HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 1305 Department of Transportation
SPONSOR(S): Infrastructure Strategies Committee, Infrastructure & Tourism Appropriations Subcommittee, Transportation & Modals Subcommittee, Abbott
TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 83 **Y's** 32 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1305 passed the House on April 27, 2023. The bill was amended in the Senate on May 2, 2023, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on May 3, 2023. Part of the bill also passed in CS/CS/CS/HB 425.

The bill relates to the Department of Transportation (DOT). Specifically, the bill:

- Increases the maximum debt service coverage for the State Transportation Trust Fund.
- Increases the term from 12 years to 18 years for state bonds for federal aid highway construction.
- Authorizes the Florida Development Finance Corporation to finance certain DOT-related public-private partnership projects.
- Authorizes installation of automated license plate recognition systems within the rights-of-way of the State Highway System for specified purposes.
- Authorizes DOT to fund up to 100 percent of eligible projects in rural areas of opportunity under the Intermodal Logistics Center Infrastructure Support Program.
- Revises the definition of "temporary airport" and clarifies DOT's process for approving a temporary airport.
- Provides that DOT may not, when granting airport site approval, require specified documents regarding air traffic pattern separation procedures unless otherwise required or deemed necessary.
- Authorizes DOT, subject to appropriated funds, to fund specified projects at certain rural airports.
- Authorizes DOT to acquire promotional items and materials to promote electric vehicles and autonomous vehicles.
- Authorizes DOT to expend funds for training, testing, and licensing for certain DOT employees.
- Increases the threshold amount under which DOT is not required to receive competitive bids.
- Increases the cap on innovative contracts that DOT may annually award, and removes the exemption for certain design-build projects from this annual cap.
- Expands DOT's potential use of phased design-build.
- Repeals the Metropolitan Planning Organization (MPO) Chairs Coordinating Committee and requires certain MPOs to submit a feasibility report that explores consolidation into a single MPO.
- Revises various duties of public transit providers relating to their transportation development plans and productivity and performance reports.
- Requires DOT to inspect fixed-guideway systems in specified independent special districts.
- Transfers the Santa Rosa Bay Bridge Authority's bridge system to DOT, authorizes DOT to transfer it to the Florida Turnpike Enterprise, and repeals the Santa Rosa Bay Bridge Authority in statute.
- Reestablishes the Greater Miami Expressway Agency and revises various provisions related to it.

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

The bill was approved by the Governor on May 11, 2023, ch. 2023-70, L.O.F., and will become effective on July 1, 2023, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Right-of-Way Acquisition and Bridge Construction Bonds-Debt Service Cap

Current Situation

The Department of Transportation (DOT) is authorized to issue Right-of-Way Acquisition and Bridge Construction bonds to finance or refinance the cost of acquiring real property for state roads or the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, bonds must be authorized by the Legislature and must be issued pursuant to the State Bond Act.[1,2]

Section 206.46, F.S., authorizes DOT to transfer up to seven percent of the revenues deposited into the State Transportation Trust Fund (STTF) in each fiscal year to the Right-of-Way Acquisition and Bridge Construction Trust Fund, to meet the requirements of outstanding or proposed bond obligations. Notwithstanding this authorized annual transfer, the annual amount transferred may not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service of $350 million,[3] which was most recently increased from $275 million to $350 million in 2021.[4]

Section 339.139, F.S., requires DOT to manage all levels of debt to ensure that no more than 20 percent of total projected available state and federal revenues from the STTF, together with any local funds committed to DOT projects, are committed to certain obligations in any year. Right-of-Way Acquisition and Bridge Construction Bonds are included in DOT's overall debt assessment.

Effect of the Bill

The bill increases the maximum debt service from the STTF from $350 million to $425 million. Therefore, in effect, debt service may not exceed seven percent of the revenues deposited into the STTF or $425 million, whichever is less. The increase of the debt service cap will provide DOT with additional bonding capacity, offering it more flexibility in financing certain projects.

Grant Anticipation Revenue Vehicles (GARVEE)

Current Situation

Generally, a Grant Anticipation Revenue Vehicle (GARVEE) is a type of anticipation vehicle, which are securities issued when moneys are anticipated from a specific source to advance the upfront funding of a particular need. For transportation finance, the anticipation vehicles' revenue source is expected federal-aid grants.[5]

Specific to highways, a GARVEE is a debt instrument that has a pledge of future federal-aid funding. Significantly, it is authorized for federal reimbursement of debt service and related financing costs. Therefore, states can receive federal-aid reimbursements for a wide array of debt-related costs incurred in connection with an eligible debt financing instrument, such as a bond, note, certificate, mortgage, or lease, the proceeds of which are used to fund a project eligible for assistance. Each of these instruments is considered a GARVEE when backed by future federal-aid highway funding, but most frequently, a bond is the debt instrument used. Specifically, debt financing instrument-related costs eligible for federal-aid reimbursement include interest payments, retirement of principal, and any other

[1] The State Bond Act is codified in ss. 215.57-215.83, F.S.
[2] S. 215.605, F.S.
[3] S. 206.46(2), F.S.
[4] Ch. 2021-186, Laws of Fla.
[5] Federal Highway Administration, *Grant Anticipation Revenue Vehicles (GARVEEs),* https://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_debt_financing/garvees/ (last visited Apr. 15, 2023).

cost incidental to the sale of an eligible debt issue. The issuer may be a state, political subdivision, or a public authority.[6]

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

Florida Law

Under s. 212.616, F.S., upon DOT's request, the Division of Bond Finance[8] is authorized pursuant to s. 11, Art. VII of the State Constitution[9] and the State Bond Act[10] to issue revenue bonds, for and on behalf of DOT, for the purpose of financing or refinancing the construction, reconstruction, and improvement of projects that are eligible to receive federal-aid highway funds. The Division of Bond Finance is authorized to consider innovative financing technologies which may include, but are not limited to, innovative bidding and structures of potential financings that may result in negotiated transactions.[11]

Any bonds issued are payable primarily from a prior and superior claim on all federal highway aid reimbursements received each year with respect to federal-aid projects undertaken in accordance with federal law.[12]

The term of the bonds may not exceed a term of 12 years. Prior to the issuance of bonds, DOT must determine that annual debt service on all bonds issued pursuant to s. 212.616, F.S., does not exceed 10 percent of annual apportionments to DOT for federal highway aid in accordance with federal law.[13]

Effect of the Bill

The bill increases from 12 years to 18 years the maximum term for GARVEE Bonds. This will give DOT additional flexibility in financing transportation projects. However, DOT will still be required to go through the Division of Bond Finance in order to issue these bonds.

Florida Development Finance Corporation - Issuance of Revenue Bonds

Current Situation

Generally, a private activity bond (PAB) is a tax-exempt security issued by or on behalf of a local or state government for the purpose of extending special financing benefits for qualified projects. PABs finance projects for a private user, and the governmental issuer's credit usually isn't pledged, but PABs provide a public benefit as well. They are used to attract private investments for projects "that have public or common utility," and result in increased spending on infrastructure."[14]

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[6] *Id.*
[7] *Id.*
[8] The Division of Bond Finance is part of the State Board of Administration.
[9] Article VII, section 11 of the Florida Constitution relates to state bonds and revenue bonds. Subsection (f) requires each project, building, or facility to be financed or refinanced with revenue bonds to be first approved by the Legislature by and act relating to appropriations or by general law.
[10] Ss. 215.57-215.83, F.S.
[11] S. 215.616(1), F.S.
[12] S. 212.616(2), F.S. *See also* Title 23 of the United States Code.
[13] S. 215.616(3), F.S.
[14] MunicipalBonds.com, *Understanding Private Activity Bonds*, https://www.municipalbonds.com/education/understanding-private-activity-bonds/ (last visited Mar. 22, 2023).

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

According to the United State Department of Transportation:

> Section 11143 of Title XI of SAFETEA-LU amended Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which PABs may be issued. This change allowed private activity on these types of projects, while maintaining the tax-exempt status of the bonds. The law limited the total amount of the bonds to $15 billion and directed the Secretary of Transportation to allocate this amount among qualified facilities. The Infrastructure Investment and Jobs Act signed into law on November 15, 2021, increased the available PAB authority from $15 billion to $30 billion. Passage of the PAB legislation reflects the federal government's desire to increase private sector investment in U.S. transportation infrastructure. Providing private developers and operators with access to tax-exempt interest rates lowers the cost of capital significantly, enhancing investment prospects. Increasing the involvement of private investors in highway and freight projects generates new sources of money, ideas, and efficiency. The $30 billion in exempt facility bonds is not subject to the state volume caps.[15]

Florida Development Finance Corporation

In Florida, access to PABs is provided by the Florida Development Finance Corporation (FDFC),[16] the "conduit issuer" of PABs, with the power to function within the corporate limits of any public agency with which it has entered into an interlocal agreement. The FDFC issues the bonds, which are purchased by a bank or investor(s). The proceeds from the sale are then loaned to finance capital projects. The interest received by the investor, if specific criteria are met, is exempt from federal income tax.[17]

The proceeds of any FDFC bonds may not be used to acquire any building or facility that will be, during the pendency of the financing, used by, occupied by, leased to, or paid for by any state, county, or municipal agency or entity.[18]

However, s. 288.9606(6), F.S., authorizes the FDFC in its corporate capacity to, without authorization from a public agency, issue revenue bonds or other evidence of indebtedness to:

- Finance the undertaking of any project within the state that promotes renewable energy;
- Finance the undertaking of any project within the state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009;[19] or
- If permitted by federal law, finance qualifying improvement projects under s. 163.08, F.S.[20]

DOT Public-Private Partnerships

[15] United States Department of Transportation, *Private Activity Bonds*, https://www.transportation.gov/buildamerica/financing/private-activity-bonds (last visited Mar. 22, 2023).
[16] The Florida Development Finance Corporation is created in s. 288.9604, F.S.
[17] Municipalbonds.com, *supra* note 14.
[18] S. 288.9606(6), F.S.
[19] Pub. L. 111-5.
[20] *See* s. 163.08(2)(b), F.S., for a listing of such improvements.

