

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/CS/SB 64

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

SUBJECT: Department of Transportation

DATE: April 26, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 64 contains various provisions relating to the Florida Department of Transportation (FDOT). The bill:

- Adds to Florida’s Move Over Law a disabled motor vehicle that is stopped and displaying warning lights or hazard lights or using emergency flares or posting emergency signage or is stopped and one or more persons are visibly present.
- Requires the FDOT to coordinate with specified entities to establish standards by which the State Highway System (SHS) roads will be graded according to their compatibility with the operation of autonomous vehicles and requires incorporation of the grading standards into standards for specified transportation projects. Revises provisions regarding airport land use compatibility zoning regulations and noise studies at airports.
- Revises the FDOT’s duty to provide a workforce development program and requires the FDOT to allocate \$5 million to the workforce development program beginning in the 2023-24 fiscal year and annually thereafter for five years, to promote career paths in this state’s road and bridge industry.
- Codifies the existing Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies Living Lab, provides its minimal duties, requires a specified annual report, and creates an advisory board.
- Revises the definition of “certified for use,” prohibits a producer from representing that an aggregate is certified for use unless such shipment is in compliance with the FDOT’s

rules, and requires a local government to accept electronic proof of delivery as an official record for a material delivery on the local governmental entity's transportation project.

- Requires each contract let by the FDOT for performance of bridge construction or maintenance over navigable waters to contain a provision requiring marine general liability insurance, in an amount determined by the FDOT, which covers third-party personal injury and property damage caused by vessels used by the contractor in the performance of the work.
- Requires the FDOT to implement strategies to reduce the cost of all project phases while ensuring the design and construction of project meet applicable federal and state standards, and to track such strategies and the projected savings to be realized therefrom.
- Authorizes the FDOT to share a portion of the construction cost savings realized due to a change in the construction contract design and scope, initiated after 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, not to exceed ten percent of the construction cost savings realized.
- Clarifies that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement.
- Revises authorization for an applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of \$2 million (rather than \$1 million) to submit reviewed (rather than audited, certified) annual or reviewed interim financial statements prepared by a certified public accountant.
- Authorizes an applicant for an FDOT contractor certificate of qualification to submit with a timely submitted application a request to keep an existing certificate, with the current maximum capacity rating, in place until the expiration date.
- Repeals a current provision of law providing temporary confidential and exempt status from public records requirements for a document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the FDOT.
- Increases the allowable height of modular news racks, including advertising thereon, from 56 inches to 105 inches, but retains the limitation on total advertising space of 56 square feet.
- Repeals a provision prohibiting the FDOT from requesting legislative approval of a proposed turnpike project until the design phase of that project is at least thirty percent complete.
- Requires increased coordination and consultation between Metropolitan Planning Organizations (MPOs); prohibits an MPO from performing project production or delivery for capital improvement projects on the SHS; revises various provisions to apply to contiguous urbanized metropolitan areas; requires certain MPOs to consider proportional representation of the area's population when selecting technical advisory committee membership; abolishes the Chairs Coordinating Committee and requires the MPOs serving specified counties to submit a feasibility report exploring possible consolidation into a single MPO serving the contiguous urbanized area, with specified goals; and revises provisions relating to the MPO Advisory Council.
- Provides Legislative findings relating to aggregate supply chain demands on the Strategic Intermodal System and the transportation network; requires funding from the State

Transportation Trust Fund (STTF) for seaport and rail line and rail facility projects that meet the public purpose of providing increased capacity and capability to move and store construction aggregate; provides project selection criteria; authorizes the FDOT to adopt rules; and repeals these provisions on July 1, 2028, unless reenacted by the Legislature.

-
- Revises multiple provisions relating to railroad special officers.

Aside from the allocation for the workforce development program and the funding to facilitate movement and storage of road construction aggregate material, the fiscal impact of the bill is indeterminate. Please see the “Fiscal Impact Statement” heading.

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:

Move Over Law (Sections 1 and 2)

Present Situation

Section 316.126(1)(b), F.S., requires drivers, as soon as it is safe, to vacate the lane closest to specified vehicles, including emergency, sanitation, utility service, wrecker, and construction vehicles performing duties on the roadside. If such movement cannot be safely accomplished, the driver must slow to a speed of 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater. A violation is a noncriminal traffic infraction punishable as a moving violation. The statutory base fine is \$60, but with additional fees and charges, the total penalty may be up to \$158.¹

The United State Government Accountability Office (GAO) studied Move Over laws in selected states in 2020, which references a 2011 study conducted by the Florida Highway Patrol and the University of Florida.² The study reportedly concluded that “[O]verall compliance with the “move over” component of the law across a variety of conditions was about 76 percent, but compliance with the requirement to slow down to 20 miles per hour below the posted speed limit when unable to move over was 5.8 percent.” The GAO study in general indicates the need for increased public education and enforcement.

¹ See *Distribution Schedule of Court-Relating Filing Fees, Service Charges, Costs and Fines*, available at [22bull098_attach_2_2022_dist.pdf \(ymaws.com\)](#), p. 57 (last visited April 24, 2023).

² [gao.gov, GAO-21-166, EMERGENCY RESPONDER SAFETY: States and DOT Are Implementing Actions To Reduce Roadside Crashes](#), page 16 (last visited April 24, 2023), citing G. Carrick and S. Washburn, “The Move Over Law: Effect of Emergency Vehicle Lighting on Driver Compliance on Florida Freeways,” *Transportation Research Record: Journal of the Transportation Research Board*, no. 2281 (2012) pp.1-7.

According to AAA, nine states have “Move Over” laws for disabled vehicles, generally requiring flashing hazard lights.³

Effect of Proposed Changes

The bill amends s. 316.126, F.S., to include in the requirements of Florida’s Move Over Law a disabled motor vehicle that is stopped and is displaying warning lights or hazard lights or is using emergency flares or posting emergency signage or is stopped and one or more person are visibly present.

The bill also reenacts s. 318.18(2)(d), F.S., relating to the amount of penalties, to incorporate the revisions to the Move Over Law.

State Highway System Grading Standards for Autonomous Vehicles (Section 3)

Present Situation

The term “autonomous vehicle” is defined in Florida law to mean any vehicle equipped with an automated driving system.⁴ An “automated driving system” is the hardware and software that are collectively capable of performing the entire dynamic driving task⁵ of an autonomous vehicle on a sustained basis, regardless of whether it is limited to a specific operational design domain.⁶ A “fully autonomous vehicle” means a vehicle equipped with an automated driving system designed to function without a human operator.⁷

These vehicles are equipped with advanced sensors, such as radar, LiDAR,⁸ or cameras, and computing abilities that perceive surroundings and activate steering, braking, and acceleration actions without operator input.⁹ All autonomous vehicles are not “fully” autonomous and may require operator input for some or all driving functions.¹⁰

³ See exchange.aaa.com, [AAA-Slow-Down-Move-Over-Chart.pdf](#) (last visited April 24, 2023). Note that while this document lists Tennessee as applying its Move Over law to disabled vehicles, a review of available news articles suggests that such is not yet the case, but legislation to add disabled vehicles is pending for 2023. See e.g., [Proposed TN bill would expand 'Move Over Law' to protect people working on disabled vehicles \(wkrn.com\)](#) (last visited April 24, 2023).

⁴ Section 316.003(3)(a), F.S.

⁵ Meaning 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. Section 316.003(3)(b), F.S.

⁶ Section 316.003(3), F.S.

⁷ Section 316.003(3)(c), F.S. All autonomous vehicles are not “fully” autonomous. For a review of six levels of driving autonomy defined by the Society of Automotive Engineers, see synopsys.com, *The 6 Levels of Vehicle Autonomy Explained*, available at [The 6 Levels of Vehicle Autonomy Explained | Synopsys Automotive](#) (last visited March 9, 2023.)

⁸ LiDAR (Light Detection and Ranging) is a ranging device that measures the distance to a target, by sending a short laser pulse and recording the time lapse between the outgoing light pulse and the detection of the reflected light pulse. See synopsys.com, *What is LiDAR*, available at [What is LiDAR and How Does it Work? | Synopsys](#) (last visited March 9, 2023).

⁹ See FDOT, [The Florida Connected Vehicle Initiative \(fdot.gov\)](#) (last visited March 9, 2023).

¹⁰ For a review of six levels of driving autonomy defined by the Society of Automotive Engineers, see synopsys.com, [The 6 Levels of Vehicle Autonomy Explained | Synopsys Automotive](#) (last visited March 9, 2023.)

Roads on the State Highway System¹¹ (SHS) are not currently categorized or graded according to their compatibility with autonomous vehicles.

Effect of Proposed Changes

The bill creates s. 316.83, F.S., requiring the FDOT to coordinate with federal, regional, and local partners, as well as industry representatives, to establish standards by which roads on the SHS must be graded according to their compatibility with the operation of autonomous vehicles. In establishing such standards, the bill requires the FDOT to 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 standards must be incorporated into the FDOT's standards for transportation projects involving the construction or new roads or maintenance of existing roads on the SHS.

