

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 287 Transportation

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

TIED BILLS: **IDEN./SIM. BILLS:** SB 266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	12 Y, 5 N, As CS	Walker	Hinshelwood
2) Infrastructure & Tourism Appropriations Subcommittee	9 Y, 5 N, As CS	McAuliffe	Davis
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

The bill address matters related to transportation. Specifically, the bill:

- Provides that the Florida Department of Transportation (FDOT) may not annually commit more than 20 percent of the revenue derived from state fuel taxes and motor vehicle license-related fees deposited into the State Transportation Trust Fund for public transit projects, with exceptions.
- Amends statutory requirements for vehicles equipped with teleoperation systems.
- Increases from five to eight the number of Department of Highway Safety and Motor Vehicles (DHSMV)-approved Basic Driver Improvement course elections that are allowed in a lifetime for a person without a commercial driver license or commercial learner's permit who is cited for a noncriminal moving violation while driving a noncommercial motor vehicle.
- Requires DHSMV to annually review changes made to major traffic laws of this state and to require course content for certain driving courses to be modified accordingly.
- Amends the law relating to public-private transportation facilities and partnerships to align with industry terms and practices and to improve current processes.
- Adds phased design-build contracts to the requirements that FDOT receive at least three letters of interest in order to proceed with a request for proposals and that FDOT request proposals from no fewer than three of the firms submitting letters of interest.
- Provides in law, rather than as a requirement in an FDOT contract, that a motor vehicle used for the performance of road or bridge construction or maintenance work on an FDOT project must be registered in compliance with ch. 320, F.S.
- Shortens the deadline for a claimant to institute an action, except an action for recovery of retainage, against the contractor or surety to within 365 days after performance of the labor or completion of delivery of the materials or supplies, rather than within 365 days after the final acceptance of the contract work by FDOT.
- Amends provisions relating to the limitation on liability of FDOT and its contractors by providing new definitions, revising conditions under which a contractor is immune from liability, and adding an additional circumstance wherein it is presumed that the driver's operation of the vehicle was the sole proximate cause of her or his own death, injury, or damage from a motor vehicle crash within a construction zone.
- Creates a working group for the purpose of streamlining the process of developing, executing, and revising utility relocation agreements to facilitate timely relocation of utilities that are in conflict with the department's construction projects.
- Codifies the Local Agency Program (LAP) within FDOT.

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

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Transportation Trust Fund

Current Situation

Florida law establishes the State Transportation Trust Fund (STTF), which is used for transportation purposes, under the direction of the Florida Department of Transportation (FDOT).¹ Such transportation purposes include maintaining and developing the state highway system and supporting various transportation related projects.²

STTF's primary revenue sources are from state fuel taxes and fees related to motor vehicle licensing.³ FDOT must expend moneys in the STTF in accordance with its annual budget.⁴

FDOT's annual budget is approved by the Legislature and the Governor and contains funding for transportation related projects through the inclusion and adoption of the Five-Year Work Program, which is a list of transportation projects planned for each fiscal year. State taxes and fees, along with federal aid, make up the primary funding sources for the work program. Other funding sources include tolls collected in certain facilities, proceeds from bond issuances, and local taxes and fees.⁵

When preparing the Five-Year Work Program, FDOT is instructed to budget sufficient funds for federal matching purposes.⁶ Additionally, FDOT's Five-Year Work Program includes projects from an Metropolitan Planning Organization's (M.P.O's) Transportation Improvement Program (TIP).

M.P.O's are responsible to develop a list of project priorities and a TIP, which includes a listing of upcoming transportation projects and priorities planned for a minimum of four years. The TIP is used to initiate federally aided transportation facilities and improvements as well as other transportation facilities and improvements including transit, rail, aviation, spaceport, and port facilities to be funded from the STTF.⁷

Each fiscal year, a minimum of 15 percent of all state revenues deposited into the STTF are committed annually by FDOT for public transportation projects.⁸

Florida law does not provide a cap on the maximum percent that FDOT may annually commit to public transit projects. Public transit is defined in Florida law as the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Public transit specifically includes those forms of transportation commonly known as paratransit.⁹

Effect of the Bill

¹ S. 206.46(1), F.S.