Section 334.30, F.S., authorizes DOT to enter into public-private partnership agreements for the building, operation, ownership, or financing of transportation facilities. Legislative approval of such projects is evidenced by approval of the project in DOT's work program.[21] According to DOT:

> A Public-Private Partnership (P3) is a contractual agreement between a public agency (federal, state, or local) and a private sector entity. Through this agreement, the skills and assets of the public agency and the private sector entity are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risk and reward potential in the delivery of the service or facility.[22]

Examples of DOT's P3 projects include the I-4 Ultimate and the Port Miami Tunnel.[23]

Effect of the Bill

The bill amends s. 288.9606, F.S., relating to the issuance of revenue bonds by FDFC, providing that s. 288.9606(6), F.S., does not prohibit the use of proceeds of FDFC revenue bonds for purposes of financing the acquisition or construction of a transportation facility under a P3 agreement authorized for DOT.

The bill also authorizes FDFC to finance the costs of acquisition or construction of a transportation facility by a private entity or consortium of private entities under a P3 agreement authorized for DOT.

Intermodal Logistics Center Infrastructure Support Program

Current Situation

The Intermodal Logistics Center Infrastructure Support Program (ILC Program) is statutorily established within DOT,[24] with the purpose of providing funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport, thereby enabling the state to respond to private sector market demands and meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities. DOT is authorized to provide funds to assist with local government projects or projects performed by private entities that meet the public purpose of enhancing transportation facilities for the conveyance or shipment of goods through a seaport to or from an intermodal logistics center.[25]

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

- The ability of the project to serve a strategic state interest.
- The ability of the project to facilitate the cost-effective and efficient movement of goods.
- The extent to which the project contributes to economic activity, including job creation, increased wages, and revenues.
- The extent to which the project efficiently interacts with and supports the transportation network.
- A commitment of a funding match.
- The amount of investment or commitments made by the owner or developer of the existing or proposed facility.

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[21] S. 334.30(1), F.S.
[22] DOT, *Public-Private Partnerships*, https://www.fdot.gov/comptroller/pfo/p3.shtm (last visited Mar. 19, 2023).
[23] DOT, *Florida Department of Transportation, Public-Private Partnership Projects,* https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/comptroller/pfo/p3-summary.pdf?sfvrsn=6db86d82_4 (last visited Mar. 19, 2023).
[24] S. 311.101, F.S.
[25] S. 311.101(1), F.S. Section 311.101(2),F.S., defines the term "intermodal logistics center," which includes 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 who activities and services are designed to support or be supported by conveyance or shipping through one or more seaports listed in s. 311.09, F.S.

- The extent to which the owner has commitments, including memoranda of understanding or memoranda of agreements, with private sector businesses planning to locate operations at the intermodal logistics center.
- Demonstrated local financial support and commitment to the project.[26]

DOT must coordinate and consult with the Department of Economic Opportunity (DEO) in the selection of projects to be funded,[27] and DOT must provide up to 50 percent of project costs for eligible projects.[28]

A rural area of opportunity (RAO) is defined as a rural community,[29] or a region of rural communities, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.[30] The Governor may designate by executive order up to three RAOs, establishing the areas as priority assignments for the Rural Economic Development Initiative.[31] The Governor may waive criteria, requirements, or similar provisions of any economic development incentive for projects located in an RAO.[32] The designated RAOs are:

- The Northwest RAO, comprised of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the area within the city limits of Freeport and north of the Choctawhatchee Bay and intercoastal waterway;
- The South Central RAO, comprised of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County); and
- The North Central RAO, comprised of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.[33]

Effect of the Bill

The bill authorizes DOT to provide up to 100 percent of project costs for eligible ILC Program projects in designated rural areas of opportunity.

Automated License Plate Recognition Systems/State Highway System

Present Situation

An automated license plate recognition system (ALPRS) is a system of mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.[34] Data obtained from an ALPRS is generally used to check license plates against law enforcement hot lists. Hot lists contain a list of stolen plates and vehicles entered into the National Crime Information Center database, the Florida Crime Information Center database, Driver and Vehicle Information Database, and any information entered manually by the operating member. Examples of

[26] S. 311.101(3), F.S.
[27] S. 311.101(4), F.S.
[28] S. 311.101(6), F.S. DOT is also authorized to administer contracts on behalf of the entity selected to receive funding for a project under the ILC Program. S. 311.101(5), F.S.
[29] Section 288.0656(1)(e), F.S., defines the term "rural community" to mean: a county with a population of no more than 75,000 or a municipality within such a county; a county with a population of no more than 125,000 which is contiguous to a county with a population of no more than 75,000 or a municipality within such a county; or an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified in s. 288.0656(c), F.S.
[30] S. 288.0656(1)(d), F.S.
[31] The Rural Economic Development Initiative is created in s. 288.0656, F.S.
[32] S. 288.0656(7)(a), F.S.
[33] Department of Economic Opportunity, *Rural Areas of Opportunity*, http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Apr. 25, 2023).
[34] S. 316.0778(1), F.S.

manual entries include, but are not limited to: attempt to locate; AMBER/SILVER alerts, child abductions, missing or wanted persons, and registered sexual predators.[35]

Florida law requires the Department of State in consultation with the Department of Law Enforcement to establish a retention schedule, including a maximum period that records may be retained, for records containing images and data generated through the use of an ALPRS.[36]

The Department of State specifies the retention of license plate recognition records: "Retain until obsolete, superseded, or administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series."[37]

Images and data containing or providing personal identifying information held by an agency and obtained by an ALPRS, as well as personal identifying information derived from ALPRS data or images is confidential and exempt from public record requirements.[38] Such information may be disclosed under the following conditions:

- By or to a criminal justice agency[39] in performance of the agency's official duties.
- To a license plate registrant requesting his or her own information, unless such information constitutes active criminal intelligence information or active criminal investigative information.

Effect of the Bill

The bill creates s. 316.0777(2), F.S., defining the term "law enforcement agency" for purposes of this subsection to mean an agency that has a primary mission of preventing and detecting crime and enforcing the state penal, criminal, traffic, and motor vehicle laws and, in furtherance of that mission, employs law enforcement officers.[40]

The bill authorizes, at DOT's discretion, the installation of ALPRSs within the right-of-way of a road on the State Highway System when installed at the request of a law enforcement agency for the purpose of collecting active criminal intelligence information or active criminal investigative information. An ALPRS may not be used to issue a notice of violation for a traffic infraction or a uniform traffic citation. Such installation must be in accordance with DOT-developed placement and installation guidelines and must be removed within 30 days after DOT notifies the requesting law enforcement agency that such removal must occur. Installation and removal are at the sole expense of the requesting law enforcement agency.

The bill provides that DOT is not liable for any damages caused to any person by the requesting law enforcement agency's operation of an ALPRS, and the bill prohibits retention of records containing

[35] Department of Highway Safety and Motor Vehicles' "Florida Highway Patrol Policy Manual" on ALPRS available at: https://www.flhsmv.gov/pdf/fhp/policies/1725.pdf (last visited Mar. 24, 2023).
[36] S. 316.0778(2), F.S.
[37] Florida Department of State, *General Records Schedule GS2 for Law Enforcement, Correctional Facilities and District Medical Examiners (Effective: Feb. 2021)*, https://fldoswebumbracoprod.blob.core.windows.net/media/703921/gs2-2021-final.pdf (last visited Mar. 24, 2023).
[38] S. 316.0777(2), F.S.
[39] Section 119.011(4), F.S., defines the term "criminal justice agency" to mean any law enforcement agency, court, or prosecutor; Any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.
[40] Section 943.10(1), F.S., defines the term "law enforcement officer" to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

images and data generated through use of an ALPR for longer than the maximum period provided in the applicable retention schedule.

Temporary Airports

Current Situation: Temporary Airports

Florida law defines the term "temporary airport" to mean any airport[41] that will be used for a period of less than 30 days with no more than 10 operations per day.[42]

Under federal law, as a general rule, persons proposing to construct, alter, activate, or deactivate a civil or joint-use airport, or to alter the status or use of such airport, are required to notify the Federal Aviation Administration (FAA).[43] Although federal law does not define temporary airports, federal law contains certain exclusions from federal airport regulations, such as an airport at which flight operations will be conducted under visual flight rules (VFR)[44] and which is used or intended to be used for a period of less than 30 consecutive days with no more than 10 operations per day.[45]

Effect of the Bill: Temporary Airports

The bill aligns the statutory definition of a "temporary airport" with the federal exemption such that under Florida law a "temporary airport" means an airport at which flight operations are conducted under VFR established by the FAA and which is used for less than 30 consecutive days with no more than 10 operations per day.

Current Situation: Temporary Airport Site Approval

Under Florida law, the owner or lessee of a proposed airport must complete an application provided by DOT and receive approval of the airport site before the acquisition, construction, or establishment of the proposed airport.[46] DOT must grant the site approval if it is satisfied:

- That the site has adequate area allocated for the airport as proposed.
- That the proposed airport will conform to licensing or registration requirements and will comply with the applicable local government land development regulations or zoning requirements.
- That all affected airports, local governments, and property owners have been notified and any comments submitted by them have been given adequate consideration.
- That safe air-traffic patterns can be established for the proposed airport with all existing airports and approved airport sites in its vicinity.[47]

Public airport site approval applicants must submit a hardcopy application to DOT with supporting documentation.[48] Private airport site approval applicants must complete an interactive internet-based registration application using DOT's electronic aviation facility data system.[49] In addition to the application, public airports require a favorable physical inspection of the proposed site by DOT prior to approval.[50]

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[41] Section 330.27(2), F.S., defines the term "airport" to mean an area of land or water used for, or intended to be used for, landing and takeoff of aircraft, including appurtenant areas, buildings, facilities, or rights-of-way necessary to facilitate such use or intended use.
[42] S. 330.27(7), F.S.
[43] 14 C.F.R § 157.1.
[44] Federal rule defines "visual flight rules" (VFR) as the rules that govern the procedures for conducting flight under visual conditions. The term "VFR" is also used to indicate weather conditions that are equal to or greater than minimum VFR requirements. 14 C.F.R § 170.3.
[45] 14 C.F.R § 157.1(b).
[46] S. 330.30(1)(a), F.S.
[47] *Id.*
[48] R. 14-60.005(3)(a), F.A.C.
[49] R. 14-60.005(3)(b), F.A.C.
[50] S. 330.30(1)(b), F.S.