Airport Noise Mitigation (Section 4)

Present Situation

Aircraft noise is considered a public nuisance and a potential public health and welfare concern, with airports and airport operations being an inherently noisy type of land use. Therefore, both federal and Florida law require the consideration of noise impacts and restriction of uses incompatible with certain levels of aircraft noise through land use planning and airport protection zoning measures.¹² Airport zoning regulations adopted by political subdivisions, as required by current law,¹³ “should enforce land use restrictions within the specific contours specified by an airport’s noise study (if completed) or within the general noise contours around an airport without a noise study.”¹⁴

The Federal Aviation Administration (FAA) regulates airports and airspace at the federal level. A Noise Compatibility Study under 14 C.F.R. part 150 is a voluntary study that airports prepare to define each airport’s five-year vision of compatibility between the airport and the surrounding communities.¹⁵

¹¹ “State Highway System” means 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. Section 334.03(24), F.S.

¹² [fdotwww.blob.core.windows.net, 2020 airport airspace - land use guidebook-\(2\).pdf \(windows.net\)](https://fdotwww.blob.core.windows.net/2020_airport_airspace_-_land_use_guidebook-(2).pdf), p. 99 (last visited April 24, 2023).

¹³ Section 333.03(2)(c) and (d), F.S.

¹⁴ *Supra* note 12 at p. 100.

¹⁵ Part 150 establishes guidelines for a program that measures current and future aircraft noise levels and their associated effects on the surrounding communities, outlines actions that will reduce or minimize aircraft noise over sensitive areas, establishes land use guidelines to address compatibility between the airport and its surrounding communities, identifies areas where aircraft noise is present and encourages land uses that are compatible, and develops a comprehensive Noise Compatibility Program for the airport. *See* National Academy of Sciences, Transportation Research Board, *Consider a Part 150 Study*, available at [Consider a Part 150 Study – Aligning Community Expectations with Airport Roles \(trb.org\)](https://www.trb.org/publications/2015/consider-a-part-150-study) (last visited April 24, 2023).

An airport's Part 150 Study includes Noise Exposure Maps defining the existing and future aircraft noise exposure boundaries surrounding the airport and a Noise Compatibility Plan identifying mitigation measures that could correct surrounding non-compatible land uses.¹⁶ Although noise studies are not normally required, a Part 150 Study may be required for some airport projects. For example, a Part 150 Study is required for FAA-authorized federal funding to mitigate aircraft noise impacts to the surrounding community. Federal funds may be available to conduct the study and to implement recommended noise mitigation measures.¹⁷

When a noise study is conducted outside of Part 150, airports have some leeway regarding the study's scope and detail. The study may be tailored to an airport's and community's needs and may help create a dialogue between the airport and the surrounding community. However, federal funds are not available to conduct the study or to implement study recommendations.¹⁸

Florida law requires political subdivisions to adopt, administer, and enforce airport land use compatibility zoning regulations that, at a minimum, address a list of items.¹⁹ Relevant to the bill, when an airport authority or other governing body operating a public-use airport has conducted a Part 150 noise study, or where a public-use airport owner has established noise contours pursuant to another public study approved by the FAA, the zoning regulations must address the prohibition of incompatible uses, as established in the study, except if such uses are specifically contemplated by such study with appropriate mitigation described in the study.²⁰

When an airport authority or other governing body operating a public-use airport has not conducted a noise study, the zoning regulations must address the prohibition of residential construction and any educational facility,²¹ except aviation school facilities, within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.²²

Effect of Proposed Changes

The bill amends s. 333.03(2), F.S., requiring that airport land use compatibility zoning regulations *consider* (rather than address), the following:

- Where an airport authority or other governing body operating a public-use airport has conducted a Part 150 noise study, or where a public-use airport owner has established noise contours pursuant to another FAA-*accepted* (rather than approved) public study, the mitigation, (rather than prohibition) of incompatible uses, as established in the Part 150 noise study or as a part of an alternative FAA-*accepted* public study, within the noise contours established by any of these studies, except if such uses are specifically contemplated by such study with appropriate mitigation or similar techniques described in the study.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 333.03(2), F.S.

²⁰ Section 333.03(2)(c), F.S.

²¹ Section 333.01(10), F.S., defines the term "educational facility" to mean any structure, land, or use that includes a public or private kindergarten through 12th grade school, charter school, magnet school, college campus, or university campus. The term does not include space used for educational purposes within a multitenant building.

²² Section 333.03(2)(d), F.S.

- Where an airport authority or other governing body operating a public-use airport has not conducted a noise study, the *mitigation* (rather than the prohibition of *potential incompatible uses associated with* residential construction and any educational facility, with the exception of aviation school facilities, within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

FDOT Workforce Development Program and Funding (Sections 5 and 17)

Present Situation

Section 334.044(35), F.S., currently requires the FDOT to provide a road and bridge construction workforce development program, in consultation with affected stakeholders, for construction of projects designated in the FDOT’s work program.

Slowing of highway and bridge construction projects due to qualified skilled labor shortages is a commonly recognized issue nationwide and in Florida.²³ The FDOT’s Statewide Workforce Development Program “works with community partners to identify and connect qualified workers with contractors for gainful employment on roadway construction projects. The program is working throughout the state to provide opportunities – for both experienced and entry-level workers – to build successful careers to improve lives.”²⁴

The program maintains a website that allows registration of current positions, provides resources for employers and job seekers to help connect potential employees and road builders, and provides student programs to “tee up tomorrow’s talent for building our state’s roads.”²⁵ A number of “Pathways to Success Videos” provide information on specific jobs, such as asphalt raker, heavy road equipment operator, and project manager.²⁶

In 2019, the Legislature directed the FDOT to merge any of its existing workforce services into a “robust” workforce development program and allocated \$2.5 million of redirected motor vehicle license tax revenues for each of the 2019-20, 2020-21, and 2021-22 fiscal years to the program.²⁷ In 2021, the last year of funding for the program was repealed.²⁸ However, the FDOT’s authorization for a workforce development program was not repealed, and the FDOT remains authorized to administer the program to the extent that funding resources are available.²⁹

²³ See, e.g., tampabay.com, [Florida construction projects slowed by worker shortage. Problem could get worse. \(tampabay.com\)](#), and floridaconstructionnews.com, [Construction industry faces workforce shortage of 650,000 in 2022: ABC / Florida Construction News](#) (last visited March 9, 2023).

²⁴ See floridaroadjobs.com, [Florida’s Statewide Workforce Development Program Home Page / Statewide Workforce Development \(floridaroadjobs.com\)](#) (last visited March 9, 2023).

²⁵ See floridaroadjobs.com, [Student Programs / Statewide Workforce Development \(floridaroadjobs.com\)](#) (last visited March 9, 2023).

²⁶ See floridaroadjobs.com, [Resources / Statewide Workforce Development \(floridaroadjobs.com\)](#) (last visited March 9, 2023).

²⁷ Ch. 2019-43, L.O.F.

²⁸ Ch. 2021-161, L.O.F.

²⁹ Section 334.044(35), F.S.

Effect of Proposed Changes

The bill amends s. 334.044(35), F.S., removing specific reference to providing a “road and bridge” construction workforce development program. The bill requires the FDOT to provide a construction work force development program, in consultation with affected stakeholders, for *delivery* (rather than construction) of projects in the FDOT’s work program.

The bill also creates section 339.84, F.S. Beginning in the 2023-24 fiscal year and annually thereafter for five years, the bill requires allocation of \$5 million from the STTF to provide a road and bridge construction workforce development program and to promote rewarding career paths in Florida’s road and bridge construction industry.

Implementing Solutions from Transportation Research and Evaluating Emerging Technologies (I-STREET) Living Lab (Section 6)

Present Situation

Various centers and institutes within the State University System are codified in Florida law, including the Florida Industrial and Phosphate Research Institute at Florida Polytechnic University,³⁰ the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida,³¹ the Louis de la Parte Florida Mental Health Institute at the University of South Florida,³² the Florida Institute for Child Welfare at Florida State University,³³ and the Center for Urban Transportation Research (CUTR) at the University of South Florida (USF).³⁴

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.³⁵

CUTR serves as a continuing resource for the Legislature, the FDOT, 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 to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.³⁶

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 the FDOT, the

³⁰ Section 1004.346, F.S.

³¹ Section 1004.43, F.S.

³² Section 1004.44, F.S.

³³ Section 1004.615, F.S.

³⁴ Section 334.065, F.S.

³⁵ Section 334.065(1), F.S.

³⁶ Section 334.065(2), F.S.

Department of Environmental Protection, and the Department of Economic Opportunity, or their designees, and a member of the Florida Transportation Commission.³⁷ The remaining five 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.³⁸

Similar in its transportation focus, but not codified, is the University of Florida's (UF's) I-STREET Living Lab. I-STREET, the FDOT, the City of Gainesville, and others have partnered to advance the I-STREET's principal objective, which is to make significant improvements to transportation safety and mobility, using a real-world testbed environment on and surrounding the UF campus in the context of expanding, diverse technology installed on Florida segments of the Interstate Highway System. According to the FDOT:

I-STREET is designed to assist in implementing emerging technologies aimed at safety and mobility improvements. The FDOT will develop requests for proposals (RFPs) utilizing the emerging technologies and will select vendors through a competitive bidding process. The selected vendor for each project will deploy technology solutions. The University of Florida will conduct before-and-after evaluations of implemented projects. After evaluation, the FDOT will consider whether to expand the successful I-STREET projects elsewhere in the state.

The FDOT has allocated funding for these innovative projects per fiscal year (FY) from FY 21 until FY 25. Each FY, the FDOT will fund multiple projects based on the projects' merits and safety and mobility improvement potential. The number of awards will vary depending on the project type and scope.³⁹

Effect of Proposed Changes

The bill creates s. 334.066, F.S., codifying the I-STREET Living Lab and providing I-STREET's minimum duties, which are to:

- Conduct and facilitate research on issues related to innovative transportation mobility and safety technology development and deployment in this state 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, the FDOT, 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.

