for the Legislature, DOT, local governments, the nation's metropolitan regions, and the private sector in the area of transportation and related research.
- Promote intercampus transportation and related research activities among Florida universities to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.
- Provide by July 1, 2024, and each July 1 thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a comprehensive report that outlines I-STREET's clearly defined goals and its efforts and progress on reaching those goals.

The bill creates an advisory board to periodically review and advise I-STREET concerning its research program. The board consists of nine members with expertise in transportation-related areas, including:

- A member appointed by the President of the Senate.
- A member appointed by the Speaker of the House of Representatives.
- The Secretary of Transportation or his or her designee.
- The Secretary of Economic Opportunity or his or her designee.
- A member of the Florida Transportation Commission.
- Four members nominated by UF's College of Engineering and approved by UF's president. These nominees may include representatives of UF, other academic and research institutions, or private entities.

## **Construction Aggregates**

### Current Situation

Aggregates are raw materials such as gravel, crushed stone, and sand. When combined with a binding medium such as water, cement, or asphalt, aggregates form compound materials, including asphalt concrete.<sup>18</sup>

Section 334.044(10)(d), F.S., authorizes DOT to adopt rules relating to approval of aggregate and other material sources.

Section 334.179, F.S., provides that notwithstanding any law, rule, or ordinance to the contrary, a local government may not adopt standards or specifications that are contrary to DOT's standards or specifications for permissible use of aggregates that have been certified for use. The term "certified for use" means that the aggregates have been certified by the producer in accordance with DOT rules.<sup>19</sup>

<sup>17</sup> Department of Transportation (DOT), *UF I-Street*, <https://www.fdot.gov/traffic/its/projects-deploy/cv/maplocations/uf-testbed.shtm> (last visited Feb. 15, 2023).

<sup>18</sup> Association of Equipment Manufacturers, *Construction Aggregates 101: What They Are (And Why They Matter)* (July 8, 2021), <https://www.aem.org/news/construction-aggregates-101-what-they-are-and-why-they-matter> (Last visited Feb. 15, 2023).

<sup>19</sup> Section 334.179, F.S., does not apply to a multicounty independent special district created by a special act of the Legislature.

DOT's rules regarding aggregates<sup>20</sup> provide a standardized method for producers of construction aggregates to apply for, receive, and maintain DOT approval of construction aggregate sources for use on DOT projects. Source and product approval, and maintenance of an on-going effective Quality Control Program, comprise DOT's primary methods of determining acceptability of aggregate on DOT projects.<sup>21</sup>

DOT's Aggregate Acceptance Unit within the Materials Office ensures the quality of aggregates in Florida's transportation system by approving and monitoring aggregate sources. It develops, reviews and recommends changes to DOT's policies and specifications for aggregate materials used in construction. It also conducts ongoing DOT research and evaluation of aggregate performance, base materials including new aggregate sources and recyclable waste products.<sup>22</sup>

### Effect of the Bill

The bill amends the definition of "certified for use" as it relates to aggregates by clarifying that the aggregates have been certified by the producer "in compliance with" (rather than "in accordance with") DOT rules, and the bill clarifies that the applicable DOT rules are those adopted pursuant to section 334.044(10)(d), F.S.

The bill provides that a producer may not represent that an aggregate is certified for use unless such aggregate is in compliance with DOT's rules adopted pursuant to section 334.044(10)(d), F.S.

### **Electronic Proof of Delivery for Material Delivery**

#### Current Situation

In April 2020, during the COVID-19 pandemic, DOT issued a Materials Bulletin/DCE Memorandum, prohibiting the use of paper delivery tickets for the delivery of construction materials. This document provided the following four methods that would satisfy the requirement that no paper be exchanged at the project site.

*Direct Electronic Submission* – This method would allow digital copies of electronic delivery tickets generated at the material source be to directly transmitted at the project site by electronic means. The electronic image of the delivery ticket would be the official project record.

*Electronic Image of Delivery Documents* – With this method, paper delivery tickets would be photographed by the delivery driver and provided at the job site by electronic means (e-mail or text). The electronic image would serve as proof of delivery.

*e-Ticketing (Asphalt only)* – With this method, for asphalt deliveries, an e-ticketing system that meets specified requirements may be used. The electronic version of the delivery ticket would be the official project record.