Site approval for both public and private airports may be granted subject to any reasonable conditions DOT deems necessary to protect the public health, safety, or welfare.[51] Such conditions shall include operations limited to VFR flight conditions, restricted approach or takeoff direction from only one end of a runway, specified air-traffic pattern layouts to help prevent mid-air collision conflict with aircraft flying at another nearby airport, airport noise abatement procedures in order to satisfy community standards, or other environmental compatibility measures.[52] The site approval remains valid for 2 years after the date of issuance.[53]

Effect of the Bill: Temporary Airport Site Approval

The bill distinguishes temporary airports from public and private airports, and clarifies the process for a temporary airport site approval. The bill provides that site approval shall be granted for a temporary airport only after receipt of documentation in a form and manner DOT deems necessary to satisfy the same conditions for public and private airports. Such documentation must be included with the application for a temporary airport registration.

The bill clarifies that site approval for a public airport or a private airport, but not a temporary airport, remains valid for 2 years after the date of issuance and that DOT may extend a public airport or private airport site approval for subsequent periods of 2 years per extension for good cause.

Current Situation: Temporary Airport Registration

Under Florida law, the owner or lessee of any airport in this state must complete an application in a form and manner prescribed by DOT and receive either a public airport license or private airport registration prior to the operation of aircraft to or from the facility.[54]

For a public airport, DOT issues a license after a final airport inspection finds the facility to be in compliance with all requirements of the license.[55] For a private airport, DOT provides electronic access to the state aviation facility data system to permit the applicant to complete the registration. The registration is completed upon self-certification by the registrant.[56]

Currently, DOT may license a public airport or a private airport may register as a temporary airport if the airport meets the requirements established by DOT. Florida law states that the airport cannot endanger public health, safety, or welfare, and that the nonrenewable temporary license or registration is valid for less than 30 days.[57]

Each public airport license shall expire no later than 1 year after the effective date of the license, but can be extended for a maximum period of 18 months in specific circumstances.[58] Private airport registration must be recertified electronically within 24 months of the last certification, else (with specified exceptions) the registration will expire.[59]

Effect of the Bill: Temporary Airport Registration

The bill clarifies that the owner or lessee of an airport in this state shall have a public airport license, private airport registration, or temporary airport registration before the operation of aircraft to or from the airport.

[51] S. 330.30(1)(d), F.S.
[52] R. 14-60.005(4), F.A.C.
[53] S. 330.30(4)(e), F.S.
[54] S. 330.30(2)(a), F.S.
[55] S. 330.30(2)(a)1., F.S
[56] S. 330.30(2)(a)2., F.S
[57] S. 330.30(2)(c), F.S.
[58] S. 330.30(2)(d)1., F.S.
[59] S. 330.30(2)(d)2., F.S

The bill provides that for a temporary airport, DOT must publish notice of receipt of a completed registration application in the next available publication of the Florida Administrative Register and may not approve a registration application less than 14 days after the date of publication of the notice. DOT must approve or deny a registration application within 30 days after receipt of a completed application and must issue the temporary airport registration concurrent with the airport site approval.

The bill specifies that a completed registration application is considered approved if DOT fails to approve or deny the completed application within 30 days of receiving the completed application. Any applicant seeking to claim registration by default, must first notify the agency clerk of DOT, in writing, of the intent to rely on the default registration. The applicant may not take any action based on the default registration until receipt of such notice by the agency clerk.

The bill maintains that a temporary airport license or registration shall be valid for less than 30 days and is not renewable, but adds that DOT may not approve a subsequent temporary airport registration for the same general location if the purpose or effect is to evade otherwise applicable airport permitting or licensure requirements.

Current Situation: Airport Site Approval and Licensure and Registration Exemptions

Under current law a temporary airport used exclusively for aerial application or spraying of crops on a seasonal basis is exempt from temporary airport site approval and temporary airport licensure or registration requirements.[60]

Effect of the Bill: Airport Site Approval and Licensure and Registration Exemptions

The bill aligns the exemption for this type of temporary airport with the current definition of temporary airports by adding to the exemption, rather than relying on a cross-reference, that the frequency of operations does not exceed 10 operations per day.

DOT Airport Site Approval

Current Situation

DOT is responsible for administering and enforcing ch. 330, F.S., relating to the regulation of aircraft, pilots, and airports, including, but not limited to, establishing requirements for airport site approval, licensure, and registration.[61] With some exception,[62] the owner or lessee of any proposed airport must obtain DOT's approval of the airport site before site acquisition or construction or establishment of the proposed airport. DOT is required to grant site approval upon satisfaction that:

- The site has adequate area allocated for the airport as proposed.
- The proposed airport will conform to licensing or registration requirements and will comply with applicable local government land development regulations or zoning requirements.
- All affected airports, local governments, and property owners have been notified and any comments submitted by them have been given adequate consideration.
- Safe air-traffic patterns can be established for the proposed airport with all existing airports and approved airport sites in its vicinity.[63]

DOT has adopted rules regarding airport site approval.[64] Rule 14-60.005, F.A.C., lists supporting documentation that must accompany an application for public airport site approval. With respect to air traffic patterns, an applicant must provide written confirmation, including a graphical depiction, demonstrating that safe air traffic patterns can be established for the proposed airport with all existing

[60] S. 330.30(3)(e), F.S.
[61] S. 330.30, F.S.
[62] S. 330.30(3), F.S.
[63] S. 330.30(1)(a), F.S.
[64] Ch. 14-60, F.A.C.

and approved airport sites within three miles of the proposed airport site. The applicant must provide a copy of a written memorandum of understanding or letter of agreement, signed by each respective party, regarding air traffic pattern separation procedures between the parties representing the proposed airport and any existing airport(s) or approved airport site(s) located within three miles of the proposed site.[65]

Effect of the Bill

The bill creates s. 330.30(1)(d), F.S., providing that for the purpose of granting airport site approval, DOT may not require an applicant to provide a written memorandum of understanding or letter of agreement with other airport sites regarding air traffic pattern separation procedures unless such memorandum or letter is required by the FAA or is deemed necessary by DOT.

Airport Projects/Rural Communities

Current Situation

Current law requires DOT to continuously update an aviation and airport work program based on a collection of local sponsors'[66] proposed projects to be included in DOT's work program. The airport work program must separately identify "development projects"[67] and "discretionary capacity improvement projects."[68] The aviation and airport work program must be consistent with the statewide aviation system plan[69] and, to the maximum extent feasible, with approved local government comprehensive plans. Projects involving funds administered by DOT to be undertaken and implemented by the airport sponsor must be included in the aviation and airport work program, and assistance may only be provided for projects which are so included.[70]

The annual legislative budget request for aviation and airport development projects must be based on the funding required for development projects in the aviation and airport work program. DOT must provide priority funding in support of the planning, design, and construction of proposed projects by local sponsors, with special emphasis on projects for runways and taxiways, including the painting and marking of runways and taxiways, lighting, other related airside activities, and airport access transportation facility projects on airport property.[71]

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[65] R. 14-60.005(5)(j), F.A.C.

[66] Section 332.004(15), F.S., defines the term "sponsor" to mean any eligible agency which, either individually or jointly with one or more eligible agencies, submits to the department an application for financial assistance for an airport development project. Federal funding of individual local airport projects is wholly between the local airport sponsors and the appropriate federal agencies; however, DOT is authorized to receive federal grants for statewide projects when no local sponsor is available. S. 332.007(1), F.S.

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

[68] Section 332.004(5),F.S., defines the term "airport or aviation discretionary capacity improvement projects" or "discretionary capacity improvement projects" to mean capacity improvements which are consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government in which the airport is located, and which enhance intercontinental capacity at airports which: are international airports with United States Bureau of Customs and Border Protection; had one or more regularly scheduled intercontinental flights during the previous calendar year or have an agreement in writing for installation of one or more regularly scheduled intercontinental flights upon the commitment of funds for stipulated airport capital improvements; and have available or planned public ground transportation between the airport and other major transportation facilities.

[69] Pursuant to s. 332.006, F.S., DOT is required to develop and periodically update a statewide aviation system plan that summarizes 5-year, 10-year, and 20-year airport and aviation needs within the state.

[70] S. 332.007(1)-(3), F.S.

[71] S. 332.007(4)(a), F.S.

No single airport may receive airport or aviation development project funds in excess of 25 percent of the total airport or aviation development project funds available in any given budget year. However, any airport which receives discretionary capacity improvement project funds in a given fiscal year may not receive greater than ten percent of total aviation and airport development project funds appropriated in that fiscal year.[72]

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

- Up to 50 percent of the portion of eligible project costs which are not funded by the Federal Government, except that DOT may initially fund up to 75 percent of the cost of land acquisition for a new airport or for the expansion of an existing airport which is owned and operated by a municipality, a county, or an authority. DOT must be reimbursed when federal funds become available or within ten years after the date of acquisition, whichever is earlier.[73]
- Up to 50 percent of the nonfederal share for land acquisition when such land is needed for airport safety, expansion, tall structure control, clear zone protection, or noise impact reduction, which DOT may retroactively reimburse to cities, counties, or airport authorities.[74]
- Up to 80 percent of master planning and eligible aviation development projects at publicly owned, publicly operated airports when federal funds are not available, and up to 80 percent of the nonfederal share when federal funds are available. This funding is limited to general aviation airports[75] or commercial service airports[76] that have fewer than 100,000 passenger boardings per year as determined by the FAA.[77]
- Up to 100 percent of the cost of an eligible project that is statewide in scope or that involves more than one county where no other governmental entity or appropriate jurisdiction exists.[78]

Subject to the availability of appropriated funds in addition to aviation fuel tax revenues,[79] DOT may participate in the capital cost of eligible public airport and aviation discretionary capacity improvement projects. The annual legislative budget request must also be based on the funding required for discretionary capacity improvement projects in the aviation and airport work program.[80] DOT is required to provide priority funding in support of:

- Land acquisition that provides additional capacity at the qualifying international airport or at that airport's supplemental air carrier airport.
- Runway and taxiway projects that add capacity or are necessary to accommodate technological changes in the aviation industry.