² Office of Work Program and Budget Florida Department of Transportation, *Florida's Transportation Tax Sources*, (2023), p. 2,

https://fdotewp1.dot.state.fl.us/FMSupportApps/Documents/pr/P_rimer.pdf#:~:text=STTF%E2%80%99s%20primary%20revenue%20sources%20from%20state%20taxes%20and,fuel%20taxes%20and%20motor%20vehicle%20license%20related%20fees. (last visited Jan. 19, 2024).

³ *Id.*

⁴ S. 339.08(1), F.S.

⁵ Office of Work Program and Budget Florida Department of Transportation, *supra* note 2.

⁶ S. 339.135(3), F.S.

⁷ S. 339.175(8)(a), F.S.

⁸ S. 206.46(3), F.S. The funding cap minimum is for public transportation projects that are in accordance with ch. 311, ss. 332.003-332.007, ch. 341, and ch. 343 of F.S.

⁹ S. 341.031(6), F.S.

The bill provides that FDOT may not annually commit to public transit projects under ch. 341, F.S., more than 20 percent of the revenue derived from state fuel taxes and motor vehicle license-related fees deposited into the STTF, with the exception of the following public transit projects:

- A project that uses revenues to match funds made available by the Federal Government.
- A project included in an M.P.O's TIP adopted pursuant to s. 339.175(8), F.S., and approved by a supermajority vote of the board of county commissioners where the project is located.

Teleoperation System

Current Situation

Although Florida law provides for vehicles equipped with teleoperation systems, the law currently requires that such vehicles also be equipped with an Automated Driving System (ADS). An ADS is the hardware and software that are collectively capable of performing the entire dynamic driving task of an autonomous vehicle,¹⁰ meaning that the hardware and software operate the vehicle. In contrast, a teleoperation system is the hardware and software that allow a remote human operator to supervise or perform aspects of, or the entirety of, the dynamic driving task.¹¹ Under current Florida law, only ADS-equipped vehicles may be operated by a remote human operator, even though the ADS must be disabled in order for a remote human operator to drive the vehicle by utilizing the teleoperation system.

Remote Human Operator

Florida law defines the term “remote human operator” to mean a natural person who is not physically present in a vehicle equipped with an automated driving system who engages or monitors the vehicle from a remote location. A remote human operator may have the ability to perform aspects of, or the entirety of, the dynamic driving task for the vehicle or cause the vehicle to achieve a minimal risk condition. A remote human operator must be physically present in the United States and be licensed to operate a motor vehicle by a United States jurisdiction.¹²

A minimal risk condition is defined in Florida law as a reasonably safe state, such as bringing the vehicle to a complete stop and activating the vehicle's hazard lamps.¹³

Operation of a Motor Vehicle with Active Display of Television or Video Content

Florida law currently prohibits a motor vehicle from operating the highways of this state if the vehicle is actively displaying moving television broadcast or pre-recorded video entertainment content that is visible from the driver's seat while the vehicle is in motion, unless the vehicle is being operated with the automated driving system engaged.¹⁴

Effect of the Bill

The bill amends the definition of remote human operator to mean a natural person who:

- Is not physically present in the motor vehicle;
- Engages or monitors the motor vehicle from a remote location;
- Has the ability to perform aspects of, or the entirety of, the dynamic driving task for the motor vehicle;
- Has the ability to cause a motor vehicle to achieve a reasonably safe state, such as bringing the vehicle to a complete stop and activating the vehicle's hazard lamps;
- Is physically present in the United States; and
- Is licensed to operate a motor vehicle by a United States jurisdiction.

¹⁰ S. 316.003(3), F.S.

¹¹ S. 316.003(95), F.S.

¹² *Id.*

¹³ S. 319.145(2), F.S.

¹⁴ S. 316.303(1), F.S.

The bill provides that when a teleoperation system is engaged, the remote human operator is deemed to be the driver or operator of the motor vehicle and must operate the motor vehicle in compliance with the applicable traffic and motor vehicle laws of the State of Florida.

The bill allows motor vehicles that are operated with the teleoperation system engaged to actively display moving television broadcast or pre-recorded video entertainment content that is visible from the driver's seat while the vehicle is in motion on the highways of the state.