*Remote Review* – With this method, job site personnel may use a grabber tool to retrieve the paper ticket from the delivery driver, photograph the paper ticket, and return the paper ticket back to the delivery driver without handling the paper ticket. Alternatively, project personnel may photograph the ticket while the truck driver in the truck cab holds up the ticket. In these instances, the electronic image may be used at the jobsite, but the paper ticket will be the official project record.<sup>23</sup>

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<sup>20</sup> R. 14-103, F.A.C.

<sup>21</sup> R. 14-103.002, F.A.C.

<sup>22</sup> DOT, *Aggregate Acceptance*, <https://www.fdot.gov/materials/laboratory/geotechnical/aggregates/laboratory.shtm> (last visited Feb. 15, 2023).

<sup>23</sup> DOT, *Materials Bulletin No. 20-12; DCE Memorandum No. 20-14, April 8, 2020*,

[https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/materials/administration/resources/library/materialsbulletins/topics/2020/mb20-12.pdf?sfvrsn=a2813251\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/materials/administration/resources/library/materialsbulletins/topics/2020/mb20-12.pdf?sfvrsn=a2813251_2) (last visited Feb. 15,

2023).

The memorandum continues with an attachment containing what information is required on an e-ticket, including, but not limited to, project information, name and location of plant, and weight of the truck.<sup>24</sup>

### Effect of the Bill

The bill requires that, notwithstanding any law, rule, or ordinance to the contrary, a local governmental entity<sup>25</sup> must accept an electronic proof of delivery as an official record for a material delivery on the local governmental entity's transportation project.

## **Bridge Contractor Marine Liability Insurance Requirements**

### Current Situation

#### *DOT Contractor Liability Insurance Requirements*

DOT requires each contractor to indemnify and hold harmless DOT, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.<sup>26</sup>

DOT also requires each contractor to carry commercial general liability insurance that provides continuous coverage for all work and operations provided under the contract. Additional requirements exist for construction adjacent to railroad tracks and certain utility facilities.<sup>27</sup>

#### *Marine General Liability Insurance*

Since commercial general liability insurance policies exclude marine work, marine general liability insurance is designed to protect against claims of liability for bodily injury, property damage, and personal/advertising injury for those who work on or near the water. These classes include ship repairers, marina operators, charterers, stevedores, and terminal operators.<sup>28</sup>

### Effect of the Bill

The bill provides that each contract let by DOT for performance of bridge construction or maintenance over navigable waters must require marine general liability insurance, in a DOT-determined amount, which covers potential liability for third-party personal injury and property damage claims caused by vessels used by the contractor in the performance of the work.

## **Construction Cost Savings**

### Current Situation

Under Florida law, DOT is required to periodically review its construction, design, and maintenance standards to ensure that such standards are cost-effective and consistent with applicable federal regulations and state law.<sup>29</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> Section 334.03(13), F.S., defines the term "local governmental entity" to mean a unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has the responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility; the term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

<sup>26</sup> DOT Specs Book (January 2017) at Section 7-12.1, <https://www.fdot.gov/docs/default-source/programmanagement/implemented/specbooks/january2017/files/007-117.pdf> (last visited Feb. 15, 2023).

<sup>27</sup> *Id.* at Sections 7-13.2, 7-13.3, and 7-13.4.

<sup>28</sup> Kelly White and Associates Insurance, LLC, *Marine General Liability Insurance*, <https://kwhiteinsurance.com/marine-insurance/#:~:text=Marine%20General%20Liability%20protects%20against,%2C%20stevedores%2C%20and%20terminal%20operator> s. (last visited Feb. 15, 2023).

<sup>29</sup> Section 334.044(10)(b), F.S.

DOT has established a Cost Savings Initiative Program (CSI), offering contractors an opportunity to demonstrate ingenuity and innovation. A contractor may be rewarded by submitting a proposal contributing to a project's cost effectiveness. The proposal must result in savings without degrading safety, operations, maintenance, aesthetics and essential functions. Over the past 10 years, DOT has approved 214 CSI proposals resulting in more than \$47 million in project savings.<sup>30</sup> However, engineering or consultant contracts are not eligible to participate in DOT's CSI program.

### Effect of the Bill

The bill requires DOT to implement strategies to reduce the costs of all project phases including, design, construction, and inspection, while ensuring that the design and construction of projects meet applicable federal and state standards. DOT must make a record of such strategies and the projected savings.