³⁷ See Florida Transportation Commission, *About Us*, available at <http://www.ftc.state.fl.us/aboutus.shtm> (last visited March 9, 2023). See also s. 20.23(2), F.S.

³⁸ Section 334.065(3), F.S.

³⁹ FDOT, *UF I-Street*, available at [UF I-STREET \(fdot.gov\)](https://fdot.gov/uf-i-street) (last visited January 14, 2020). For a listing of completed and active projects and a map, see UF, *I-STREET Projects*, available at [I-STREET Projects - I-STREET \(ufl.edu\)](https://uf.edu/i-street-projects) (last visited March 9, 2023).

- 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 and Material Deliveries (Sections 7 and 8)

Present Situation

The FDOT is currently authorized to adopt rules relating to approval of aggregate⁴⁰ and other material sources.⁴¹ Pursuant to that authorization, the FDOT has adopted rules relating to construction aggregates,⁴² setting out a standardized method for producers of construction aggregates to apply for, receive, and maintain FDOT approval of construction aggregate sources for use on FDOT projects. The FDOT's primary methods of determining acceptability of aggregate are source and product approval, and maintenance of an on-going quality control program as monitored by the FDOT.⁴³

Under the rule, a quality control program requires *producers* of construction materials to:

- Be responsible for their products;
- Establish, maintain, and implement their own individualized process control system; and
- Certify to the FDOT compliance of their product with the applicable standards and contract specifications.⁴⁴

⁴⁰ Generally speaking, aggregate materials are mined resources that provide the basic material for concrete, asphalt, and road base. Rule 14-103.003(3), F.A.C., defines the term "aggregate" to mean a granular construction material such as sand, limerock, limestone, gravel, shell, slag, and crushed stone; manufactured materials such as shales, slates, and clays; and recycled material such as crushed concrete used as specified, or for other construction materials and uses not yet developed, but which may have potential usage by the FDOT.

⁴¹ Section 334.044(10)(d), F.S. The FDOT may enter into agreements with private or public entities that will provide reliable and economic supplies of construction aggregate materials and control time and cost increases on construction projects. Section 337.026, F.S.

⁴² Rule Chapter 14-103, F.A.C. Section 334.179, F.S., prohibits local governments from adopting standards or specifications that are in conflict with the FDOT's standards or specifications for permissible use of aggregates that have been certified for use.

⁴³ Rule 14-103.002(1), F.A.C.

⁴⁴ Rule 14-103.002(2), F.A.C.

Approval of a source and implementation of a quality assurance program by the FDOT does not relieve the producer of responsibility for compliance with the producer's quality control program, nor of shipping aggregate that meet specifications.⁴⁵ Contractors must transport and handle aggregate in a manner that precludes significant variation in the properties of the aggregate, and the rule recites the FDOT's reservation of the right to test all aggregate at the point of use or at the project site to determine acceptability for use according to contract specifications.⁴⁶

Under the FDOT's rules, to "certify" means that the producer affixes the statement "CERTIFIED FOR FDOT" or "CERT. FOR FDOT" to a shipping ticket to attest that the subject aggregate shipment was produced and shipped under an FDOT-approved quality control program and for which quality control tests indicate that the subject aggregate meets the FDOT's specifications and quality and uniformity requirements.⁴⁷ Certification must be made at the time of shipment when the weight of material is recorded on the shipping ticket.⁴⁸

According to the Federal Highway Administration (FHWA), "massive amounts of valuable data" are produced by highway construction projects and, historically, such information was communicated via paper. The sole use of paper tickets, such as aggregate shipping tickets collected from truck drivers documenting the weight of every load of materials delivered to a project site "is cumbersome, inefficient, and outdated."⁴⁹ Electronic ticketing, known as "e-Ticketing" in the industry, "is a market-ready digital innovation that automates the recording and transfer of information in real time for materials as they are moved from the plant to the job site."⁵⁰

The FTBA advises that a small number of local governments are refusing to accept electronic shipping tickets and are continuing to require paper shipping tickets.⁵¹

Effect of Proposed Changes

The bill amends s. 334.179, F.S., to redefine the term "certified for use," providing that the term means that the aggregates have been certified by the producer in compliance with the FDOT's rules adopted pursuant to s. 334.044(10)(d), F.S. This appears to be a restatement of current law, as aggregate shipments must be certified by a producer in accordance with Rule Chapter 14-103, F.A.C., the FDOT's legislatively authorized rule.

⁴⁵ Rule 14-103.002(3), F.A.C.

⁴⁶ *Id.*

⁴⁷ Rule 14-103.003(5), F.A.C. Section 334.179, F.S., defines the term "certified for use" as meaning the aggregates have been certified by the producer in accordance with FDOT rules.

⁴⁸ Rule 14-103.004(5)(e), F.A.C. A different process is used for direct shipment from a mine through a redistribution terminal (a physical operation at a fixed location, not including the point of production, where aggregates are received from one or more approved sources, recombined from discrete haul units into common storage units, then redistributed for resale to more than one point of use). See Rule 14-103.004(5)(g), F.A.C. However, shipping tickets are also required, and a given shipping ticket must reference the producer's ticket number (bill of lading) from the mine.

⁴⁹ See [highways.dot.gov, e-Ticketing Implementation Plan](https://highways.dot.gov/e-Ticketing-Implementation-Plan), December 2021, available at [FHWA-HRT-22-045: e-Ticketing Implementation Plan \(dot.gov\)](https://www.fhwa.gov/e-Ticketing-Implementation-Plan), at p. 3. (last visited February 2, 2023).

⁵⁰ *Id.*

⁵¹ Conversation with the FTBA December 20, 2022. The FDOT's Standard Specifications for Road and Bridge Construction FY 2023-24 authorize its contractors to use either a paper ticketing system or an electric ticketing (E-ticketing) system. See 320-3.2.1, p. 273 of 1299, available at [fy2023-24ebook.pdf \(windows.net\)](https://www.fdot.com/fy2023-24ebook.pdf) (last visited February 15, 2023).

In addition, the bill prohibits a producer from representing that an aggregate is certified for use unless such aggregate is in compliance with FDOT rules adopted pursuant to s. 334.044(10), F.S., which is again the same rule chapter.

The bill also creates s. 334.181, F.S., providing that a local governmental entity must accept an electronic proof of delivery as an official record for a material delivery on the local governmental entity's transportation projects, notwithstanding any law, rule, or ordinance to the contrary.

FDOT Contractor Insurance Requirements (Section 9)

Present Situation

Each contract let by the FDOT requires the contractor to indemnify and hold harmless the FDOT, its officers, and employees from any 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 used by the contractor in performance of the construction contract.⁵² The FDOT's contractors are also required to carry commercial general liability insurance, with limits not less than \$1 million for each occurrence and not less than a \$5 million annual general aggregate, with additional requirements for construction adjacent to railroad tracks and certain utility facilities.⁵³

In September of 2020, during the high winds and seas of Hurricane Sally, the Pensacola Bay Bridge suffered severe damage after multiple barges used by the FDOT's contractor in the bridge's construction broke free of their moorings and struck the bridge.⁵⁴ The FDOT closed the bridge to all traffic until May of 2021.⁵⁵ Claims were filed by businesses, homeowners, governments, and others claiming direct loss.

The contractor, citing the federal Limitation of Liability Act of 1851 (the Act),⁵⁶ sought to limit its liability to the value of the barges that actually caused damage to the bridge (approximately \$1.43 million).⁵⁷ A federal court judge subsequently ruled that the contractor was negligent in its

⁵² FDOT, *Standard Specifications for Road and Bridge Construction, FY 2023-24*, Section 7-12.1, available at [fy2023-24ebook.pdf \(windows.net\)](#) (last visited February 1, 2023).

⁵³ *Id.* at 7-13.2, 7-13.3, and 7-13.4.

⁵⁴ See FDOT, *Pensacola Bay Bridge Updates and FAQ*, available at [Pensacola Bay Bridge FAQ \(fdot.gov\)](#), for additional details (last visited February 1, 2023).

⁵⁵ Pensacola New Journal, *Pensacola Bay Bridge finally open after 8-month closure; drivers can expect some delays*, Kennedy, E., May 28, 2021, available at [Pensacola Bay Bridge reopened after Skanska barges damaged during hurricane \(pnj.com\)](#) (last visited February 1, 2023).

⁵⁶ 46 U.S.C. s. 30501, et. seq. Generally, the Act applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats and barges. 46 U.S.C. s. 30502. Under the Act, the liability of the owner of a vessel for specified claims, debts, or liabilities may not exceed the value of the vessel and pending freight. 46 U.S.C. s. 30505(a).

⁵⁷ Construction Dive, *Skanska wins key ruling in Pensacola bridge case*, Bousquin, J., August 3, 2021, available at [Skanska wins key ruling in Pensacola bridge case | Construction Dive](#) (last visited February 1, 2023).

preparations ahead of Hurricane Sally⁵⁸ and was not entitled to the limitation of liability contained in the Act.⁵⁹

Effect of Proposed Changes

The bill creates s. 337.11(15), F.S., requiring each contract let by the FDOT for performance of bridge construction or maintenance over navigable waters to contain a provision requiring marine general liability insurance, in an amount determined by the FDOT, that covers third-party personal injury and property damage caused by vessels used by the contractor in the performance of the work.