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[72] S. 332.007(4)(c), F.S.

[73] S. 332.007(6)(a), F.S. Such projects must be contained in the Federal Government's Airport Capital Improvement Program, and the Federal Government must fund, or have funded, the first year of the project. The national Airports Capital Improvement Plan is an internal FAA document that serves as the primary planning tool for identifying and prioritizing critical airport development and associated capital needs for the National Airspace System. It also serves as the basis for the distribution of grant funds under the Airport Improvement Program. Federal Aviation Administration, *Airports Capital Improvement Plan*, https://www.faa.gov/airports/aip/acip (last visited May 2, 2023). The Airport Improvement Program provides grants to public agencies — and, in some cases, to private owners and entities — for the planning and development of public-use airports. Federal Aviation Administration, *Overview: What is AIP & What is Eligible?*, https://www.faa.gov/airports/aip/overview (last visited May 2, 2023).

[74] S. 332.007(6)(b), F.S. However, no land purchased prior to July 1, 1990, or purchased prior to executing the required DOT agreements shall be eligible for reimbursement.

[75] A general aviation airport is a public-use airport that does not have scheduled service or has scheduled service with less than 2,500 passenger boardings each year. Federal Aviation Administration, *Airport Categories*, https://www.faa.gov/airports/planning_capacity/categories (last visited May 2, 2023).

[76] A commercial service airport is a publicly owned airport with at least 2,500 annual enplanements and schedule air carrier service. *Id.*

[77] S. 332.007(6)(c), F.S.

[78] S. 332.007(6)(d), F.S.

[79] The aviation fuel tax is imposed in accordance with s. 206.9825, F.S. Aviation fuel tax revenues are initially deposited in the Fuel Tax Collection Trust Fund. After deducting the service charges imposed by s. 215.20, F.S., the refunds granted pursuant to s. 206.9855, F.S., and the administrative costs incurred by the Department of Revenue in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, are distributed monthly to the State Transportation Trust Fund per s. 206.9845, F.S.

[80] S. 332.007(7), F.S.

- Airport access transportation projects that improve direct airport access and are approved by the airport sponsor.
- International terminal projects that increase international gate capacity.[81]

No single airport may receive discretionary capacity improvement project funds in excess of 50 percent of the total discretionary capacity improvement project funds available in any given budget year.[82]

DOT may fund up to 50 percent of the portion of eligible project costs which are not funded by the Federal Government, except that DOT may initially fund up to 75 percent of the cost of land acquisition for a new airport or for the expansion of an existing airport which is owned and operated by a municipality, a county, or an authority. DOT must be reimbursed when federal funds become available or within 10 years after the date of acquisition, whichever is earlier.[83]

DOT is authorized in s. 339.2821, F.S., to expend funds and contract with the appropriate governmental body[84] for the direct costs of "transportation projects"[85] which DOT, in consultation with DEO, deems necessary to facilitate the economic development and growth of the state. When reviewing projects for approval and funding, DOT, in consultation with DEO, must consider:

- The cost per job created or retained considering the amount of transportation funds requested and the average hourly rate of wages for jobs created;
- The reliance on any program as an inducement for determining the transportation project's location;
- The amount of capital investment to be made by a business and the demonstrated local commitment;
- The location of the transportation project in an enterprise zone as designated in s. 290.0055, F.S.,[86] or in a spaceport territory as defined in s. 331.304, F.S.;
- The unemployment rate of the surrounding area; and
- The poverty rate of the community.[87]

DOT must approve a transportation project if it determines that it will:

- Attract new employment opportunities to the state or expand or retain employment in existing companies operating within the state.
- Allow for the construction or expansion of a state or federal correctional facility in a county having a population of 75,000 or fewer which creates new employment opportunities or expands or retains employment in the county.[88]

Current law requires inclusion of specific clauses in a contract between DOT and a governmental body for economic development transportation projects.[89] Each governmental body receiving funds must submit to DOT a financial audit conducted by an independent certified public accountant. DOT must monitor the construction or building site for each transportation project.

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[81] S. 332.007(7)(a), F.S.
[82] S. 332.007(7)(b), F.S.
[83] S. 332.007(7)(d), F.S.
[84] Section 339.2821(1)(b)2., F.S., defines the term "governmental body" to mean an instrumentality of the state or a county, municipality, district, authority, board, or commission, or an agency thereof, within which jurisdiction the transportation p roject is located and which is responsible to DOT for the transportation project.
[85] Section 339.2812(1)(b)2., F.S., defines the term "transportation project" to mean a transportation facility, as defined in s. 334.03, F.S., which DOT, in consultation with the Department of Economic Opportunity, deems necessary to facilitate the economic development and growth of the state.
[86] Florida's Enterprise Zone Program provides state and local incentives to induce private investment in specific geographic are as targeted for economic revitalization. To qualify, these areas must meet specified criteria, including suffering from pervasive poverty, unemployment, and general distress. *See* the Florida Enterprise Zone Act, ss. 290.001-290.016, F.S.
[87] S 339.2821(2), F.S.
[88] S. 339.2821(3)(a), F.S.
[89] S. 339.2821(4), F.S.

Effect of the Bill

The bill provides that, subject to the availability of appropriated funds, and unless otherwise provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act, the DOT may fund up to 100 percent of eligible project costs of all of the following at a publicly owned, publicly operated airport located in a rural community, as defined in s. 288.0656, F.S., which does not have any scheduled commercial service:

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

Any remaining funds must be allocated for development projects per s. 332.007(6), F.S., discussed above. The bill does not make an appropriation.

DOT Public Information and Educational Campaigns

Current Situation

Section 334.044(5), F.S., authorizes DOT to purchase, lease, or otherwise acquire property and materials, including the purchase of promotional items as part of public information and education campaigns for the promotion of scenic highways, traffic and train safety awareness, alternatives to single-occupant vehicle travel, and commercial motor vehicle safety; to purchase, lease, or otherwise acquire equipment and supplies; and to sell, exchange, or otherwise dispose of any property that is no longer needed by DOT.

DOT recently published Florida's Electric Vehicle Infrastructure Deployment Plan,[90] deemed as the "framework for implementing the National Electric Vehicle Infrastructure Program (NEVI) to invest funding for EV infrastructure improvements to address charging gaps identified in the market," which will serve "as a guide for how EV funds will be invested across the state over the five-year timeline of the NEVI program."

The Federal Highway Administration views public engagement activities as enabling "a more inclusive, accessible, and transparent process to gain input from communities," and NEVI funds can be used for public engagement.[91] DOT advises that public engagement activities include "briefings, meetings, venues, social media, interactive displays, kiosks, visual materials, etc."[92] However, DOT does not have state statutory authority to purchase promotional items relating to electric vehicles or electric vehicle charging stations, nor for autonomous vehicles (which may be electrically powered), or context design for each.[93]

According to DOT, context design relates to the various design elements surrounding roads and other infrastructure that will have to be updated to account for these emerging technologies and the respective community's environment and educating the public about these new features. This is applicable to both type of emerging technologies – electric vehicle and autonomous vehicles.

Effect of the Bill

[90] *See* DOT, *Florida's Electric Vehicle Infrastructure Deployment Plan*, p. 3, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/electric-vehicle/florida's-evidp_2022-07-29_final_v2.pdf?sfvrsn=21099b3e_2 (last visited Mar. 19, 2023).
[91] *See* FHWA, *National Electric Vehicle Infrastructure (NEVI) Formula Program Q&A*, pp. 12-13, https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/resources/nevi_program_faqs.pdf (last visited Mar. 23, 2023).
[92] DOT's responses to Senate committee staff questions.
[93] According to the DOT, context design relates to the various design needs in different communities as electric vehicle and autonomous vehicle technology continues to evolve. *Id.*

The bill amends DOT's powers and duties authorizing it to purchase, lease, or otherwise acquire property and materials, including promotional items as part of public information and education campaigns for the promotion of electric vehicle use and charging stations, autonomous vehicles, and context design for electric vehicles and autonomous vehicles.

DOT Employee Commercial Driver Licenses

Current Situation

DOT notes that truck drivers licensed to drive commercial motor vehicles "are the department's heaviest need right now. This can also extend to heavy equipment drivers such as bridge snoopers[94] and dump trucks, all of which also require a [commercial driver license] as a condition of employment."[95]

The 2022 General Appropriations Act contained the following proviso language:

> From the funds in Specific Appropriations 1969 and 1995, $500,000 may be expended for training, testing, and licensing for full-time employees of the Department of Transportation who are required to have a valid Class A[96] or Class B[97] commercial driver license as a condition of employment with the department.[98]

Effect of the Bill

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

DOT Rapid Response Contracting Authority

Current Situation

Under current law, DOT is authorized to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System or the State Park Road System or of any roads placed under its supervision. DOT also has the authority to enter into contracts for the construction and maintenance of rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities.[99]

When DOT determines that it is in the public's best interest for reasons of public concern, economy, improved operations, or safety, and only when circumstances dictate rapid completion of the work, DOT may enter into contracts for construction and maintenance, up to the amount of $250,000, without advertising and receiving competitive bids. DOT may enter into such contracts only upon a determination that the work is necessary for one of the following reasons:

- To ensure timely completion of projects or avoidance of undue delay for other projects;

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[94] Bridge snoopers are designed for under-bridge access inspections and bridge maintenance work. *See* paxton-mitchell.com, *The Original Snooper Underbridge Inspection Truck,* https://paxton-mitchell.com/category/bridge-inspection-equipment/ (last visited Mar. 19, 2023).
[95] Attachment to e-mail from Brett Tubbs, Legislative Affairs Director, Department of Transportation, RE HB 1305, Initial Questions. (Mar. 10, 2023)
[96] A Class A commercial driver license is for trucks or truck combinations weighing with a Gross Vehicle Weight Rating of 26,001 lbs. or more, provided towed vehicle is more than 10,000 lbs. Department of Highway Safety and Motor Vehicles, *License Classes, Endorsements, and Designations,* https://www.flhsmv.gov/driver-licenses-id-cards/general-information/license-classes-endorsements-designations/ (last visited Mar. 23, 2023).
[97] A Class B commercial driver license is for straight trucks weighing 26,001 lbs. Gross Vehicle Weight Rating or more. *Id.*
[98] Ch. 2022-156, Laws of Fla. *See* proviso language to specific appropriation 1969.
[99] S. 337.11(1), F.S.