The bill provides that a motor vehicle equipped with a teleoperation system, while the teleoperation system is engaged, must be covered by a policy of automobile insurance which provides:

- Primary liability coverage of at least \$1 million for death, bodily injury, and property damage.
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.
- Uninsured and underinsured vehicle coverage as required by Section 627.727, F.S.

The bill provides that it is the legislative intent that there be a uniformity of laws governing autonomous vehicles and motor vehicles equipped with teleoperation system. Additionally, the bill prohibits a local government from imposing any tax, fee, for-hire vehicle requirement or other requirements on teleoperation systems, motor vehicles equipped with teleoperation systems, or a remote human operator of motor vehicle with a teleoperation system engaged.

Course Content for New Driver Education Courses and Driver Improvement Courses

Current Situation

Each applicant for a driver license who is not already licensed in another jurisdiction must complete a traffic law and substance abuse education course (TLSAE course), unless the applicant has satisfactorily completed a Department of Education driver education course.¹⁵ The Department of Highway Safety and Motor Vehicles (DHSMV) must approve TLSAE courses, and course materials must be designed to promote safety, education, and driver awareness.¹⁶ Approved TLSAE courses must be updated at DHSMV's request, and a course provider's failure to do so within 90 days after DHSMV's request will result in the suspension of the course approval until such time that the updates are submitted and approved by DHSMV.¹⁷

DHSMV must approve and regulate the basic driver improvement courses required by ss. 322.0261 and 318.14(9), F.S., as well as the advanced driver improvement courses required by ss. 322.0261(1)(c) and 322.291, F.S.¹⁸ In determining whether to approve these courses, DHSMV must consider course content designed to promote safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve driver performance from a safety viewpoint, including promoting motorcyclist, bicyclist, and pedestrian safety and risk factors resulting from driver attitude and irresponsible driver behaviors, such as speeding, running red lights and stop signs, and using electronic devices while driving.¹⁹ DHSMV must set and modify course content requirements to keep current with laws and safety information.²⁰ DHSMV may require that approved driver improvement courses listed above be updated, and failure to do so will result in the suspension of the course approval until the course is updated and approved by DHSMV.²¹

¹⁵ S. 322.095(1), F.S.

¹⁶ S. 322.095(2), F.S.

¹⁷ S. 322.095(7), F.S.

¹⁸ S. 318.1451(1), F.S. See also DHSMV, *Driver Improvement Schools*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/driver-improvement-schools/#:-:text=All%20first%2Dtime%20drivers%20must,have%20to%20take%20the%20TLSAE> (last visited Jan. 19, 2024); DHSMV, *What are 3 crashes in 3 years and how do I complete this requirement?*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/driver-improvement-schools/3-crashes-3-years-complete-requirement/> (last visited Jan. 19, 2024).

¹⁹ S. 318.1451(2)(a), F.S.

²⁰ S. 318.1451(6)(d), F.S.

²¹ S. 318.1451(6)(b), F.S.

Effect of the Bill

The bill requires DHSMV to annually review changes made to major traffic laws of this state, including the Move Over Law in s. 316.126(1)(b), F.S. DHSMV must require that course content for the TLSAE course and the basic and advanced driver improvement courses be modified in accordance with changes relevant to the courses.

Basic Driver Improvement Course Election

Current Situation

Under Florida law, if a person who does not hold a commercial driver license or commercial learner's permit is cited while driving a noncommercial motor vehicle for a noncriminal moving violation, then such person may, in lieu of a court appearance, elect to attend in the location of his or her choice within this state a Basic Driver Improvement (BDI) course approved by the Department of Highway Safety and Motor Vehicles. This election may only be made once every 12 months and a total of five times within his or her lifetime.²²

Effect of the Bill

The bill increases from five to eight the number of DHSMV-approved BDI course elections that are allowed in a lifetime for a person without a commercial driver license or commercial learner's permit who is cited for a noncriminal moving violation while driving a noncommercial motor vehicle.

Additionally, the bill conforms a cross-reference to reflect this increase in the section of law relating to insurance discounts for persons completing a driver improvement course.