Project Cost-Reduction Strategies and Cost Savings Sharing (Section 9)

Present Situation

The FDOT 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.⁶⁰

The FDOT's Cost Savings Initiative (CSI) is a program that allows contractors to submit proposals that contribute to the cost effectiveness of a given transportation construction project. The CSI Program "provides a method for the Contractor to propose changes in the contract requirements which will accomplish the project's functional requirements, while reducing the project cost, increasing cost effectiveness or significantly improving the project quality without degrading performance, maintainability, or safety. Any proposal submitted that reduces the project cost without substantially changing the work and that was not otherwise provided for in the contract documents should be considered as a CSI Proposal."⁶¹

The FDOT has an extensive process for evaluating submitted CSI proposals.⁶² A contractor's CSI submittal must identify the proposal as a CSI submittal, and a mandatory CSI workshop must be held prior to the beginning of the contract time.⁶³ The submittal must include a number of items (a description, separate detailed cost estimates, revised plans, a date by which a decision is needed, and a revised project schedule). A submittal must also include an engineering analysis of the proposed change in the contract requirements.

According to the FDOT's Standard Specifications for Road and Bridge Construction, "If the Department approves a Proposal, the Contractor shall receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the

⁵⁸ NorthEscambia.com, *Skanska Loses Federal Lawsuit Over Hurricane Sally Barge Damage*, December 29, 2021, available at [Skanska Loses Federal Lawsuit Over Hurricane Sally Barge Damage: NorthEscambia.com](https://www.northescambia.com/news/skanska-loses-federal-lawsuit-over-hurricane-sally-barge-damage) (last visited February 1, 2023).

⁵⁹ Pensacola News Journal, *Skanska loses Hurricane Sally trial. Judge finds company negligent for failing to prepared*, Kennedy, E., December 29, 2021, available at [Skanska trial: Judge sides with claimants in Hurricane Sally case \(pnj.com\)](https://www.pnj.com/story/news/2021/12/29/skanska-loses-hurricane-sally-trial-judge-finds-company-negligent-for-failing-to-prepare/8111111002/) (last visited February 1, 2023).

⁶⁰ Section 334.044(10)(b), F.S.

⁶¹ FDOT CSI Procedure 625-030-0050, available at [Cost Savings Initiative \(CSI\) \(fdot.gov\)](https://www.fdot.gov/csi/) (last visited January 9, 2023).

⁶² *Id.* See also Specification 4-3.9, *FDOT Standard Specifications for Road and Bridge Construction FY 2023-24*, available at [fy2023-24ebook.pdf \(windows.net\)](https://www.fdot.gov/csi/) (last visited January 9, 2023).

⁶³ See the FDOT CSI Presentation, *Cost Savings Initiatives*, p. 14, available at [Heading 2 \(windows.net\)](https://www.fdot.gov/csi/) (last visited March 9, 2023).

contractor and the Department. The net reduction will be determined by subtracting from the savings of the construction costs the reasonable documented engineering costs incurred by the contractor to design and develop a Proposal.”⁶⁴ Under the specification, “The total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and shall not include any markup by the Contractor or the costs for engineering services performed by the Contractor.”⁶⁵

As an example of the net reduction calculation, if the total construction cost savings is \$100,000 and the documented engineering costs are \$10,000, the net reduction equals \$90,000. The contract for an approved CSI Proposal would be reduced by 50% of the net reduction (\$45,000).

The FTBA advises that under the CSI Program, even if a submitted proposal from a contractor is based on an idea presented to the contractor by a design consultant or a construction engineering and inspection services consultant, the consultant does not receive a share of the cost savings.⁶⁶

Effect of Proposed Changes

The bill creates s. 337.11(16), F.S., requiring the FDOT to implement strategies to reduce the cost of all project phases, including design, construction, and inspection,⁶⁷ while ensuring that the design and construction of projects meet applicable federal and state standards. The bill also requires the FDOT to track such strategies, as well as the projected savings to be realized from such strategies.

The bill creates s. 337.11(17), F.S., authorizing the FDOT to share a portion of the construction cost savings realized due to a change in the construction contract design and scope, initiated after execution of the contract, with a design services consultant or a construction engineering and inspection services consultant in accordance with the extent that the consultant’s input and involvement contributed to such savings. The amount paid may not exceed ten percent of the construction cost savings realized. This revision may incentivize the identified consultants (as opposed to contractors under the FDOT’s CSI Program) to propose and share in cost savings to be realized during the course of an FDOT construction contract.

FDOT Contracting and Procurement Authority/Settlements and Stipends (Section 10)

Present Situation

When the FDOT determines that doing so is in the best interest of the public and intends, *through a settlement*, to pay a non-selected responsive bidder a total sum of \$1 million or more, including any amount paid pursuant to s. 334.049, F.S. (patents, copyrights, trademarks, and trade secrets), s. 337.11(8), F.S. (stipends to non-selected, responsive design-build firms), or any other law, current law requires the FDOT to:⁶⁸

⁶⁴ *Supra* note 31, Specification 4-3.9.7.

⁶⁵ *Id.*

⁶⁶ Telephone conversation with the FTBA, January 9, 2023.

⁶⁷ “Inspection” refers to “construction, engineering, and inspection services,” which include the activities required to review and inspect highway and bridge construction performed by a construction contractor. See FDOT, Construction, Engineering & Inspections, available at [Construction, Engineering & Inspections \(fdot.gov\)](https://www.fdot.gov/construction-engineering-inspections) (last visited January 9, 2023).

⁶⁸ Section 337.1101(1), F.S.

- Document in a written memorandum by the FDOT secretary the specific reasons that such settlement and payment to a non-selected responsive bidder is in the best interest of the state. The written memorandum must be included and maintained in the permanent procurement files of the FDOT and must include:
 - A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that the department will acquire or retain as a result of such settlement; and
 - The specific appropriation in the existing General Appropriations Act which the department 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 5 business days, or as soon thereafter as practicable, before the FDOT makes the settlement agreement final. Such written notification must include the written memorandum described above.
- Provide written notification of such discussions to the same individuals at the time settlement discussions regarding any such payment have begun in earnest.

The FDOT is separately authorized, when the FDOT determines that doing so is in the best interest of the public, to pay a stipend to non-selected design-build firms that have submitted responsive proposals to the FDOT for construction contracts.⁶⁹ These projects are included in the FDOT's legislatively approved work program. The decision and amount of a stipend must be based on the FDOT's analysis of the estimated proposal development costs and the anticipated degree of engineering design during the procurement process. The FDOT retains the right to use the designs in the proposals from responsive non-selected design-build firms that accept a stipend.

A review of the FDOT's Work Program Instructions suggests that the amount of a stipend to be paid is noted in the request for proposals for a design-build project. The FDOT enters into a stipend agreement with each firm after the proposals are "shortlisted,"⁷⁰ and each agreement states that the firm that receives the project contract award will not get the stipend. The non-selected firms then submit an invoice within two weeks after the project contract is executed and are paid the stipend amount noted in the request for proposals.⁷¹

While the FDOT might settle a bid protest through payment of a stipend, in contrast to any amounts paid by the FDOT that would trigger the documentation and notice requirements *for a settlement*, stipends paid by the FDOT pursuant to its separate authority are authorized payments arrived at by contract *during the procurement process*.

Effect of Proposed Changes

The bill amends s. 337.1101(1), F.S., to clarify that stipends paid by the FDOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in the FDOT's legislatively approved work program are not subject to existing documentation

⁶⁹ Section 337.11(8), F.S.

⁷⁰ A "shortlist" is a list of selected candidates from which a final choice is to be made.

⁷¹ See FDOT, *Work Program Instructions FY 23/24 – 27/28*, p. 378 of 861, available at [WorkProgramInstructions.pdf \(state.fl.us\)](https://www.fl.gov/work-program-instructions) (last visited February 1, 2023).

and notification requirements for stipend payments made by the FDOT to resolve a bid protest through a settlement. If the FDOT pays a stipend to *settle* a bid protest in an amount that triggers the requirements, the FDOT must continue to comply with the documentation and notification requirements.

Contractor Certificates of Qualification (Section 11)

Present Situation

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of \$250,000 to first be certified by the FDOT as qualified pursuant to s. 337.14, F.S., and the FDOT's rules.⁷² When applying to the FDOT, each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which the FDOT receives the application, the contractor must also submit an interim financial statement and an updated application.⁷³ Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant (CPA). However, an applying contractor who desires 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 CPA.⁷⁴

The FDOT'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. In so doing, the FDOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.⁷⁵

Part of the latter inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating (MCR), which is defined as 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.⁷⁶ According to the FDOT's rules, the MCR is established by a formula, one element of which is the "ability factor." The FDOT'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.⁷⁷

⁷² Rule Chapter 14-22, F.A.C.

⁷³ The interim 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 the FDOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the FDOT within 15 days after either four-month period is considered timely.

⁷⁴ A reviewed annual or reviewed interim financial statement is less expensive than an audited, certified annual or interim financial statement.

⁷⁵ Rule 14-22.003(1), F.A.C.

⁷⁶ Rule 14.22-003(1)(d) and (2), F.A.C.

⁷⁷ Rule 14-22.006(1), F.A.C.