- To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or
- To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.

DOT must make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract. DOT must consider disadvantaged business enterprise participation. However, when the work exists within the limits of an existing contract, DOT should make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract.[100]

The maximum dollar threshold was most recently increased in 2017, when it was increased from $120,000 to $250,000.[101]

Effect of the Bill

The bill increases the threshold amount from $250,000 to $500,000, under which DOT may enter into construction and maintenance contracts without advertising and receiving competitive bids. DOT may only enter into such contracts as provided above.

Phased Design-Build and Innovative Contracting

Current Situation

Florida law authorizes DOT, if it determines that it is in the public interest, to combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, referred to as a "design-build" contract.[102] DOT must adopt, by rule, procedures for administering design-build contracts. Such procedures must include, but are not limited to:

- Prequalification requirements.
- Public announcement procedures.
- Scope of service requirements.
- Letters of interest requirements.
- Short-listing criteria and procedures.
- Bid proposal requirements.
- Technical review committee.
- Selection and award processes.
- Stipend requirements.[103]

Florida law authorizes DOT to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must be intended to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of:

- Highway and bridge design, construction, and maintenance;
- Innovative bidding and financing techniques;
- Accelerated construction procedures; and
- Techniques that have the potential to reduce project life cycle costs.[104]

[100] S. 337.11(6)(c), F.S.
[101] Ch. 2017-196, Laws of Fla.
[102] S. 337.11(7)(a), F.S.
[103] S. 337.11(7)(b), F.S.
[104] S. 337.025(1), F.S.

To the maximum extent practical, DOT must use existing processes to award and administer construction and maintenance contracts.[105]

DOT's authority for utilizing innovative techniques is limited to $120 million annually for the purposes of contracting for innovative transportation projects. The $120 million annual cap does not apply to:

- Turnpike Enterprise projects, and
- Low-bid design-build milling and resurfacing contracts.[106]

According to the Design-Build Institute of America (DBIA), design-build projects enable the project owner to manage only one contract, with the designer and contractor working together from the beginning and providing consensus project recommendations to fit the owner's schedule and budget. The entire team addresses any necessary changes, which leads "to collaborative problem-solving and innovation...." This method of project delivery, the DBIA asserts, creates an inherent "culture of collaboration."[107] As described by the DBIA, the "progressive" or "phased" type of design-build contract "uses a qualifications-based or best value selection, followed by a process whereby the owner then 'progresses' towards a design and contract price with the team."[108]

Effect of the Bill

The bill increases the limit on DOT's authority for utilizing innovative techniques from $120 million to $200 million annually and removes an exception to the annual cap for low-bid design-build milling and resurfacing contracts.

The bill provides that if DOT determines that it is in the best interests of the public, it may combine the design and construction phases of a project fully funded in its 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-step progression through construction. Such a contract is referred to as a phased design-build contract.

For phased design-build contracts, selection and award includes a two-phase process. For phase one, DOT competitively awards the contract to a design-build firm based upon qualifications. For phase two, the design-build firm competitively bids construction trade subcontractor packages and, based upon these bids, negotiates with DOT a fixed firm price or guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

The bill adds phased design-build contracts to an existing provision relating to design build contracts providing that both types of contracts may be advertised and awarded notwithstanding the requirements of s. 337.11(3)(c), F.S. However, construction activities may not begin on any portion of such projects for which DOT has not yet obtained title to the necessary rights-of-way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed. Title to rights-of-way is deemed to have vested in the state when the title has been dedicated to the public or acquired by prescription.

The bill adds phased design-build contracts to DOT's rulemaking requirements for design-build contracts and requires DOT to receive at least three letters of interest to proceed with a phased design-build proposal, which is the same for the existing design-build proposal.

Metropolitan Planning Organizations

[105] *Id.*
[106] S. 337.025(2), F.S.
[107] DBIA, *What is Design-Build*, https://dbia.org/what-is-design-build/ (last visited Apr. 16, 2023).
[108] DBIA, *Progressive Design-Build, Design-Build Procured with a Progressive Design and Price*, at p. 3, https://dbia.org/wp-content/uploads/2018/05/Primer-Progressive-Design-Build.pdf (last visited Apr. 16, 2023).

Metropolitan planning organizations (MPOs) are federally required transportation planning entities in urbanized areas with populations of 50,000 or more persons.[109] Florida has 27 MPOs.[110]

Federal law and regulations give significant responsibility for transportation planning to MPOs, in coordination with DOT and others. To carry out the MPO planning process, federal[111] and state[112] law require an MPO to be designated for each urbanized area[113] 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.[114]

To the extent possible, only one MPO may be designated for each urbanized area or group of contiguous areas.[115] Under both federal[116] and state law,[117] 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.

Current law creates the Chairs Coordinating Committee, composed of the MPOs serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties.[118] The committee must:

- Coordinate transportation projects deemed to be regionally significant by the committee.
- Review the impact of regionally significant land use decisions on the region.
- Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one MPO represented on the committee.
- Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.[119]

Effect of the Bill

The bill repeals the Chairs Coordinating Committee. In its place, the bill requires, by December 31, 2023, 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 for consolidation into a single MPO serving the contiguous urbanized 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.

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[109] Federal Transit Administration, *Metropolitan Planning Organization (MPO)*, https://www.transit.dot.gov/regulations-and-guidance/transportation-planning/metropolitan-planning-organization-mpo (last visited Apr. 17, 2023).
[110] A list of Florida's MPOs is available at: https://www.mpoac.org/mpos/ (last visited Apr. 17, 2023).
[111] 23 U.S.C. § 134.
[112] S. 339.175, F.S.
[113] 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* Federal Highway Administration, *Census Urban Areas and MPO/TMA Designation, FAQ Topic 1: Definitions*, https://www.fhwa.dot.gov/planning/census_issues/urbanized_areas_and_mpo_tma/faq/page01.cfm (last visited Apr. 5, 2023). For a table listing all 2020 Census urban areas, including those in Florida, see the Federal Register, Vol. 87, No. 249 (Dec. 29, 2022), https://www.govinfo.gov/content/pkg/FR-2022-12-29/pdf/2022-28286.pdf (last visited Apr. 5, 2022).
[114] Florida law generally mirrors federal law with respect to MPO designation, as well as other provisions relating to MPOs.
[115] S. 339.175(2)(a)2., F.S.
[116] 23 U.S.C. § 134(d)(7).
[117] S. 339.175(2)(a)2., F.S. Each designated MPO operates under s. 339.175, F.S., pursuant to an interlocal agreement.
[118] The Chairs Coordinating Committee was previously created within the Tampa Bay Area Regional Transit Authority.
[119] S. 339.175(6)(i), F.S.

Public Transit Development

Current Situation

Public Transit Block Grants

The federal Surface Transportation Block Grant Program apportions funding for each state[120] that may be used by states and localities for projects to preserve and improve the conditions and performance on any Federal-aid highway, bridge, and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects,[121] including intercity bus terminals.[122] DOT and local governmental entities are authorized to receive federal grants or apportionments for public transit[123] and intercity bus service projects[124] in this state.[125]

Section 341.052, F.S., creates a public transit block grant program which is administered by DOT. Block grant funds may only be provided to "Section 9" providers[126] and "Section 18" providers[127] designated by the United States Department of Transportation and community transportation coordinators.[128] Eligible providers must establish public transportation development plans consistent, to the maximum extent feasible, with approved local government comprehensive plans of the units of local government in which the provider is located. In developing public transportation development plans, eligible providers must solicit comments from local workforce development boards.[129] The development plans must address how the public transit provider will work with the appropriate local workforce development board to provide services to participants in the welfare transition program. Eligible

[120] Federal Highway Administration, *Surface Transportation Block Grant Fact Sheet*, https://www.fhwa.dot.gov/bipartisan-infrastructure-law/stbg.cfm (last visited Mar. 19, 2023).
[121] Section 341.031(7), F.S., defines the term "public transit capital project" to mean a project undertaken by a public agency to provide public transit to its constituency, and is limited to acquisition, design, construction, reconstruction, or improvement of a governmentally owned or operated transit system.
[122] Federal Highway Administration, *Surface Transportation Block Grant Program (STBG)*, https://www.fhwa.dot.gov/specialfunding/stp/#:~:text=The%20Surface%20Transportation%20Block%20Grant%20program%20%28STBG%29%20provides,and%20transit%20capital%20projects%2C%20including%20intercity%20bus%20terminals (last visited Mar. 23, 2023).
[123] Section 341.013(6), F.S., defines the term "public transit" to mean 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.
[124] Section 341.031(11), F.S., defines the term "intercity bus service" to mean regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity; has the capacity for transporting baggage carried by passengers; makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available; maintains scheduled information in the National Official Bus Guide; and provides package express service incidental to passenger transportation.
[125] S. 341.051(1), F.S.
[126] A "Section 9" provider is now referred to as a Section 5307 provider, one eligible to receive funds from the Urbanized Area Formula Grants program under 49 U.S.C. § 5307. The program makes federal resources available to urbanized areas (50,000 population or more) and to governors for transit capital and operating assistance in urbanized areas and for transportation-related planning. Designated recipients that are public bodies with the legal authority to receive and dispense federal funds are eligible. For a list of eligible activities, see Federal Transit Administration, *Urbanized Area Formula Grants – 5307*, https://www.transit.dot.gov/funding/grants/urbanized-area-formula-grants-5307 (last visited Mar. 23, 2023).
[127] A "Section 18" provider is now referred to as a Section 5311 provider, one eligible to receive funds from the Formula Grants for Rural Areas under 49 U.S.C. 5311. The grants provide capital, planning, and operating assistance to states to support public transportation in rural areas with populations of less than 50,000, where many residents often rely on public transit to reach their destinations. The program also provides funding for state and national training and technical assistance through the Rural Transportation Assistance Program. Eligible recipients include states and federally recognized Indian Tribes. Subrecipients may include state or local government authorities, nonprofit organizations, and operators of public transportation or intercity bus service. Eligible activities include planning, capital, operating, job access and reverse commute projects, and the acquisition of public transportation services. See Federal Transit Administration, *Formula Grants for Rural Areas – 5311*, https://www.transit.dot.gov/rural-formula-grants-5311 (last visited Mar. 23, 2023).
[128] Section 427.011(5), F.S., defines the term "community transportation coordinator" to mean a transportation entity recommended by a metropolitan planning organization, or by the appropriate designated official planning agency as provided for in ss. 427.011-427.017, F.S., in an area outside the purview of a metropolitan planning organization, to ensure that coordinated transportation services are provided to the transportation disadvantaged population in a designated service area.
[129] Workforce development boards are established under ch. 445, F.S.