Public-Private Transportation Facilities and Comprehensive Agreements

Current Situation

Public-Private Transportation Facilities

Florida law allows FDOT to receive and solicit proposals and, with legislative approval of a project in FDOT's work program, enter into agreements with private entities for the building, operation, ownership, or financing of transportation facilities. FDOT may advance projects in the adopted Five-Year Work Program or projects in the 10-year Strategic Intermodal Plan greater than \$500 million that increase transportation capacity using funds provided by private entities.^{23 24}

Public-Private Partnerships

The use of public-private partnerships is authorized by Florida law²⁵ for a broad range of infrastructure projects at the local and state level. Public private partnerships (P3s) are contractual agreements between public and private-sector partners that perform functions that are normally undertaken by a public agency. P3s allow cooperation between both sectors, with the agency remaining ultimately responsible for the public function.²⁶ In P3s, the private sector typically takes on the additional project risks such as design, construction, finance, long-term operation, and traffic revenue.²⁷ P3s have

²² S. 318.14(9), F.S.

²³ S. 334.30(1), F.S.

²⁴ Florida Department of Transportation, Agency Analysis of 2024 Senate Bill 266, p. 2 (Jan. 5, 2024).

²⁵ S. 255.065, F.S.

²⁶ Florida Tax Watch, *Using Public-Private Partnerships and Public-Public Partnerships to Meet the Growing Demands for Public Infrastructure*, (Jan. 2023), p. 2, file:///C:/Users/walker.rachel/Downloads/Web-Public-Private%20Partnership%20Report_Florida%20TaxWatch%20FINAL.pdf (last visited Jan. 19, 2024).

²⁷ U.S. Department of Transportation, *Public Private-Partnerships (P3)*, (Jan. 3, 2024),

<https://www.transportation.gov/buildamerica/p3> (last visited Jan. 19, 2024).

potential to lower the cost of infrastructure to the public partner by reducing construction costs and overall life cycle costs.²⁸

Proposals for P3s projects can be unsolicited or solicited. Before the procurement process is initiated, or before a contract is awarded, the public entity must perform an independent analysis of the proposed P3 to demonstrate its overall cost-effectiveness and public benefit.²⁹

Effect of the Bill

The bill amends the law relating to public-private transportation facilities and P3s by:

- Replacing the term “public-private partnership agreement” with the term “comprehensive agreement”, thereby aligning with industry terms.
- Requiring a private entity, as part of the private entity proposal, to provide an independent traffic and revenue study prepared by a traffic and revenue expert, rather than an investment grade traffic and revenue study prepared by an internationally recognized traffic and revenue expert. The independent traffic and revenue study must be accepted by national bond rating agencies before closing on financing that supports the comprehensive agreement for the public-private partnership project.
- Adding a minimum timeframe of 30 days for FDOT to accept other proposals on a project where FDOT has received an unsolicited proposal and providing FDOT discretion for how many days to accept other proposals based on the complexity of the project.
- Authorizing FDOT before or in connection with the negotiation of a comprehensive agreement, to enter into an interim agreement with the private entity proposing the development or operation of a qualifying project. An interim agreement does not obligate FDOT to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to any of the following provisions that:
 - Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, designing, environmental analysis and mitigation, surveying, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.
 - Establish the process and timing for the negotiation of the comprehensive agreement.
 - Contain such other provisions related to an aspect of the development or operation of a qualifying project which FDOT and the private entity deem appropriate.
- Providing that a comprehensive agreement with a term of more than 50 and no more than 75 years may only be authorized for projects that are partially or completely funded from project user fees.

Design-Build and Phased Design-Build Contracts

Current Situation

If FDOT determines that it is in the best interests of the public, it may:

- Combine the design and construction phases of a project into a single contract, which is referred to as a design-build contract.³⁰
- Combine the design and construction phases of a project fully funded in the work program into a single contract and select the design-build firm in the early stages of a project to ensure that the design-build firm is part of the collaboration and development of the design as part of a step-by-

²⁸ Florida Tax Watch, *Supra* note 26.

²⁹ *Id.*

³⁰ S. 337.11(7)(a), F.S.

step progression through construction. Such a contract is referred to as a phased design-build contract.³¹

Provisions in Florida law related to phased design-build contracts were added in the 2023 Legislative Session.³²

Effect of the Bill

The bill adds phased design-build contracts to the requirements that FDOT receive at least three letters of interest in order to proceed with a request for proposals and that FDOT request proposals from no fewer than three of the firms submitting letters of interest.