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, the FDOT must issue the applicant a certificate, which, unless revoked by the FDOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as the FDOT prescribes. Submission of an application does not affect expiration of the certificate and, as of July 1, 2021, does not affect the ability factor of the applicant or the maximum capacity rating of the applicant.⁷⁸

The FTBA indicated the FDOT requested revision of the current language to address overlapping certificates of qualification and any changes in the amount of new work that a firm can bid, due to a revised maximum capacity rating. As an example, the FTBA described a potential situation in which a firm is allowed to bid on a \$1 million contract under its existing certificate of qualification and then is later found nonresponsive when a new certificate is issued to the firm during the time leading up to the submission of a bid, due to a revised (lower) capacity rating.⁷⁹

Effect of Proposed Changes

The bill amends s. 337.14(1), F.S., to increase from \$1 million to \$2 million the proposed budget estimate amount for triggering authorization of an applying contractor to submit reviewed annual or reviewed interim financial statements prepared by a CPA, instead of audited, certified statements. An applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of \$2 million or less may submit reviewed annual or reviewed interim financial statements prepared by a CPA.

The bill also amends the current provision in s. 337.14(4), F.S., that submission of an application does not affect the ability factor or the maximum capacity rating of an applicant for an FDOT certificate of qualification. Instead, the bill authorizes an applicant to submit a written request to the FDOT with a timely submitted application to keep an existing certificate in place until its expiration date. If the FDOT approves the request, the applicant's current maximum capacity rating must remain in place until expiration of the current certification. In the absence of the FDOT's approval and in accordance with the FDOT's existing rules, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.

Public Records Exemption/Confidentiality of Bidders (Section 12)

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

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

⁷⁸ Section 337.14(4), F.S. See s. 10, ch. 2021-188, Laws of Fla., which added the ability factor and MCR as items not being affected by the submission of an application.

⁷⁹ See FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).

Section 337.168(2), F.S., currently provides that a document⁸⁰ revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1), F.S., for the period which begins two working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity before the two working days before the deadline for obtaining bid packages, plans, or specifications remains a public record.

According to the FDOT's analysis and information provided on the same language proposed during the 2022 Session, the FDOT maintains a website that lists the identity of those who have requested or obtained bid packages for a given project. The lists contain for each person a vendor identification number, an indication of the name of the entity that ordered the documents, and a shipping address and phone number for each. The lists did not appear to contain any information which would be exempt under any other provisions of law. The FDOT advised the lists are published daily, except for during the two-day confidential period defined in current law, and a comprehensive list is then published after the letting occurs.⁸¹

The issue appears to relate to small contractors, who use the identities of potential bidders for the purpose of submitting sub-contract bids to general contractors for their use in preparing bids for FDOT projects.⁸²

Effect of Proposed Changes

The bill amends s. 337.168(2), F.S., to repeal the temporary public records exemption for a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by the FDOT. According to the FTBA, this revision provides full transparency as to the identity of potential bidders during the entire procurement process.⁸³

Modular News Racks/Advertising (Section 13)

Present Situation

Section 337.408, F.S., provides for the regulation of bus stops, benches, transit shelters, street light poles, waste disposal receptacles, and modular news racks within rights-of way. Specifically, s. 337.408(3), F.S., provides that modular news racks, including advertising thereon, may be located within the right-of-way limits of any municipal, county, or state road, except a limited access highway, provided the municipal government within whose incorporated limits such racks are installed or the county government within whose unincorporated limits such

⁸⁰ The FDOT advised that many documents submitted by contractors contain both exempt and non-exempt information. Telephone conversation between FDOT staff and Senate Transportation Committee staff, November 24, 2021. In accordance with s. 119.07(1)(d), F.S., the FDOT would be required to redact any information contained in a document that reveals the identity of persons who have requested or obtained bid packages if the information is exempt under any other provision of law.

⁸¹ See FDOT email to Transportation Committee staff, November 24, 2021 (on file in the Senate Transportation Committee).

⁸² Telephone conversation between FDOT staff and Senate Transportation Committee staff, November 24, 2021.

⁸³ See FTBA email to Transportation Committee staff, November 30, 2021 (on file in the Senate Transportation Committee).

racks are installed has passed an ordinance regulating the placement of modular news racks within the right-of-way and has authorized a qualified private supplier of modular news racks to provide such service. The modular news rack or advertising thereon may not exceed a height of 56 inches or a total advertising space of 56 square feet. No later than 45 days prior installing modular news racks, the private supplier must provide a map of proposed locations and typical installation plans to DOT for approval. If DOT does not respond within 45 days after receiving the submitted plans, installation may proceed.

Section 479.16(13), F.S., exempts signs placed on benches, transit shelters, modular news racks, street light poles, public pay telephones, and waste receptacles, within the right-of-way, as provided in s. [337.408](#), F.S., from the provisions of Chapter 479, F.S., which regulate outdoor advertising signs.

Effect of Proposed Changes

The bill amends s. 337.408, F.S., to increase the allowable size of a modular news rack or advertising thereon from 56 to 105 inches, but retains the overall total advertising space of 56 square feet.

Legislative Approval of a Proposed Turnpike Project (Section 14)

Present Situation

The Florida Turnpike Enterprise (FTE) within the FDOT is empowered to plan, construct, maintain, repair, and operate the Florida Turnpike System. The FTE's powers are in addition to those of the FDOT.⁸⁴ The FTE is a single budget entity that develops its own budget, submitted to the Legislature along with the FDOT's.⁸⁵ The turnpike system currently includes the mainline from Central Florida to Miami, as well as the Homestead Extension, and the First Coast Expressway, the Seminole Expressway, the Beachline West and Beachline East Expressways, the Southern Connector Extension, the Sawgrass Expressway, the Suncoast Parkway, the Daniel Webster Western Beltway, the Veterans Expressway, the I-4 Connector, and the Polk Parkway.⁸⁶

A proposed turnpike project may not be added to the turnpike system unless the project is determined to be economically feasible, a statement of environmental feasibility is completed for the project, and such project is determined to be consistent with approved local comprehensive plans of the local governments in which the project is located, to the maximum extent feasible.⁸⁷

“Economically feasible” for a proposed turnpike project means that, as determined by the FDOT before issuance of revenue bonds for the project, the estimated net revenues of the project, excluding feeder roads⁸⁸ and turnpike improvements, will be sufficient to pay at least 50 percent of the annual debt service on the bonds by the end of the 12th year of operation and to pay at

⁸⁴ Section 338.2216(1)(a), F.S.

⁸⁵ Section 338.2216(3)(a), F.S.

⁸⁶ For a map of the turnpike system, *see* Florida's Turnpike System Maps, available at [Florida's Turnpike System Maps – Florida's Turnpike \(floridasturnpike.com\)](#) (last visited February 3, 2023).

⁸⁷ Section 338.223(1)(a), F.S.

⁸⁸ A “feeder road” is defined as any road no more than five miles in length, connecting to the turnpike system which the FDOT determines is necessary to create or facilitate access to a turnpike project. Section 338.221(3), F.S.

least 100 percent of the debt service on the bonds by the end of the 30th year of operation. Up to 50 percent of the adopted work program costs of the project may be funded from turnpike revenues.⁸⁹ The required statement of *environmental* feasibility is a statement by the Department of Environmental Protection of the project's significant environmental impacts,⁹⁰ and that review must occur prior to requesting legislative approval of a proposed turnpike project.⁹¹

If a proposed project is economically feasible, consistent to the maximum extent feasible with the applicable local comprehensive plans, and a favorable statement of environmental feasibility is completed, the FDOT, with the approval of the Legislature, is directed to construct, maintain, and operate the project.

The FDOT 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.⁹² However, the FDOT may not request legislative approval of a proposed project (by including the project in the FDOT's annual request for legislative approval of its budget) until the design phase of the project is at least thirty percent complete.⁹³

Research reveals that this limitation on requesting legislative approval applies only to a proposed turnpike project. The limitation does not apply to other FDOT projects. The FTBA suggests the limitation is overly restrictive and could cause project delays.⁹⁴

Effect of Proposed Changes

The bill amends s. 338.223(1)(a), F.S., to remove the prohibition against the FDOT requesting legislative approval of a proposed turnpike project until the design phase of that project is at least thirty percent complete. A proposed turnpike project must continue to be economically feasible, a statement of environmental feasibility must still be completed for the project before requesting legislative approval, and such project must still be determined to be consistent with approved local comprehensive plans of the local governments in which the project is located, to the maximum extent feasible.

Metropolitan Planning Organizations (Section 15)

MPO Designation

⁸⁹ Sections 338.223(1)(a) and 338.221(8)(a), F.S.

⁹⁰ Section 338.221(10), F.S.

⁹¹ Section 338.223(1)(c), F.S.

⁹² Section 338.223(1)(a), F.S.

⁹³ *Id.*

⁹⁴ Telephone conversation with the FTBA, January 31, 2023.

Present Situation

Federal law and regulations give significant responsibility for transportation planning to metropolitan planning organizations (MPOs),⁹⁵ in coordination with the FDOT and others. To carry out the MPO planning process, federal⁹⁶ and state⁹⁷ law require an MPO to be designated for each urbanized area⁹⁸ 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.⁹⁹

To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous areas.¹⁰⁰ Under both federal¹⁰¹ and state law,¹⁰² 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,¹⁰³ 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 area¹⁰⁴ or the consolidated metropolitan statistical area.¹⁰⁵ In those cases where two or more MPOs serve the same urbanized area, the MPOs shall establish official, written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among the MPOs.¹⁰⁶

⁹⁵ 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.