providers must provide information to the local workforce development board serving the county in which the provider is located regarding the availability of transportation services to assist program participants.[130]

Costs for which public transit block grant program funds may be expended include:

- Costs of public bus transit and local public fixed guideway capital projects.
- Costs of public bus transit service development and transit corridor projects.
- Costs of public bus transit operations.

All projects must be consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government in which the project is located.[131]

Transit Productivity and Performance Measures

Where there is an approved local government comprehensive plan in the political subdivision or political subdivisions in which the public transportation system is located, each public transit provider must establish public transportation development plans consistent with approved local government comprehensive plans.[132]

Each public transit provider must establish productivity and performance measures, which must be approved by DOT and which must be selected from measures developed pursuant to s. 341.041(3), F.S. Each provider must, by January 31 of each year, report to DOT relative to these measures. In approving these measures, DOT must consider the goals and objectives of each system, the needs of the local area, and the role for public transit in the local area. The report must also specifically address potential enhancements to productivity and performance which would have the effect of increasing farebox recovery ratio.[133]

Each public transit provider must publish in the local newspaper of its area the productivity and performance measures established for the year and a report which provides quantitative data relative to the attainment of established productivity and performance measures.[134]

Metropolitan Planning Organization Long-Range Transportation Plans

Under Florida law, each MPO is required to develop a long-range transportation plan with a 20-year planning horizon. The plan must include both long-range and short-range strategies and must comply with all other 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.[135]

Effect of the Bill

The bill requires eligible public transit providers public transportation development plan be consistent, to the maximum extent feasible, with the long-range transportation plans of the MPO in which the provider is located. Currently, DOT's Transit Development Plan Handbook provides that at a minimum a transportation development plan must be consistent with the Florida Transportation Plan, local government comprehensive plans, and local MPO long-range transportation plans.[136] Therefore, it appears that the bill is codifying current practice.

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[130] S. 341.052(1), F.S.
[131] S. 341.052(2), F.S.
[132] S. 341.071(1), F.S.
[133] S. 341.071(2), F.S.
[134] S. 341.071(3), F.S.
[135] S. 339.175(7), F.S.
[136] DOT, *TPD Handbook, Version III (2022 Update)*, p. 101, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/transit/documents/2022-transit-development-plan-handbook.pdf?sfvrsn=be593482_2 (last visited Mar. 19, 2023).

The bill provides that each public transit provider's productivity and performance report must include the farebox recovery ratio, but removes the requirement that the report specifically address potential enhancements to productivity and performance that would have the effect of increasing the farebox recovery ratio.[137]

The bill also requires each public transit provider to publish on its website, instead of in the local newspaper, its productivity and performance measure and data relative to the attainment of those measures.

Fixed Guideway Inspection

Current Situation

Under current law, DOT must adopt, by rule, minimum safety standards for governmentally owned fixed-guideway transportation systems (FGTSs) and privately owned or operated FGTSs which are financed wholly or partly by state funds. Standards must be site-specific and developed jointly by DOT and representatives of the affected systems, giving full consideration to nationwide industry safety norms relating to the development and operation of such systems.[138]

The primary objective of DOT's Bridge and Other Structures Inspection Program is to protect the safety and welfare of the motoring public and safeguard the public's investment.[139] The program identifies bridge deficiencies and other deficiencies that are critical enough to endanger public safety.[140] Non-critical deficiencies are also identified.[141]

DOT's rule[142] incorporates by reference DOT's Fixed Guideway Transportation Systems State Safety and Security Oversight (SSO) Program Standard (May 2018). According to the SSO program document:

> The [DOT] SSO program fulfills the Federal Transit Administration (FTA) State Safety Oversight Rule (49 CFR Part 674), which requires states to oversee the safety of Rail Fixed-Guideway Transit Systems through a designated oversight agency. This FTA rule implement enhanced oversight requirements precipitated by the Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012. Pursuant to s. 341.061(1), F.S., and Rule 14-15.017, Florida Administrative Code, DOT is designated as the State Safety Oversight Agency responsible for safety and security oversight of Rail Fixed Guideway Transit Systems operated in the State of Florida, which are financed wholly or partly by state funds.[143]

The SSO Program document makes the following distinction:

- The FGTS subject to the FTA regulations [49 CFR Part 674] and the provisions in Part 1 of this SSO Manual as of August 2018 are: Miami-Dade Department of Transportation and Public Works (DTPW) Metrorail and Metromover, Jacksonville Transportation Authority (JTA) Skyway, and Hillsborough Area Regional Transit Authority (HART) – TECO Line Streetcar.

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[137] The farebox recovery ratio is the percentage of direct operating costs for a route that are recovered through the fare paid by the ridership. It is equal to fare revenue divided by total expenses. Attachment to E-mail from Brett Tubbs., Legislative Affairs Director, Department of Transportation, RE: HB 1305 Initial Questions (Mar. 10, 2023).
[138] S. 341.061, F.S.
[139] DOT, *Bridge and Other Structures Inspection and Reporting, Procedure 850-010-030-k*, p. 3, available at: https://pdl.fdot.gov/Procedures (last visited May 11, 2023).
[140] *Id.*
[141] *Id.*
[142] R. 14-15.017, F.A.C.
[143] DOT, *Fixed Guideway Transportation Systems State Safety and Security Oversight Program Standard (May2018)*, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/transit/documents/ssofgtsmanual2018.pdf?sfvrsn=38f65fa5_2 (last visited May 11, 2023).

- Other FGTS in the state are subject to s. 341.061(1), F.S., but not 49 U.S.C. 5329 and 49 CFR Part 674. These systems are subject to Part 2 of this Manual. As of August 2018, these systems are: the Miami International Airport automated people movers, the Orlando International Airport automated people movers, the SunRail commuter rail system, the Tampa International Airport automated people movers, and the South Florida Regional Transportation Authority Tri Rail commuter rail system.[144]

Florida law does not currently require DOT to inspect fixed-guideway transportation systems that are privately funded and operated, even when open to the public.

Effect of the Bill

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

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

Santa Rosa Bay Bridge Authority

Current Situation

Originally created in 1984,[145] ch. 348, part IV, F.S., creates the Santa Rosa Bay Bridge Authority (SRBBA) in Santa Rosa County. The SRBBA was created for the purpose of acquiring, holding, constructing, maintaining, operating, owning, and leasing the Santa Rosa Bay Bridge System (system),[146] commonly known as the Garcon Point Bridge. Bridge construction began in December 1996, and the bridge opened to traffic in May 1999.[147]

Toll Facility Revolving Trust Fund Loans

The Toll Facilities Revolving Trust Fund was a loan program used to develop and enhance the financial feasibility of revenue-producing road projects. The trust fund provided interest free loans to pay the toll facility's initial project development costs. Loans of greater than $1.5 million required specific legislative appropriation. In 2012, the Legislature repealed the Toll Facilities Revolving Trust Fund.[148]

Between 1989 and 1994, SRBBA received $8.5 million in Toll Facilities Revolving Trust Fund loans. SRBBA used the loan proceeds to pay preliminary expenditures related to the bridge. Toll Facilities Revolving Trust Fund loan repayment is subordinate to the SRBBA's debt service and administrative costs. As of June 30, 2016, SRBBA owed DOT $7.9 million in Toll Facilities Revolving Trust Fund loans and has not made any loan payments since August 1999.[149]

In January 2001, SRBBA requested an additional loan of over $2.9 million, anticipated to be sufficient to cover revenue shortfalls in Fiscal Years 2001 and 2002. SRBBA's request was reduced to $1.4

[144] *Id.* at p. 17.
[145] Ch. 84-354, Laws of Fla.
[146] DOT/Division of Bond Finance, *Economic Feasibility Study: State Acquisition of the Garcon Point Bridge (Dec. 2017)*, p. 11.
[147] *Id.* at B-2.
[148] Ch. 2012-128, Laws of Fla.
[149] Economic Feasibility Study, *supra* note 146 at p. 11.

million after updated revenue estimates decreased its anticipated revenue shortfall. In May 2001, the Legislature approved SRBBA's loan request;[150] however, Governor Bush vetoed the loan.[151]

Following the veto, SRBBA used its operating reserves to cover the revenue shortfall for its July 1, 2001, debt service payment. This temporarily allowed SRBBA to delay drawing on its $9.2 million debt service reserve fund. This also left SRBBA without funds for its day-to-day operations. By mid-2001, SRBBA was using all available toll revenues for debt service, leaving it without operating funds. By the end of 2001, due to lack of funds, SRBBA closed its office and ceased all administration services. DOT agreed to take possession of all SRBBA's records and provide administrative support for SRBBA's future board meetings.[152]