The bill authorizes DOT to share a portion of the construction cost savings realized due to a change in a construction contract's design and scope, initiated after the execution of the contract, with a design services consultant or a construction engineering and inspection services consultant to the extent that the consultant's input and involvement contributed to such savings. The amount paid to a consultant may not exceed 10 percent of the construction cost savings realized.

## **DOT Contracting and Procurement Authority, Settlements, and Stipends**

### Current Situation

#### *Bid Settlements*

Under current law, when DOT determines that it is in the public's best interest to resolve a bid protest<sup>31</sup> related to the purchase of personal property or contractual services,<sup>32</sup> through a settlement requiring DOT to pay a nonselected responsive bidder a sum of \$1 million or more, including any amount paid relating to patents, copyrights, and trademarks,<sup>33</sup> relating to design-build stipends,<sup>34</sup> or any other law, DOT must:

- Document in a written memorandum prepared by the DOT secretary the specific reasons that such settlement and payment to a nonselected bidder is in the state's best interest. The written memorandum must be included and maintained in DOT's permanent files concerning the procurement and must include:
  - A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that DOT will acquire or retain as a result of such settlement; and
  - The specific appropriation in the existing General Appropriations Act which DOT intends to use to provide such payment.
- Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least five business days, or as soon thereafter as practicable, before DOT makes the settlement agreement final. Such written notification must include the written memorandum.
- Provide, at the time settlement discussions regarding any such payment have begun in earnest, written notification of such discussions to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General.<sup>35</sup>

#### *Design-Build Stipends*

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<sup>30</sup> DOT, *Cost Savings Initiative*, <https://www.fdot.gov/roadway/qa/default.shtm> (last visited Feb. 15 2023).

<sup>31</sup> Bid protests are handled in accordance with s. 120.57(3), F.S.

<sup>32</sup> S. 287.057, F.S.

<sup>33</sup> S. 334.049, F.S.

<sup>34</sup> S. 337.11(8), F.S.

<sup>35</sup> S. 337.1101(1), F.S.

Florida law provides that if DOT determines that it is in the public's best interest, it may pay a stipend to nonselected design-build firms that have submitted responsive proposals for construction contracts. The decision and amount of a stipend is based upon DOT analysis of the estimated proposal development costs and the anticipated degree of engineering design during the procurement process. DOT retains the right to use those designs from responsive nonselected design-build firms that accept a stipend.<sup>36</sup>

### Effect of the Bill

The bill provides that stipends paid by DOT to nonselected design-build firms that have submitted responsive proposals for construction contracts, which stipends are contained in DOT's legislatively approved work program, are not subject to existing documentation and notification requirements for stipend payments made by DOT to resolve a bid protest through a settlement. If DOT pays a stipend to settle a bid protest in an amount that triggers the requirements (\$1 million) and such amount is not contained in DOT's legislatively approved work program, DOT must continue to comply with the documentation and notification requirements.

### **Contractor Certificate of Qualification**

#### Current Situation

Florida law requires a contractor desiring to bid on any DOT construction contract in excess of \$250,000 to obtain a certificate of qualification from DOT.<sup>37</sup> Each application for a certificate of qualification must be accompanied by the contractor's latest audited annual financial statements. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date when DOT receives the application, the contractor must also submit audited interim financial statements and an updated application.<sup>38</sup>

DOT's rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. DOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.<sup>39</sup>

Part of DOT's inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating, which is the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.<sup>40</sup> According to DOT's rules, the maximum capacity rating is established by a formula, one element of which is the "ability factor."<sup>41</sup> DOT's rules require an applicant's maximum capacity rating to be reduced by the total value of their current uncompleted work, producing the applicant's "current capacity," or bidding capacity. Under the rule, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.<sup>42</sup>

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, DOT must issue the applicant a certificate, which, unless revoked by DOT for good

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<sup>36</sup> S. 337.11(8), F.S.

<sup>37</sup> S. 337.14, F.S.; r. 14-22, F.A.C.

<sup>38</sup> The interim financial statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date DOT receives the interim statement; but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the DOT within 15 days after either four-month period is considered timely. S. 337.14(1), F.S.

<sup>39</sup> R. 14-22-003(1), F.A.C.

<sup>40</sup> R. 14-22-003(1)(d) and (2), F.A.C.