⁹⁶ 23 U.S.C. § 134.

⁹⁷ Section 339.175, F.S.

⁹⁸ 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). 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 \(govinfo.gov\)](https://www.govinfo.gov) (last visited April 5, 2022).

⁹⁹ Florida law generally mirrors federal law with respect to MPO designation, as well as other provisions relating to MPOs.

¹⁰⁰ Section 339.175(2)(a)2., F.S.

¹⁰¹ 23 U.S.C. § 134(d)(7).

¹⁰² 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.

¹⁰³ The geographic area determined by agreement between the MPO for the area and the Governor. 23 U.S.C. § 134(b)(1).

¹⁰⁴ 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.

¹⁰⁵ 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.

¹⁰⁶ Section 339.175(2)(d), F.S.

While MPO coordination is clearly contemplated in current law, of Florida's 27 MPOs¹⁰⁷ (the most of any state in the country), most are not multi-jurisdictional; and each has its own priorities.

Effect of Proposed Changes

The bill amends s. 339.175(2)(a)2., F.S., providing that in the case of more than one MPO being designated within an existing urbanized area as a result of agreement between the Governor and an existing MPO, each MPO designated for the area must:

- Consult with every other MPO designated for the area and the state to coordinate plans and transportation improvement programs, and
- Ensure, to the maximum extent practicable, the consistency of data used in the planning process, including data used in forecasting travel demand within the area.

MPO Powers, Duties, and Responsibilities

Present Situation

An MPO's powers, privileges, and authority are those specified in s. 339.175, F.S., or incorporated into an interlocal agreement. The intent of s. 339.175, F.S., is that each MPO be involved in the planning and programming of transportation facilities to the extent permitted by state or federal law.¹⁰⁸

Each MPO, in cooperation with the FDOT, must develop a long-range transportation plan¹⁰⁹ and a transportation improvement program.¹¹⁰ In developing these, each MPO must consider projects and strategies that will:

- Support the economic vitality of the metropolitan area;
- Increase the safety and security of the transportation system;
- Increase the accessibility and mobility options available to people and for freight;
- Protect and enhance the environment, promote energy conservation, and improve quality of life;
- Enhance the integration and connectivity of the transportation system for people and freight;
- Promote efficient system management and operation; and
- Emphasize the preservation of the existing transportation system.¹¹¹

In order to provide recommendations to the FDOT and local governmental entities regarding transportation plans and programs, each MPO must:

- Prepare a congestion management system for the metropolitan area and cooperate with the FDOT in the development of all other transportation management systems;
- Assist the FDOT in mapping transportation planning boundaries;

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

¹⁰⁸ Section 339.175(6), F.S.

¹⁰⁹ These plans are developed pursuant to s. 339.175(7), F.S.

¹¹⁰ The transportation improvement programs are developed pursuant to s. 339.175(8), F.S.

¹¹¹ Section 339.175(6)(b), F.S.

- Assist the FDOT in performing its duties relating to access management, functional classification of roads, and data collection;
- Execute all agreements or certifications necessary to comply with applicable law;
- Represent all the jurisdictional areas within the metropolitan area in the formulation of required transportation plans and programs; and
- Perform all other duties required by state or federal law.¹¹²

Florida law currently requires each MPO to appoint a technical advisory committee, whose members include, whenever possible, planners; engineers; representatives of local aviation authorities, port authorities, and public transit authorities or representatives of aviation departments, seaport departments, and public transit departments, the school superintendent or his or her designee from each county within the MPO, and other appropriate representatives of affected local governments.¹¹³

Current law contains the Legislature's finding that that the state's rapid growth in recent decades has caused many urbanized areas subject to MPO jurisdiction to become contiguous to each other. As a result, various transportation projects may cross into multiple MPOs. To more fully accomplish the MPO's purposes, MPOs must develop coordination mechanisms with one another to expand and improve transportation. The appropriate method of coordination between MPOs varies depending upon the project involved and given local and regional needs. Therefore, it is appropriate to set forth a flexible methodology that can be used by MPOs to coordinate with other MPOs and appropriate political subdivisions as circumstances demand.¹¹⁴

Any MPO may join with any other MPO or any individual political subdivision to coordinate activities or to achieve any federal or state transportation planning or development goals or purposes consistent with federal or state law. When an MPO determines that it is appropriate to join with another MPO or any political subdivision to coordinate activities, the MPO or political subdivision must enter into an interlocal agreement to coordinate the transportation planning or development activities, and the statute provides various requirements for these agreements. However, this does not require any MPOs to merge, combine, or otherwise join together as a single MPO.¹¹⁵

Effect of Proposed Changes

The bill amends s. 339.175(6), F.S., relating to MPO powers, duties, and responsibilities, to prohibit an MPO from performing project production or delivery for capital improvement projects on the SHS.

The bill amends s. 339.175(6)(b), F.S., amending the list of items to be considered in developing MPO long-range transportation plans and transportation improvement programs, by requiring consideration of projects and strategies that support the economic vitality of the *contiguous urbanized* metropolitan area; enhance the integration and connectivity of the transportation system across and between modes *and contiguous urbanized metropolitan areas*, for people and freight; and improve the resilience of transportation infrastructure.

¹¹² Section 339.175(6)(c), F.S.

¹¹³ Section 339.175(6)(d), F.S.

¹¹⁴ Section 339.175(6)(j)1., F.S.

¹¹⁵ Section 339.175(6)(j)2., F.S.

The bill amends s. 339.175(6)(c), F.S., to amend each MPO's duty to provide recommendations to the FDOT and local governmental entities regarding transportation plans and programs, requiring MPO congestion management systems to be prepared for the *contiguous urbanized* metropolitan area.

The bill amends s. 339.175(6)(d), F.S., requiring the membership of MPO technical advisory committees to include, whenever possible, representatives of intermodal logistics centers,¹¹⁶ and requiring MPOs, when selecting the membership of such committees, to consider the proportional representation of the area's population.

The bill amends s. 339.175(6)(j)1., F.S., to delete the following Legislative finding: "Current law contains the Legislature's finding that that the state's rapid growth in recent decades has caused many urbanized areas subject to MPO jurisdiction to become contiguous to each other. As a result, various transportation projects may cross into multiple MPOs." The bill also revises the language providing that the referenced paragraph does not require any MPOs to merge, combine, or otherwise join together as a single MPO, to authorize multiple MPOs to merge, combine, or otherwise join together as a single MPO.

Tampa Bay Area MPOs

Current Situation

Current law creates the Chairs Coordinating Committee, composed of the MPOs serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties.¹¹⁷ Following a number of legislative revisions to transportation and transit authorities and related entities in the area,¹¹⁸ 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).¹¹⁹

¹¹⁶ Section 311.101, F.S., defines "intermodal logistics center," including, but not limited to, an "inland port," 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 whose 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.

¹¹⁷ Section 339.175(6)(i), F.S.

¹¹⁸ See the Florida Senate Staff Analysis for CS/SB 198 dated March 7, 2023, available at [2023 S0019 ATD \(flsenate.gov\)](https://www.flsenate.gov/2023/S0019-ATD) (last visited April 11, 2023).

¹¹⁹ Suncoasttpa.org, [Alliance Members – Sun Coast TPA](#) (last visited April 11, 2023).

A review of the SCTPA's website suggests it is actively engaged in regional transportation planning.¹²⁰ Among other relevant information such as transit and trails visions, the Regional 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.¹²¹

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 programs¹²² 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 to submit a feasibility report to the Governor, the President of the Senate, and the Speaker of the House of Representatives exploring the benefits, costs, and process of consolidation into a single MPO serving the contiguous urbanized metropolitan area, the goals of which would be 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.

Long-Range Transportation Plans

Present Situation

Each MPO must develop a long-range transportation plan addressing at least a 20-year planning horizon. The plan must include both long-range and short-range strategies and comply with state and federal requirements. The prevailing principles to be considered in the long-range transportation plan are:

- Preserving the existing transportation infrastructure;
- Enhancing Florida's economic competitiveness; and
- Improving travel choices to ensure mobility.¹²³

¹²⁰ Suncoasttpa.org, [Our Board – Sun Coast TPA](#) (last visited April 11, 2023).

¹²¹ Suncoasttpa.org, [Sun Coast TPA – Sun Coast Transportation Planning Alliance \(SCTPA\)](#) (last visited April 11, 2023).

¹²² 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.

¹²³ Section 339.175(7), F.S.

An MPO's long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans of the local government located within the MPO. Florida law encourages each MPO to consider strategies that integrate transportation and land use planning to provide for sustainable development and reduce greenhouse gas emissions. The MPO's approved long-range transportation plan must be considered by the relevant local governments in developing and amending the transportation elements in local government comprehensive plans.¹²⁴

The long-range transportation plan must, at a minimum:

- Identify transportation facilities that will function as an integrated metropolitan transportation system. The long-range transportation plan must emphasize transportation facilities that serve national, statewide, or regional functions, and consider the Florida Transportation Plan's identified goals and objectives. If a project is located within more than one MPO, the MPOs must coordinate plans regarding the project in the long-range transportation plan.¹²⁵
- Include a financial plan demonstrating how the plan can be implemented, indicating resources from public and private sources which are reasonably expected to be available to carry out the plan, and recommends any additional financing strategies for needed projects and programs.¹²⁶

Effect of Proposed Changes

The bill amends s. 339.175(7)(a), F.S., requiring multiple MPOs within a contiguous urbanized area to coordinate the development of the long-range transportation plans to be reviewed by the Metropolitan Planning Organization Advisory Council.