Financing and Construction

In 1996, SRBBA issued $95 million in bonds to pay for the construction of the Garcon Point Bridge. Also in 1996, SRBBA entered into a lease-purchase agreement with DOT, where DOT operated, maintained, repaired, and insured the bridge, and SRBBA was to reimburse DOT for associated expenditures only when it was able to meet its bond obligations.[153]

Of SRBBA's $95 million in bonds, $75.5 million are fixed-rate current-interest bonds. Fixed-rate current-interest bonds pay interest at a set rate on a periodic basis. At maturity, the final interest payment and the original principal amount is paid to the bondholder. This is the conventional debt structure in the municipal bond market and is utilized for the vast majority of the state's debt transactions.[154]

The remaining $19.5 million in bonds are Capital Appreciation Bonds. Capital Appreciation Bonds do not make periodic interest payments and instead increase in value at a compounded rate. At maturity, bondholders receive a single payment equal to their original principal and all compounded interest. The total or amount due at maturity of SRBBA's in Capital Appreciation Bonds issued is $73.8 million. Since Capital Appreciation Bonds only pay at maturity, they are used to avoid periodic interest payments.[155]

In 1999, the Garcon Point Bridge opened to traffic. However, it never received enough toll revenues to meet its bond obligations and its bonds went into default. In 2015 and 2018, the bond trustees requested that DOT increase the toll on the bridge. DOT expressed concerns over its legal authority to increase toll and did not increase the tolls.[156]

Lease-Purchase Agreement

In October 1996, SRBBA and DOT entered into a lease-purchase agreement,[157] granting DOT exclusive possession and use of the bridge. Under the agreement, DOT pays the costs of operating, maintaining, repairing, and insuring the bridge. The agreement requires DOT to collect the tolls on the bridge and remit the revenues to the bond trustee as lease payments. The agreement's terms extend through the date upon which all of the bonds have been repaid and all amounts due to DOT, including the Toll Facilities Revolving Trust Fund loans and all operations and maintenance costs paid by DOT, have been repaid.[158]

The agreement was a mechanism for the state to provide credit support in connection with financing the bridge. With the state paying the operation and maintenance expenses, SRBBA was able to pledge its

[150] Ch. 2001-253, Laws of Fla. (Veto of proviso language for specific appropriation 2032).
[151] Economic Feasibility Study, *supra* note 146 at p. B-3.
[152] *Id.* at B-3 - B-4.
[153] DOT settlement agreement with UMB National Association regarding the Garcon Point Bridge (June 13, 2022), Paragraph C, https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=550000&ContractId=S0424&Tab=4 (last visited Mar. 2, 2023).
[154] Economic Feasibility Study, *supra* note 146 at p. B-3.
[155] *Id.*
[156] Settlement Agreement, *supra* note 153 at paragraph L.
[157] DOT's authority to enter into lease-purchase agreements with SRBBA and similar authorities was repealed in 2014.
[158] Economic Feasibility Study, *supra* note 146 at p. 14.

gross toll revenues as security for the bonds. The state's credit support reduced the financial risk to bondholders and was essential for the marketability of the bonds given.

Litigation and State Takeover

In December 2018, the bond trustees filed a Complaint in the Circuit Court for Leon County seeking an order requiring DOT to increase the tolls on the bridge in order to cover the SRBBA's bond obligations and a separate claim in excess of $75 million in damages for DOT's failure to raise tolls when requested by the trustee. The complaint was subsequently amended to request damages relating to DOT's extended suspension of tolls following Hurricane Sally in September 2020.[159]

In December 2019, the court entered its Final Judgement, directing DOT to increase tolls in the manner recommended by DOT's traffic engineering consultant. In February 2020, DOT established higher tolls on the Garcon Point Bridge. However, the tolls were still not sufficient to cover bond costs.[160]

On July 28, 2021, Governor DeSantis announced a toll reduction for the Garcon Point Bridge and directed DOT to lower the toll rates and reach a settlement with the bond trustee and bond holders to purchase the bridge and transfer it to the Florida Turnpike Enterprise.[161]

In June 2022, a settlement agreement was reached between the bond trustee and DOT, where DOT paid the bond trustees $134 million and took over ownership of the bridge.[162] The tolls on the bridge were then lowered from $4.50 to $2.30 for SunPass customers and from $5 to $2.75 for cash customers.[163]

Effect of the Bill

Effective upon becoming a law, the bill provides that since SRBBA's bridge system was transferred to DOT under the terms of the lease-purchase agreement between DOT and the SRBBA, which was effective as of the close of business on June 30, 2022,[164] any remaining assets, facilities, tangible and intangible property, and any rights in such property, and other legal rights of the SRBBA are transferred to DOT. DOT succeeds to all powers of the SRBBA. DOT may review other contracts, financial obligations, and contractual obligations and liabilities of the SRBBA and may assume legal liability for such obligations that are determined by DOT to be necessary for the continued operation of the bridge system.

The bridge system, or any portion of the bridge system, may be transferred by DOT and become part of the turnpike system under the Florida Turnpike Enterprise Law.[165]

Upon becoming a law, the bill repeals ch. 348, part IV, F.S., repealing the Santa Rosa Bay Bridge Authority. The bill transfers the governance and control of SRBBA to DOT.

Miami-Dade County Expressway Authority/Greater Miami Expressway Agency

Current Situation

[159] Settlement Agreement, *supra* note 153 at paragraph M. Due to damage from Hurricane Sally to the Pensacola Bay Bridge that bridge was closed. Shortly after that bridge's closure, Governor DeSantis waived tolls on the Garcon Point Bridge through July 6, 2021. https://www.flgov.com/2021/07/28/governor-desantis-reduces-tolls-for-garcon-point-bridge/ (last visited Mar. 19, 2023).
[160] Settlement Agreement, *supra* note 153 at paragraph N.
[161] Governor Ron DeSantis, Press Release, *Governor DeSantis Reduces toll for Garcon Point Bridge,* July 28, 2021. https://www.flgov.com/2021/07/28/governor-desantis-reduces-tolls-for-garcon-point-bridge/ (last visited Mar. 19, 2023).
[162] Settlement Agreement, *supra* note 153 at paragraph 4.
[163] Alex Miller, *Florida takes ownership of Garcon Point Bridge; cash toll is $2.75 effective Thursday. Pensacola News Journal*. June 16, 2022. https://www.pnj.com/story/news/local/santa-rosa/2022/06/15/garcon-point-bridge-purchased-state-tolls-now-2-75/7623694001/ (last visited Mar. 19, 2023).
[164] Per DOT, this was the date the SRBBA's bonds were discharged.
[165] Ss. 338.22-338.241, F.S.

Florida Expressway Authority Act

Created in 1990[166] and repealed in 2019,[167] the Florida Expressway Authority Act[168] authorized any county or two or more contiguous counties within a single DOT district to, by resolution adopted by the board of county commissioners, form an expressway authority as an agency of the state.[169]

The Miami-Dade County Expressway Authority (MDX) was created in 1994, when the Miami-Dade County Commission adopted ordinance 94-215. In 1996, control of the expressway authorities was established by an agreement between DOT and MDX.[170] MDX was the only expressway authority operating under the Florida Expressway Authority Act. Its system consists of the following facilities in Miami-Dade County: Airport Expressway, Dolphin Expressway, Don Shula Expressway, Snapper Creek Expressway, and Gratigny Parkway[171]

In addition to the above, the Florida Expressway Authority Act also governed MDX as it related to tolling, the maximum percentage of revenues that may be used for administrative expenses, the dedication of some of its surplus revenues for transportation projects in Miami-Dade County, the authority to borrow money and refund bonds, mandatory toll decreases for SunPass users, and financial audit requirements.[172] While the Florida Expressway Authority Act authorized MDX to issue bonds under the State Bond Act, MDX was also authorized to issue its own bonds approved for purposes of Article VII, section 11(f) of the Florida Constitution.[173] Finally, the Florida Expressway Authority Act required MDX to post specified information on its website including board meeting minutes, bond covenants, budgets, and contracts.[174]

Creation of the Greater Miami Expressway Agency

In 2019, the Legislature passed CS/CS/CS/HB 385,[175] which, in part, repealed ch. 348, part I, F.S., repealing the Florida Expressway Authority Act. This resulted in the repeal of the Miami-Dade County Expressway Authority and prevented any other county from creating its own expressway authority.

CS/CS/CS/HB 385 (2019) also dissolved MDX and created the Greater Miami Expressway Agency (GMX) in Miami-Dade County in a new ch. 348, part I, F.S.[176] That bill transferred MDX's assets and liabilities to the new GMX and provided GMX with statutory authority that is substantially similar to the statutory provisions that were applicable to MDX.

Following the passage of the 2019 legislation, and prior to the bill being signed by the Governor, MDX filed a complaint seeking a declaration that the 2019 legislation and several existing related statutes violated Miami-Dade County's home rule authority and unconstitutionally impaired its contracts. DOT sought summary judgment asserting that MDX lacked standing to bring the particular causes of action stated in its complaint and that it lacked standing to sue. The trial court held that MDX had standing and granted partial summary judgment in favor of MDX as to count 1 of its complaint. On count 1, MDX

[166] Ch. 90-136, Laws of Fla.
[167] Ch. 2019-169, Laws of Fla.
[168] The Florida Expressway Authority Act was previously codified in ch. 348, part I, F.S., consisting of ss. 348.0001 - 348.0012, F.S.
[169] S. 348.0003(1), F.S. (2018).
[170] *Dep't of Transportation v. Miami-Dade Cnty. Expressway Auth.*, 316 So. 3d 388 (Fla. Dist. Ct. App. 2021), reh'g denied (May 17, 2021), review dismissed sub nom. *Miami-Dade Cnty. Expressway Auth. v. State*, No. SC21-841, 2021 WL 3783383 (Fla. Aug. 26, 2021).
[171] Miami-Dade County Expressway Authority (MDX), *About,* https://mdxway.com/about/mdx (last visited Apr. 26, 2023).
[172] S. 384.0004, F.S. (2018).
[173] Article VII, section 11(f) of the Florida Constitution requires each project, building, or facility to be financed or refinanced with revenue bonds first approved by the Legislature by an act relating to appropriations or by general law.
[174] S. 348.00115, F.S. (2018).
[175] Ch. 2019-169, Laws. of Fla.
[176] The new ch. 348, part I, F.S., consists of ss. 348.0301 - 348.0318, F.S.

sought a declaration that the Greater Miami Expressway Agency Act was an unconstitutional local law which violated Miami-Dade County's home rule authority.[177]

On March 31, 2021, the First District Court of Appeal opined that MDX lacked standing, and reversed the trial court's partial final judgment granting MDX's motion for summary judgment on count 1 and directed the trial court to dismiss the complaint because all MDXs claims purport to challenge the constitutionality of related state statutes duly enacted by the Legislature, which is barred by the public official standing doctrine.[178] A motion for rehearing, rehearing en banc, and certification of a question of great public importance was denied by the First District Court of Appeal on May 17, 2021.[179]

On May 4, 2021, the Miami-Dade County Commission adopted Ordinance 21-35, which abolished the Greater Miami Expressway Agency and transferred everything back to the Miami Dade County Expressway Authority.