Motor Vehicles and Road and Bridge Construction or Maintenance

Current Situation

FDOT contracts let for the performance of road or bridge construction or maintenance must require that motor vehicles that the contractor operates or causes to be operated in the state of Florida be registered in compliance with ch. 320, F.S., relating to motor vehicle license laws.³³

Effect of the Bill

The bill provides in law, rather than as a requirement or condition in an FDOT contract, that a motor vehicle used for the performance of road or bridge construction or maintenance work on an FDOT project must be registered in compliance with ch. 320, F.S.

Retainage

Current Situation

Retainage

Retainage is the portion of monies kept aside until a project is completed in all aspects according to the contract.³⁴ FDOT may provide in its construction contracts for retaining a portion of the amount due a contractor for work that the contractor has completed, until completion and final acceptance of the project by FDOT.³⁵

FDOT may, when using flexible start and finish time limits on public contracts, withhold up to 10 percent retainage on completed work when the contractor either fails to timely commence work or falls behind in work progress at any point prior to completion of the contract.³⁶

Timeline for Actions Filed Against Construction or Maintenance Contractors or Surety Bonds

Under Florida law, an action must be instituted by a claimant, whether in privity with the contractor or not, against the contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond within 365 days after the final acceptance of the contract work by FDOT.³⁷

Effect of the Bill

The bill shortens the deadline for a claimant to institute an action against the contractor or surety to within 365 days after performance of the labor or completion of delivery of the materials or supplies, rather than within 365 days after the final acceptance of the contract work by FDOT. However, the bill

³¹ S. 337.11(7)(b), F.S.

³² Ch. 2023-197, Laws of Fla.

³³ S. 337.11(13), F.S.

³⁴ Florida Department of Transportation, *supra* note 24 at p. 3.

³⁵ S. 337.175, F.S.

³⁶ S. 337.015(5), F.S.

³⁷ S. 337.18(2)(d), F.S.

excludes an action for recovery of retainage from the amended deadline and retains current law as to the deadline to institute such an action.

Limits on Liability on FDOT and its Construction and Maintenance Contractors

Current Situation

Under Florida law, in a civil action for the death of or injury to a person, or damage to property due to a motor vehicle crash within a construction zone, against FDOT and its agents, it is presumed that the driver's operation of the vehicle was the sole proximate cause of her or his own death, injury, or damage under the following circumstances:

- The driver operated a vehicle recklessly; or³⁸
- The driver was under influence of alcoholic beverages, under the influence of certain chemical substances, or illegally under the influence of any other substance controlled under ch. 893, F.S., to the extent that the driver's normal faculties were impaired.³⁹

This presumption can be overcome if the gross negligence or intentional misconduct of the FDOT, or of its agents, consultants, or contractors, was a proximate cause of the driver's death, injury, or damage.⁴⁰

Florida law also limits the liability of FDOT's construction and maintenance contractors performing services for FDOT if at the time of the personal injury, property damage, or death, the contractor was in compliance with the contract documents material relating to the condition that was the proximate cause of the personal injury, property damage, or death.⁴¹ This limitation on the liability of such contractors does not apply when the proximate cause is a latent condition, defect, error, or omission that was created by the contractor and not a defect, error, or omission in the contract documents; or when the proximate cause was the contractor's failure to perform, update, or comply with the maintenance of the traffic safety plan as required by the contract documents.⁴²

Additionally, Florida law limits the liability of a person or entity contracting with FDOT to provide engineering plans for construction or repair of highway, road, street, bridge, or other transportation facility. This limit on liability presumes that, in all cases involving personal injury, property damage, or death, the person or entity shall be presumed to have prepared such engineering plans using the degree of care and skill ordinarily exercised by other engineers in the field under similar conditions and in similar localities and with due regard for acceptable engineering standards and principles if the engineering plans conformed to FDOT's design standards material to the condition or defect that was the proximate cause of the personal injury, property damage, or death.⁴³ This presumption can be overcome only upon a showing of the person's or entity's gross negligence in the preparation of the engineering plans, and this limitation on liability does not apply to any hidden or undiscoverable condition created by the engineer.⁴⁴

If FDOT, its agents, consultants, engineers, or contractors are immune from liability, or are not parties to the litigation, they may not be named on the jury verdict form or be found to be at fault or responsible for the injury, death, or damage that gave rise to the damages.⁴⁵

Effect of the Bill

The bill defines the following terms:

- Contract documents: Those contract documents defined in Section 1-3 of FDOT's Standard Specifications for Road and Bridge Construction which are applicable under the contract between FDOT and the contractor.