The bill amends s. 339.175(7)(b), F.S., requiring multiple MPOs within a contiguous urbanized area to ensure, to the maximum extent possible, the consistency of data used in the planning process.

Transportation Improvement Programs

Current Situation

Each MPO must, in cooperation with the state and affected public transportation operators, develop a transportation improvement program for the area within the MPO's jurisdiction. In developing its transportation improvement program, each MPO must provide the public, affected public agencies and other interested parties with a reasonable opportunity to comment on the proposed transportation improvement program. MPO transportation improvement plans must, at a minimum:

- Include projects and project phases to be funded with state or federal funds within the time period of the transportation improvement program and which are recommended for advancement during the next fiscal year and four subsequent fiscal years.

¹²⁴ *Id.*

¹²⁵ Section 339.175(7)(a), F.S.

¹²⁶ Section 339.175(7)(b), F.S.

- Include projects within the metropolitan area which are proposed for funding under the Federal Transit Act and which are consistent with the long-range transportation plan.
- Provide a financial plan demonstrating how the transportation improvement program can be implemented; indicating the resources that are reasonably expected to be available to accomplish the program; identifying any innovative financing techniques that may be used to fund needed projects and programs.
- Group projects and project phases of similar urgency and anticipated staging into appropriate staging periods.
- Indicate how the transportation improvement program relates to the long-range transportation plan, including examples of specific projects or project phases that further the long-range transportation plan's the goals and policies.
- Indicate whether any project or project phase is inconsistent with an affected local government's approved comprehensive plan. If a project is inconsistent with an affected comprehensive plan, the MPO must provide justification for including the project in the transportation improvement program.
- Indicate how the improvements are consistent, to the maximum extent feasible, with affected seaport, airport, and spaceport master plans and with public transit development plans of local governments located within the MPOs jurisdiction. If a project is located within more than one MPO, the MPOs must coordinate plans regarding the project in the transportation improvement program.¹²⁷

Effect of Proposed Changes

The bill amends s. 339.175(8)(c), F.S., to add to the list of minimum requirements for MPO transportation improvement programs a requires to indicate coordination or alignment with transportation improvement plans of other MPOs within the contiguous urbanize area.

MPO Advisory Council

Present Situation

Section 339.175(11), F.S., creates the Metropolitan Planning Organization Advisory Council (MPOAC) to augment, not supplant, the role of the individual MPOs in the cooperative transportation planning process.¹²⁸ The MPOAC consists of one representative from each MPO.¹²⁹ The MPOAC's powers and duties are to:

- Enter into contracts with individuals, private corporations, and public agencies.
- Acquire, own, operate, maintain, sell, or lease personal property essential for the conduct of business.
- Accept funds, grants, assistance, gifts, or bequests from private, local, state, or federal sources.
- Establish bylaws providing procedural rules to guide its proceedings and consideration of matters before the council, or, alternatively, adopt rules to implement laws conferring powers or duties upon it.

¹²⁷ Section 339.175(8)(b), F.S.

¹²⁸ Section 339.175(11)(a)

¹²⁹ Section 339.175(11)(b), F.S.

- Assist MPOs in carrying out the urbanized area transportation planning process by serving as the principal forum for collective policy discussion.
- Serve as a clearinghouse for review and comment by MPOs on the Florida Transportation Plan and on other issues required to comply with federal or state law.
- Employ an executive director and other staff necessary to adequately perform, within budgetary limitations, the MPOAC's functions. The executive director and staff are exempt from the Career Service System and serve at the MPOAC's direction and control. The MPOAC is assigned to the Office of the Secretary of Transportation for fiscal and accountability purposes, but otherwise functions independently of the FDOT's control and direction.
- Adopt an agency strategic plan that prioritizes steps the agency will take to carry out its mission within the context of the state comprehensive plan and any other statutory mandates and directives.¹³⁰

Effect of Proposed Changes

The bill amends s. 339.175(11)(c), F.S., to remove the following from the MPOAC's powers and duties:

- To enter into contracts with individuals, private corporations, and public agencies.
- To acquire, own, operate, maintain, sell, or lease personal property essential for the conduct of business.
- To accept funds, grants, assistance, gifts, or bequests from private, local, state, or federal sources.

The bill adds to the MPOAC's powers and duties delivering training on federal and state program requirements and procedures to MPO board members and staff.

The MPOAC is required to annually report to the Florida Transportation Commission¹³¹ on the alignment of MPO long-range transportation plans with the Florida Transportation Plan.¹³²

Strategic Intermodal System Supply Chain Demands (Section 16)

Present Situation

Established in 2003, the Strategic Intermodal System (SIS) focuses Florida's limited transportation resources on the facilities most significant for interregional, interstate, and international travel. The SIS is Florida's highest priority for transportation capacity investments and a primary focus for implementing the Florida Transportation Plan, the state's long-range transportation vision and policy plan.¹³³

The SIS consists of appropriate components of:

¹³⁰ Section 339.175(11)(c), F.S.

¹³¹ Created in s. 20.23, F.S.

¹³² For an overview of the Florida Transportation Plan, see fdot, [FTP \(floridatransportationplan.com\)](http://floridatransportationplan.com) (last visited April 25, 2023).

¹³³ See fdot.gov, [Strategic Intermodal System \(fdot.gov\)](http://strategicintermodal.com) (last visited April 25, 2023).

- Highway corridors established under s. 339.65, F.S.¹³⁴
- The National Highway System.
- Airport, seaport, and spaceport facilities.
- Rail lines and rail facilities.
- Selected intermodal facilities; passenger and freight terminals; and appropriate components of the State Highway System, county road system, city street system, inland waterways, and local public transit systems that serve as existing or planned connectors between the components listed above.
- Other existing or planned corridors that serve a statewide or interregional purpose.¹³⁵

Concerns have been raised regarding the supply of aggregate material necessary to complete road construction projects in the FDOT's work program.

Effect of Proposed Changes

The bill creates s. 339.651, F.S., providing Legislative findings that SIS components described in s. 339.62, F.S., ensure a multimodal transportation system; that the SIS is a critical network supporting economic activities and the transport of people and goods; and that the SIS is instrumental in the movement of road-building materials for infrastructure investments. The Legislature further finds that Florida's rapid economic and population growth can compound supply chain demands on the transportation system, and that the demand for construction aggregate continues to outpace supply.

The bill requires the FDOT to specifically address in its transportation plans, including the Florida Transportation Plan and the SIS Plan, movement and storage of construction aggregate materials essential for building roadways.

The bill requires the FDOT to make available up to \$20 million each year for fiscal years 2023-2024 through 2027-2028 to fund projects that meet the public purpose of providing increased capacity and enhanced capabilities to move and store construction aggregate. Applicants eligible for project funding include seaports listed in s. 311.09 and rail lines and rail facilities.

The bill requires to the FDOT to consider, but is not limited to, the following criteria when evaluating projects for assistance:

- The ability of the project to serve the strategic state interest of mitigating supply-chain demands for construction aggregate sufficient to ensure ongoing improvement of the SIS and the state's entire transportation network.
- The ability of the project to facilitate the cost-effective and efficient movement and storage of construction aggregate.
- The extent to which the project efficiently interacts with and supports the transportation network.
- A commitment of a funding match, which may be investments or commitments made by the owner or developer of the existing or proposed facility that facilitates or will facilitate the

¹³⁴ 4 Strategic Intermodal System highway corridors include the following components of the State Highway System: interstate highways, the Florida Turnpike System, interregional and intercity limited access facilities, existing interregional and intercity arterial highways previously upgraded or upgraded in the future to limited access or controlled access facility standards, new limited access facilities necessary to complete a balanced statewide system.

¹³⁵ Section 339.62, F.S.

movement and storage of construction aggregate, local financial support or commitment, or a combination of both. Projects with a funding match must be prioritized based on the amount of the match and must be prioritized over projects having no such funding match.

The bill requires the FDOT to give funding priority to projects creating new supply chains or closing existing supply chain gaps. The STTF may fund up to 100 percent of the cost of a project selected based on the specified criteria.

The bill authorizes the FDOT to adopt rules to implement the new section of law, which section is repealed July 1, 2028, unless reenacted by the Legislature.

Railroad Special Officers (Sections 18 – 22)

Present Situation

According to the United States Surface Transportation Board (STB), railroads are classified based on their annual operating revenues. The class to which a railroad belongs is determined by comparing its adjusted operating revenues for three consecutive years to the following scale:

- Class I - \$943.9 million or more;
- Class II - \$42.4 million or more;
- Class III - \$0 to \$42.4 million.¹³⁶

Florida has a 3,865 mile long rail network. Its freight rail system consists of two Class I railroads, one Class II railroad, and multiple Class III railroads. Roughly 60 percent of Florida's rail mileage is owned by Class I or Class II railroads. Amtrak and Brightline intercity passenger rail operates on freight tracks and, in the Orlando and Miami urbanized areas, The FDOT owns rail corridors where SunRail (Orlando) and Tri-Rail (Miami) operate. Additionally, there are urban rail transit systems in Miami, Jacksonville, and Tampa.¹³⁷

Section 354.01, F.S., provides that upon the application of any railroad or other common carrier, the Governor must appoint one or more persons who have met the statutory law enforcement qualifications and training requirements as special officers for the protection and safety of such carriers; their passengers and employees; and the property of such carriers, passengers, and employees.