<sup>41</sup> The ability factor is a performance score which a contractor receives from DOT upon completion of a project. The initial ability factor is based on the applicant's organization, management, work experience, and letters of recommendation. R. 14-22-003, F.A.C.

<sup>42</sup> R. 14-22-006(1), F.A.C.



cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as DOT prescribes. Submission of an application does not affect expiration of an existing certificate, the ability factor of the applicant, or the maximum capacity rating of the applicant.<sup>43</sup>

Under Florida law, an applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than \$1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant, instead of audited, certified financial statements. DOT may waive these requirements for projects having a contract price of \$500,000 or less if DOT determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.<sup>44</sup>

### Effect of the Bill

The bill removes existing provisions providing that submission of an application does not affect the ability factor or the maximum capacity rating of an applicant for certificate of qualification from DOT. Instead, the bill authorizes an applicant to submit a written request to DOT, along with its timely submitted application, to keep an existing certificate in place until its expiration date. If DOT approves the request, the applicant's current maximum capacity rating remains in place until expiration of the current certification. In the absence of DOT's approval and in accordance with DOT's existing rules, the current capacity rating must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.

The bill increases from \$1 million to \$2 million the proposed budget estimate amount for contracts under which an applying contractor may submit reviewed, rather than audited, annual or interim financial statements prepared by a certified public accountant. As a result, an applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of \$2 million or less may submit reviewed, rather than audited, annual or interim financial statements prepared by a certified public accountant.

## **Identities of Potential Bidders on DOT Contracts**

### Current Situation

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.<sup>45</sup>

Current law provides that a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by DOT is confidential and exempt from the public records law for the period which begins two working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of such persons more than the two working days before the deadline for obtaining bid packages, plans, or specifications remains a public record.<sup>46</sup>

### Effect of the Bill

The bill eliminates the public record exemption for documents revealing the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by DOT for the period that begins two working days before the deadline for obtaining bid packages plans, or specifications, and ends with the letting of the bid. Under the bill, such documents would be open to public inspection and copying as with any other public records.

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<sup>43</sup> S. 337.14(4), F.S.

<sup>44</sup> S. 337.14(1), F.S.

<sup>45</sup> Art. I, s. 24(c), Fla. Const.

<sup>46</sup> S. 336.168(2), F.S.

## Proposed Turnpike Projects

### Current Situation

Under Florida law, any proposed project to be constructed or acquired as part of DOT's turnpike system and any turnpike improvement must be included in DOT's tentative work program.<sup>47</sup> A proposed turnpike project may not be added to the turnpike system unless DOT determines the project is economically feasible, a statement of environmental feasibility has been completed, and such project is determined to be consistent, to the maximum extent feasible, with approved local government comprehensive plans of the local governments in which such project is located.<sup>48</sup>

DOT may authorize engineering studies, traffic studies, environmental studies, and other expert studies of the location, costs, economic feasibility, and practicality of proposed turnpike projects and may proceed with the design phase of such projects. DOT may not request legislative approval of a proposed turnpike project until the design phase of that project is at least 30 percent complete.<sup>49</sup> There is not a similar statutory requirement for non-turnpike projects.

If a proposed turnpike project or group of proposed turnpike projects is found to be economically feasible, consistent, to the maximum extent feasible, with approved local government comprehensive plans of the local governments in which such projects are located, and a favorable statement of environmental feasibility has been completed, DOT, with the approval of the Legislature must, after receiving all necessary permits, construct, maintain, and operate such turnpike projects.<sup>50</sup>

### Effect of the Bill

The bill authorizes DOT to request legislative approval of a proposed turnpike project regardless of how complete the project's design phase is.

## Workforce Development

### Current Situation

Section 334.044, F.S., authorizes DOT to provide a road and bridge construction workforce development program for construction of projects designated in the 5-Year Work Program. The program serves as a tool to address the construction labor shortage by recruiting and building a pipeline of skilled workers for multiuse infrastructure projects. For Fiscal Years 2019-2020, 2020-2021, and 2021-2022, the department was appropriated \$2.5 million to the State Transportation Trust Fund (STTF) to fund the program. Even though the dedicated program funding ended, the program remains authorized in statute and may be administered by DOT to the extent that funding resources are available.