³⁸ S. 316.192(1), F.S., states that any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

³⁹ S. 337.195(1), F.S.

⁴⁰ *Id.*

⁴¹ S. 337.195(2), F.S.

⁴² *Id.*

⁴³ S. 337.195(3), F.S.

⁴⁴ *Id.*

⁴⁵ S. 337.195(4), F.S.

- Contractor: A person or entity, at any contractual tier, including any member of a design-build team who constructs, maintains, or repairs a highway, road, street, bridge, or other transportation facility for FDOT or in connection with an FDOT project.
- Design engineer: A person or entity, including the design consultant of a design-build team, who contracts at any tier to prepare or provide engineering plans, including traffic control plans, for the construction or repair of a highway, road, street, bridge, or other FDOT transportation facility.
- Traffic control plans: means the maintenance of traffic plans designed by a professional engineer, or otherwise in accordance with FDOT's standard plans, and approved by FDOT.

The bill adds the following circumstance wherein it is presumed that the driver's operation of the vehicle was the sole proximate cause of her or his own death, injury, or damage from a motor vehicle crash within a construction zone: The driver was under the influence of marijuana authorized by Florida law⁴⁶, excluding low-THC cannabis.

The bill amends the immunity of a contractor by providing that a contractor is immune from liability for personal injury, property damage, or death arising from:

- The performance of the construction, maintenance, or repair of the transportation facility, if, at the time the personal injury, property damage, or death occurred, the contractor was in compliance with the contract documents material.
- Acts or omissions of a third party who furnishes, or contracts at any contractual tier to furnish, services or materials to the transportation facility, including a subcontractor; sub-subcontractor; laborer; materialman; owner, lessor, or operator of a motor vehicle, trailer, semitrailer, truck, heavy truck, truck tractor, or commercial motor vehicle; or person who performs services as an architect, a landscape architect, an interior designer, an engineer, or a surveyor and mapper.
- Acts or omissions of a third party who trespasses within the limits of the transportation facility or otherwise is not authorized to enter the area of the transportation facility in which the personal injury, property damage, or death was caused.
- Acts or omissions of a third party who damages, modifies, moves, or removes a traffic control device, warning device, barrier, or any other facility or device used for the public's safety and convenience.

The bill provides that the above limitations on liability do not apply when the proximate cause of the personal injury, property damage, or death was the contractor's failure to comply with the traffic control plans as required by the contract documents.

The bill deletes reference to "engineer" or "engineering firm" and replaces such terms with "design engineer". The bill also eliminates the paragraph that provides that FDOT, its agents, consultants, engineers, or contractors may not be named on the jury verdict form or be found to be at fault or responsible for the injury, death, or damage that gave rise to the damage if they are immune from liability, or are not parties to the litigation.

Utility Relocation and Utility Relocation Schedule

Current Situation

A utility is any electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other like structures.⁴⁷

Under Florida law, a utility may not be installed, located, or relocated unless authorized by a written permit issued by FDOT and local government entities (authority). However, for public roads or publicly owned rail corridors under the jurisdiction of FDOT, a utility relocation schedule and relocation

⁴⁶ S. 381.986, F.S.