However, until the Governor appoints or rejects the application for appointment of a special officer, the railroad or common carrier may temporarily employ the person as a special officer if he or she complies with the qualifications for employment as a law enforcement officer. However, a special officer must have the same training as a law enforcement officer. A Class I, Class II, or Class III railroad is considered an employing agency for purposes of ss. 943.13 and 943.135(1), F.S., and must pay all costs associated with the training and continuing education of employed special officers.¹³⁸

¹³⁶ See stb.gov, *Economic Data*, [Surface Transportation Board \(stb.gov\)](http://SurfaceTransportationBoard(stb.gov)) (last visited April 25, 2023).

¹³⁷ See fdotwww.blob.core.windows.net, [Florida Rail System Plan - November 2022 - Chapter 1 \(windows.net\)](http://FloridaRailSystemPlan-November2022-Chapter1(windows.net)), pp. 13-14 (last visited April 25, 2023).

¹³⁸ In accordance with ss. 943.13 and 943.135(1), F.S.

Each special officer has, in every county in which the common carrier for which he or she was appointed, does business, operates, or owns property, the power to make arrests for violation of law on the property of such common carrier, and to arrest persons, whether on or off such carrier's property, violating any law on such carrier's property, under the same conditions under which a deputy sheriff may make arrests, and may carry weapons.¹³⁹

Before entering into the performance of his or her duties every such special officer must enter into a \$5,000 bond payable to the Governor with a surety company authorized to do business in Florida, conditioned for the faithful performance of his or her duties, and to pay any and all damage done by any illegal act committed by him or her.¹⁴⁰

These special officers are commissioned by the Governor, and their commissions continue so long as they are employed in such capacity by the railroad or other common carrier; but may be removed by the Governor as provided by law.¹⁴¹

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). Currently, every prospective LEO must meet the minimum qualifications outlined in s. 943.13, F.S., successfully complete a CJSTC-developed Basic Recruit Training Program, and pass a statewide certification examination in order to receive their certification.¹⁴²

LEOs must also satisfy the continuing training and education requirements of s. 943.135, F.S., to maintain their certification. This statute requires LEOs, as a condition of continued employment or appointment, to receive periodic CJSTC-approved continuing training or education at the rate of 40 hours every 4 years.¹⁴³

The employing agency must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and must maintain and submit the documentation to CJSTC.¹⁴⁴

Effect of Proposed Changes

The bill amends s. 354.01, F.S., providing that a railroad police officer who has met the statutory law enforcement officer qualifications and training requirements must be recognized as a special officer for the protection and safety of any railroad or common carrier doing business in Florida, its passengers and employees; and the property of such carrier, passengers, and employees. A special officer is not considered a "law enforcement officer" except for purposes of ss. 943.085-943.255, F.S.

¹³⁹ Section 354.02, F.S.

¹⁴⁰ Section 354.03, F.S.

¹⁴¹ Section 354.05, F.S.

¹⁴² Section 943.13, F.S.

¹⁴³ Section 943.135(1), F.S.

¹⁴⁴ *Id.*

The bill removes the provision allowing temporary employment of a special officer until the Governor appoints or rejects an individual as a special officer, and provides that a Class I, Class II, or Class III railroad is considered an employing agency for purposes of ss. 943.10, 943.13, and 943.135(1), which agency must pay all costs associated with the training and continuing education of employed special officers.

The bill amends s 354.02, F.S., revising the powers of a special officer, providing that throughout every county in which the common carrier for which he or she is employed does business, operates, or owns property, a special officer may arrest a person who has violated any law on such carrier's property, whether the arrest occurs on or off such carrier's property, under the same conditions under which a deputy sheriff may make arrests, and may carry weapons for reasonable purposes.

The bill amends s. 354.05, F.S., relating to terms of office and removal, providing that the commission of a special officer continues as long as he or she is employed in such capacity by the railroad or other common carrier. However, a special officer may, be removed, at any time, as provided by law, rather than by the Governor.

The bill amends s. 784.07, F.S., striking from the definition of "railroad special officer" the reference to a person appointed or pending appointment by the Governor.

The bill amends s. 943.10, F.S., revising the definition of the term "law enforcement officer" to include a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S., and revises the definition of the term "employing agency" to include a Class I, Class II, or Class III railroad that employs special officers pursuant to s. 354.01.

Effective Date (Section 23)

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.

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:

The fiscal impact of the FDOT's authorization to share a portion of construction cost savings (realized due to a change in the construction contract design and scope after the contract is executed) with a design service consultant or a construction, engineering, and inspection services consultant is indeterminate, as the amount of any potentially shared savings is unknown.

Contractors who wish to bid exclusively on construction contracts with proposed budget estimates of \$2 million or less are expected to experience a positive fiscal impact, in an unknown amount, resulting from the authorization to submit reviewed annual or reviewed interim financial statements prepared by a CPA, which are less expensive than audited, certified annual or interim financial statements.

Contractors who enter into an FDOT contract for performance of bridge construction or maintenance over navigable waters would be required to purchase marine general liability insurance, in an amount determined by the FDOT, the cost of which may be passed on to the FDOT in a contractor's bid on a given project.

C. Government Sector Impact:

The bill provides no funding to support the required establishment of autonomous vehicle grading standards for roads on the SHS. The FDOT's costs to coordinate with the specified entities and to establish such standards are expected to be absorbed within existing resources.

The bill requires the annual allocation of \$5 million from the STTF to the workforce development program beginning in the 2023-24 fiscal year and for five years thereafter. The allocations are expected to be absorbed within existing resources.

Public participants on the I-STREET Living Lab Advisory Board may incur travel-related costs which are expected to be insignificant and absorbed within existing resources.

The fiscal impact of the FDOT's authorization to share a portion of construction cost savings (realized due to a change in the construction contract design and scope after the contract is executed) with a design service consultant or a construction, engineering, and

inspection services consultant is indeterminate, as the amount of any potentially shared savings is unknown.

MPOs may incur administrative expenses associated with the bill's increased coordination and consultation requirements, which are expected to be absorbed within existing resources.

The bill requires the FDOT to make available up to \$20 million each year for fiscal years 2023-2024 through 2027-2028 from the STTF for seaport and rail line and rail facility projects that meet the public purpose of providing increased capacity and capability to move and store construction aggregate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.126, 333.03, 334.044, 334.179, 337.11, 337.1101, 337.14, 337.168, 337.408, 338.223, 339.175, 354.01, 354.02, 354.05, 784.07, and 943.10

This bill creates the following sections of the Florida Statutes: 316.83, 344.066, 334.181, 339.651, and 339.84.

This bill reenacts s. 318.18 of the Florida Statutes.

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:

- Adds to Florida's Move Over Law a disabled motor vehicle that is stopped and displaying warning lights or hazard lights or using emergency flares or posting emergency signage or is stopped and one or more persons are visibly present.
- Revises provisions regarding airport land use compatibility zoning regulations and noise studies at airports.
- Revises the FDOT's duty to provide a workforce development program and requires the FDOT to allocate \$5 million to the workforce development program beginning in the 2023-24 fiscal year and annually thereafter for five years, to promote career paths in this state's road and bridge industry.

- Revises the definition of “certified for use,” prohibits a producer from representing that an aggregate is certified for use unless such shipment is in compliance with the FDOT’s rules, and requires a local government to accept electronic proof of delivery as an official record for a material delivery on the local governmental entity’s transportation project.
- Increases the allowable height of modular news racks, including advertising thereon, from 56 inches to 105 inches, but retains the limitation on total advertising space of 56 square feet.
- Requires increased coordination and consultation between MPOs; prohibits an MPO from performing project production or delivery for capital improvement projects on the SHS; revises various provisions to apply to contiguous urbanized metropolitan areas; requires certain MPOs to consider proportional representation of the area’s population when selecting technical advisory committee membership; abolishes the Chairs Coordinating Committee and requires the MPOs serving specified counties to submit a feasibility report exploring possible consolidation into a single MPO serving the contiguous urbanized area, with specified goals; and revises provisions relating to the MPO Advisory Council.
- Provides Legislative findings relating to aggregate supply chain demands on the Strategic Intermodal System and the transportation network; requires funding from the State Transportation Trust Fund (STTF) for seaport and rail line and rail facility projects that meet the public purpose of providing increased capacity and capability to move and store construction aggregate; provides project selection criteria; authorizes the FDOT to adopt rules; and repeals these provisions on July 1, 2028, unless reenacted by the Legislature.
- Revises multiple provisions relating to railroad special officers.

CS by Appropriations Committee on Transportation, Tourism and Economic Development on March 8, 2023:

The committee substitute:

- Requires the FDOT to coordinate with specified entities to establish standards by which the State Highway System roads will be graded according to their compatibility with the operation of autonomous vehicles.
- Codifies the existing Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies Living Lab.
- Allocates \$5 million to the workforce development program within the FDOT beginning in the 2023-24 fiscal year and annually thereafter for five years.

CS by Transportation on February 21, 2023:

The committee substitute:

- Removes the language prohibiting the FDOT from annually committing more than 20 percent of specified revenues for public transit projects, and the language relating to progressive design-build contracting.
- Clarifies the provisions relating to aggregate certification and electronic tickets to improve readability and remove potential ambiguity.

B. Amendments:

None.

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