DOT is authorized to administer workforce development contracts with consultants and non-profit entities, such as local community partners, state colleges, and technical institutions. These entities, as specified in a contract with the DOT, are deemed to have the primary purposes of providing:

- Workforce recruitment;
- Training curriculum for the DOT's road and bridge construction and corridor projects; and
- Providing support services to remove barriers to work.

### Effect of the Bill

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<sup>47</sup> DOT's tentative work program is provided for in s. 339.135(4), F.S.

<sup>48</sup> S. 338.223(1), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

The bill authorizes DOT, beginning in Fiscal Year 2023-2024 and annually thereafter for five years, to allocate existing resources to the workforce development program and to promote career paths in Florida's road and bridge industry. A minimum of \$5 million is authorized for the administration and promotion of the program.

### **Effective Date**

The bill has an effective date of July 1, 2023.

### **B. SECTION DIRECTORY:**

- Section 1.** Creates section 316.83, F.S., relating to autonomous vehicle grading standards for roads on the State Highway System.
- Section 2.** Creates section 334.066, F.S., establishing the Implementing Solutions from Transportation Research and Evaluating Emerging Technologies (I-STREET) Living Lab.
- Section 3.** Amends section 334.179, F.S., relating to DOT standards or specifications for permissible use of aggregates.
- Section 4.** Creates section 334.181, F.S., relating to electronic proof of delivery.
- Section 5.** Amends section 337.11, F.S., relating to contracting authority of DOT; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.
- Section 6.** Amends section 337.1101, F.S., relating to contracting and procurement authority of DOT; settlements; notification required.
- Section 7.** Amends section 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.
- Section 8.** Amends section 337.168, F.S., relating to confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.
- Section 9.** Amends section 338.223, F.S., relating to proposed turnpike projects.
- Section 10.** Creates 339.84, F.S., relating to workforce development.
- Section 11.** Provides an effective date of July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

DOT's costs associated with establishing autonomous vehicle grading standards for roads on the State Highway System are indeterminate, but implementation would be limited to available transportation revenues within the confines of the Work Program. DOT reports that some autonomous vehicle grading standards are already incorporated into the department's current standards for transportation projects for new roads and maintenance of existing State Highway System roads.

DOT reports that policies relating to the contractor certificate of qualification would require amending, but any costs would be negligible and absorbed within existing resources.

Any travel related costs associated with the Secretary or his or her designee participating in the I-STREET advisory board would be insignificant and absorbed within existing resources according to DOT.

In addition, the bill mandates that beginning in Fiscal Year 2023-2024, a minimum of \$5 million from existing department resources be allocated to support the costs related to implementing the workforce development program and promoting career paths in Florida's road and bridge industry.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Indeterminate. Requiring local governments to accept electronic proof of delivery for material delivery is not expected to add expense to the local government's processes.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Certain portions of the bill may result in cost savings to the private sector, while the provision requiring marine general liability insurance of bridge construction or maintenance over navigable waters may increase costs to the private sector. According to DOT, however, private vendors who bid on these projects normally include such costs in their bids, thus passing this cost back to the state. The fiscal impact of this provision is indeterminate.

The road and bridge industry may experience improved employee recruitment as a result of the workforce development program.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Rulemaking may be necessary in order to conform to changes made by the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 22, 2023, the Transportation & Modals Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from HB 425 in that it:

- Creates a statute requiring DOT to coordinate with certain entities to establish standards by which the State Highway System roads will be graded according to their compatibility with the operation of autonomous vehicles.
- Establishes in statute the I-STREET Living Lab at the University of Florida.
- Removes a provision that would have limited the amount of fuel tax revenues and motor vehicle fees that DOT may spend on public transit projects (e.g., buses and rail).
- Clarifies the provision related to the certification of construction aggregates and the prohibition against a producer falsely representing that an aggregate is certified for use by DOT.
- Clarifies the provision related to a local governmental entity's acceptance of electronic proof of delivery for a material delivery on a local governmental entity's transportation project.
- Removes provisions relating to authorizing DOT to engage in progressive design-build.
- Makes other clarifying and technical changes.

On March 9, 2023, the Infrastructure & Tourism Appropriations Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment added a provision that requires DOT to allocate annually a minimum of \$5 million from existing resources to the workforce development program and to promote career paths in Florida's road and bridge industry.

This analysis is drafted to the committee substitute as adopted by the Infrastructure & Tourism Appropriations Subcommittee.