⁴⁷ S. 337.401(1)(a), F.S.

agreement may be executed in lieu of a written permit. The permit must require the permit holder to be responsible for any damage resulting from the issuance of such permit.⁴⁸

If a utility that is placed upon, under, over, or within the right-of-way limits of any public road or publicly owned rail corridor is found by an authority to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of such public road or publicly owned rail corridor, then the utility owner must, upon 30 days' written notice to the utility or its agent, initiate the work necessary to alleviate the interference at its own expense. The work must be completed within such reasonable time as stated in the notice or such time as agreed to by the authority.⁴⁹

Whenever a notice from the authority requires such utility work and the owner thereof fails to perform the work at his or her own expense within the time stated in the notice or such other time as agreed to by the authority and the utility owner, the respective authority must proceed to cause the utility work to be performed. The expense thereby incurred must be paid out of any money available, and such expense is charged against the owner and levied and collected and paid into the fund from which the expense of such relocation was paid.⁵⁰

Effect of the Bill

The bill creates a working group for the purpose of streamlining the process of developing, executing, and revising utility relocation agreements authorized under ss. 337.401 and 337.403, Florida Statutes, to facilitate timely relocation of utilities that are in conflict with the department's construction projects.

The working group will consist of the following 20 members:

- Eight members designated by department, one of whom is a representative of the department's central office and seven of whom each represent one of the department's districts.
- One member designated by each investor-owned electric utility in this state.
- One member designated by the Florida Municipal Electric Association who is a representative of municipal electric and gas utilities.
- One member designated by the Florida Electric Cooperatives Association, Inc., who is a representative of the electric cooperative industry.
- Two members designated by the telecommunications industry, one of whom is a wireless provider.
- One member designated by Florida Internet & Television Association, Inc., who is a representative of the cable and television industry.
- One member designated by the department who provides broadband services.
- One member designated by the Florida Natural Gas Association who provides natural gas distribution.
- Four members designated by the Florida Transportation Builders' Association, Inc., who are representatives of the road and bridge contractor industry.

The bill requires FDOT to provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 2, 2025, which contains a list of recommendations mutually agreed upon by FDOT and the working group, including, but not limited to, recommendations regarding any changes to current law or administrative rules.

Local Agency Program

Current Situation

Currently, FDOT oversees the Local Agency Program (LAP) on behalf of the Federal Highway Administration (FHWA). The LAP provides federal funds to sub-recipient towns, cities, and counties in order to develop, design, and construct transportation facilities. This program prioritizes local projects through the M.P.Os or governing boards, and the reimbursement of project costs with federal funds is

⁴⁸ S. 337.401(2), F.S.

⁴⁹ S. 337.403(1), F.S.

⁵⁰ S. 337.403(3), F.S.

only available to local agencies that perform the required certification process. Such certification process evaluates whether the local agency has the sufficient qualifications and ability to undertake and satisfactorily complete the work.⁵¹ The LAP is not currently codified in Florida law.

Effect of the Bill

The bill codifies the LAP program within FDOT. The bill provides that the LAP will have the purpose of providing assistance to subrecipient agencies, which include counties, municipalities, intergovernmental agencies, and other eligible governmental entities, in developing, designing, and constructing transportation facilities using funds allocated by federal agencies to FDOT which are then suballocated by FDOT to local agencies.

The bill requires FDOT to:

- Take the responsibility of oversight of funded projects on behalf of FHWA; and
- Update the project cost estimate in the year the project is granted to the local agency and include a contingency amount as part of the project cost estimate.

The bill requires local agencies to:

- Prioritize and budget local projects through their respective M.P.O's or governing boards that are eligible for reimbursement for the services provided to the traveling public through compliance with applicable federal statutes, rules, and regulations.
- Be certified by FDOT based on their qualifications, experience, ability to comply with federal requirements, and ability to undertake and satisfactorily complete the work; and
- At minimum, include in their contracts to develop, design, or construct transportation facilities FDOT's Division I General Requirements and Covenants for local agencies and a contingency amount in the project cost to account for unforeseen conditions.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

- Section 1** Amends s. 206.46, F.S., relating to State Transportation Trust Fund.
- Section 2** Amends s. 316.003, F.S., relating to definitions.
- Section 3** Amends s. 316.303, F.S., relating to television receivers.
- Section 4** Amends s. 316.85, F.S., relating to autonomous vehicles; operation; compliance with traffic and motor vehicle laws; testing.
- Section 5** Amends s. 318.14, F.S., relating to noncriminal traffic infractions; exception; procedures.
- Section 6** Amends s. 318.1451, F.S., relating to driver improvement schools.
- Section 7** Amends s. 322.095, F.S., relating to traffic law and substance abuse education program for driver license applicants.
- Section 8** Amends s. 334.30, F.S., relating to public-private transportation facilities.
- Section 9** Amends s. 337.11, F.S., relating to contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.