On October 28, 2021, MDX filed a Complaint for Declaratory Relief, Injunctive Relief, and Quiet Title, against the Greater Miami Expressway Agency and its board members.[180] On July 26, 2022, the trial judge issued final judgement declaring Miami-Dade County's 2021 Ordinance valid and MDX the lawful owner of the toll facilities.[181]

On July 28, 2022, the Greater Miami Expressway Agency filed a noticed of appeal, and the case is pending in the Third District Court of Appeal.[182]

Greater Miami Expressway Agency

Section 348.0304, F.S., creates and establishes a body politic, corporate, and agency of the state, to be known as the Greater Miami Expressway Agency (GMX).

GMX's governing body consists of nine voting members. Except for the DOT district secretary, each member must be a permanent resident of the county and may not hold, or have held in the previous 2 years, elected or appointed office in the county. Each member may only serve two terms of 4 years each. Four members are appointed by the Governor, one of whom must be a member of MPO for the county. Two members, who must be residents of an unincorporated portion of the county residing within 15 miles of an area with the highest amount of agency toll roads, are appointed by the board of county commissioners of Miami-Dade County. Two members, who must be residents of incorporated municipalities within the county, are appointed by the MPO for Miami-Dade. The DOT district secretary serving in the district that contains Miami-Dade County serves as an ex officio voting member of the governing body.[183]

Initial appointments to the governing body of the agency must be made by July 31, 2019. For the initial appointments:

- The Governor must appoint one member for a term of 1 year, one member for a term of 2 years, one member for a term of 3 years, and one member for a term of 4 years.
- The board of county commissioners must appoint one member for a term of 1 year and one member for a term of 3 years.

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[177] *Dep't of Transportation v. Miami-Dade Cnty. Expressway Auth.*, 316 So. 3d 388 (Fla. Dist. Ct. App. 2021), reh'g denied (May 17, 2021), review dismissed sub nom. *Miami-Dade Cnty. Expressway Auth. v. State*, No. SC21-841, 2021 WL 3783383 (Fla. Aug. 26, 2021).
[178] *Id.*
[179] *Id.*
[180] *Miami-Dade County Expressway Authority v. Greater Miami Expressway Agency*, et. al.; Miami-Dade County Circuit Court Case No. 2021-024025-CA-1 (filed Oct. 28, 2021).
[181] *Miami-Dade County Expressway Authority v. Greater Miami Expressway Agency, et.al.*, filing No. 154112275 (July 26, 2022), Miami-Dade County Case No. 2021-024025-CA-1., p. 2.
[182] *Greater Miami Expressway Agency, et. al, vs. Miami-Dade County Expressway Authority, et.al.,* Florida Third District Court of Appeal, Case No. 3D22-1316 (filed July 28, 2022).
[183] S. 348.0304(2)(a), F.S.

- The MPO must appoint one member for a term of 2 years and one member for a term of 4 years.[184]

Beginning October 1, 2020, and annually thereafter, GMX must submit to the MPO for the county a report providing information regarding the amount of tolls collected and how those tolls were used in the agency's previous fiscal year. The report must be posted on GMX's website.[185]

Effect of the Bill

Effective upon the bill becoming a law, the bill reestablishes GMX, created by ch. 2019-169, Laws of Fla., subject to the revised powers and duties in the bill.

The bill changes the short title of the "Greater Miami Expressway Act" to the "Greater Miami Expressway Act of 2023."

The bill repeals s. 348.0302, F.S., which currently provides that the Greater Miami Expressway Act is only applicable to a county as defined in s. 125.011(1), F.S.[186]

Definitions

The bill deletes the definition of "county" for purposes of the Greater Miami Expressway Act.

The bill amends the definition of the term "expressway system"[187] to remove the phrase "not owned by [DOT]." This would allow the expressway system to consist of DOT-owned transportation facilities.

The bill defines the term "Miami-Dade County Expressway Authority" to mean the state agency previously existing and originally established under the Florida Expressway Authority Act and subsequently dissolved by the Greater Miami Expressway Agency Act.

Legislative Findings, Intent, and Declaration

The bill provides that the Legislature finds the need to clarify the legal status, ownership, and control of the roads that constitute the expressway system in Miami-Dade County and the portions of northeast Monroe County, following Miami-Dade County's attempt to abolish the Greater Miami Expressway Agency in Miami-Dade Ordinance 21-35 (May 4, 2021).

The Legislature recognizes that the original expressway previously operated by the former Miami-Dade County expressway authority is owned by DOT. The transfer agreement dated December 10, 1996, entered into by DOT and the former Miami-Dade County Expressway Authority, transferred only operational and financial control of the expressways owned by DOT.

The Legislature recognizes that the Miami-Dade County Expressway Authority was dissolved by ch. 2019-169, Laws of Fla., and all assets, employees, contracts, rights, and liabilities were purportedly transferred to the Greater Miami Expressway Agency. All assets, employees, contracts, rights, and liabilities previously owned or controlled by the former Miami-Dade County Expressway Authority, including, without limitation, those previously transferred to the Greater Miami Expressway Agency, are

[184] S. 348.0304(2)(b), F.S.
[185] S. 348.0315(2), F.S.
[186] Section 125.011(1), F.S., defines the term "county" means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.
[187] Section 348.0303(9), F.S., defines the term "expressway system" to mean any and all expressways not owned by the department which fall within the geographic boundaries of the agency established pursuant to this act and appurtenant facilities thereto, including but not limited to, all approaches, roads, bridges, and avenues of access for such expressway. The term includes a public transportation facility.

transferred back to the reestablished Greater Miami Expressway Agency on the effective date of the bill.

It is the intent of the Legislature to confirm that the Greater Miami Expressway Agency that was created by ch. 2019-169, Laws of Fla., is hereby reestablished. The Greater Miami Expressway Agency is the state agency that must govern the expressway system within the geographical boundaries of Miami-Dade County and that portion of northeast Monroe County which includes County Road 94 and that portion of Monroe County bounded on the north and east by the borders of Monroe County and on the south and west by County Road 94. It is further the express intent of the Legislature that the Greater Miami Expressway Agency is an agency of the state and not subject to any county's home rule powers.

Greater Miami Expressway Agency

The bill provides Legislative intent that GMX prioritize the best interests of South Florida's toll payers.

The bill provides that GMX serves the area within the geographical boundaries of Miami-Dade County and that portion of northeast Monroe County described above.

The bill revises the requirements for membership of GMX's governing body. Specifically, the bill requires each member to be a permanent resident of a county served by the agency (Miami-Dade or Monroe) who has not held elected or appointed office in the previous two years in such county, except that it does not apply to any initial appointment or any member who previously served on GMX's governing body. The bill provides an exception to the limit of board members' terms (two terms of four years) for the term of DOT's district secretary.

The bill provides that four members of the authority, each of whom must be a permanent resident of Miami-Dade County, are appointed by the Governor, subject to Senate confirmation at the next regular session of the Legislature. Refusal or failure of the Senate to confirm a member creates a vacancy on the board. The bill removes the requirement that one member of the authority must be a member of the MPO serving Miami-Dade County.

The bill requires that appointments made by the Governor and the Miami-Dade County commission must reflect the state's interests in the transportation sector; must represent the intent, duties, and purpose of GMX; and must have at least three years of professional experience in one or more of the following areas: finance, land use planning, tolling industry, or transportation engineering. Additionally, two members must be residents of unincorporated of the geographic area and residing within 15 miles of an area with the highest amount of toll roads, to be appointed by the board of county commissioners of Miami-Dade County. Two board members must be residents of an incorporated municipality within a county served by the agency, to be appointed by the MPO for a county served by the agency. The bill also provides that the DOT district secretary serving the district containing Miami-Dade County serves as an ex officio voting member of the governing body.

The bill also clarifies how Miami-Dade County was to make initial appointment of GMX's governing body.

Purpose and Powers

The bill authorizes, instead of requires, GMX to construct expressways. The bill also provides that GMX may only add additional expressways to an expressway system with the prior written consent of the board of county commissioners of Miami-Dade County or Monroe County, as applicable.

The bill also provides that GMX may not undertake any construction that is not consistent with both the MPO's transportation improvement plan and the county's comprehensive plan in an area served by GMX.

The bill also authorizes the governing body of a county served by GMX to enter into an interlocal agreement with GMX for the performance of specified functions.

Public Accountability

The bill changes the due date for the first annual report from October 1, 2020, to October 1, 2024, and requires it to be submitted to the MPO for each county served by GMX. The report must still be posted on GMX's website.

Conforming Changes

The bill also makes conforming changes to s. 348.0309, F.S., relating to GMX's bonds, and s. 318.0318, F.S., providing that ch. 348, part I, F.S., is complete and additional authority.

The bill provides that statutory provisions regarding the dissolution of an independent special district do not apply to any entity created pursuant to the Florida Expressway Authority Act, derived from ch. 90-136, Laws of Fla., and subsequently repealed by ch. 2019-169, Laws of Fla.

The bill directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in the bill with the date the act becomes a law.

Effective Date

Except as otherwise provided in the bill, the bill has an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.