⁵¹ Florida Department of Transportation, *LAP Certification*, <https://www.fdot.gov/programmanagement/lap/becomingcertified.shtm> (last visited Jan. 19, 2024).

- Section 10** Amends s. 337.18, F.S., relating to surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.
- Section 11** Amends s. 337.195, F.S., relating to limits on liability.
- Section 12** Creates a working group for the purpose of streamlining the process of developing, executing, and revising utility relocation agreements to facilitate timely relocation of utilities that are in conflict with the department's construction projects.
- Section 13** Creates s. 339.28201, F.S., relating to the Local Agency Program.
- Section 14** Amends s. 339.2825, F.S., relating to approval of contractor-financed projects.
- Section 15** Amends s. 627.06501, F.S., relating to insurance discounts for certain persons completing driver improvement course.
- Section 16** Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
Indeterminate. See "Fiscal Comments" section below.
2. Expenditures:
Indeterminate. See "Fiscal Comments" section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
Indeterminate. See "Fiscal Comments" section below.
2. Expenditures:
Indeterminate. See "Fiscal Comments" section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. See "Fiscal Comments" section below.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on FDOT, as well as local government and transit agencies, as the bill establishes a 20 percent STTF funding cap on public transit projects. The funding cap would limit the total amount of state discretionary funding the department can provide to local governments and transit agencies. However, these costs will be contained within the confines of the Work Program and will not alter overall State expenditures.

The bill may have an indeterminate positive fiscal impact on companies in the teleoperated vehicle industry, as the bill provides regulatory clarity for teleoperation systems and vehicles equipped with such systems.

The bill may have an indeterminate positive fiscal impact on FDOT and its contractors to the extent that such contractors benefit from increased immunity from liability for personal injury, property damage, or

death that may occur due to a motor vehicle crash within a construction zone, or the acts or omissions of third parties under certain circumstances.

The bill may have an indeterminate negative fiscal impact on FDOT, as the bill requires the department to convene a working group to streamline the process of developing, executing, and revising utility relocation agreements and provide a report to the Governor and the Legislature. These expenditures can be absorbed within existing department resources.

The bill may have an indeterminate negative fiscal impact on FDOT as a result of codifying the LAP Program. Although, FDOT already oversees LAP and LAP certifications, FDOT has communicated that the creation of the LAP program in law may increase their administrative burden and, therefore, increase their need for additional staff in the future.⁵²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Transportation & Modals Subcommittee considered a proposed committee substitute with one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute differs from HB 287 in the following ways:

- Amends statutes relating to vehicles equipped with teleoperation systems (i.e., vehicles operated by a remote human operator) in order to clarify that they are not autonomous vehicles (i.e., vehicles operated by an automated driving system) and to provide for them separately in statute.
- Increases from five to eight the number of times a driver may elect to attend a basic driver improvement course in lieu of a court appearance.
- Requires DHSMV to annually review changes made to major traffic laws of this state and to require course content for certain driving courses to be modified accordingly.
- Requires the Department of Transportation to receive at least three letters of interest in order to proceed with a request for proposals for design-build contracts and phased design-build contracts.
- Removes language that would have required FDOT to pay a contractor interest on certain unpaid amounts.
- Amends statutes relating to locating and relocating utilities in right-of-way.
- Amends the provision relating to limits on liability (s. 337.195, F.S.).
- Amends the provision codifying the Local Agency Program.

⁵² Florida Department of Transportation, *supra* note 24 at pp. 8-9.

- Makes clarifying and conforming changes.

On February 1, 2024, the Infrastructure & Tourism Appropriations Subcommittee considered CS/HB 287 with one amendment, which was adopted, and reported the bill favorably as committee substitute to CS/HB 287.

The amendment:

- Removes changes made to ss. 337.401 and 337.043, F.S., relating to use of right-of-way for utilities and interference caused by utilities.
- Creates a working group for the purpose of streamlining the process of developing, executing, and revising utility relocation agreements to facilitate timely relocation of utilities that are in conflict with the department's construction projects.