The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1194
INTRODUCER:	Appropriations Committee; Transportation Committee; and Senator Hooper
SUBJECT:	Transportation
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	McAuliffe	Sadberry	AP	**Fav/CS**
3.	Price	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1194 contains various transportation-related provisions, including:

- Authorizing a municipal or county governing body to abandon roads and rights of way dedicated in a recorded residential subdivision plat and to simultaneously convey the city's or the county's interest to a community development district under specified conditions.
- Precluding a governmental entity from prohibiting a bid relating to the entity's procurement of certain contractual services from a vendor possessing a valid certificate of qualification from the Florida Department of Transportation (FDOT) relating to certain road and bridge construction contracts or a license relating to construction, electrical and alarm, or septic tank contracting corresponding to the services being procured.
- Authorizing construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher to display a combination of flashing green, amber, and red lights during periods when workers are present.
- Authorizing flashing lights on vehicles during periods of extremely low visibility on roadways posted with a speed limit of 55 miles per hour or more.
- Substitutes an affidavit with an attestation on a form provided by the Florida Department of Highway Safety and Motor Vehicles (DHSMV) as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction for motor vehicles and mobile homes from the DHSMV.
- Clarifies that the types of vehicles authorized to elect a permanent registration period are rental vehicles, making clear that the authorization does not apply to leased vehicles.

- Requires motor vehicle dealer licensees to deliver to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.
- Dissolves the inactive Northwest Florida Transportation Corridor Authority and repeals part III of ch. 343, F.S., under which the authority was established.
- Prohibits the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation.
- Increases from 40 years to 99 years an existing limitation on the term of a lease into which the Jacksonville Transportation Authority may enter.
- Revising provisions relating to an annual cap on the FDOT's authorization to enter into contracts for innovative transportation projects.
- Amending financial statement requirements relating to applications for certificates of qualification to bid on contracts for the performance of work for the FDOT under certain construction contracts.
- Excluding certain airports from the prohibition against the same entity performing design and performing construction engineering and inspection services on a project funded by the FDOT and administered by a local governmental entity
- Substantially revising provisions relating to the State Arbitration Board, which hears claims for additional compensation arising out of construction and maintenance contracts between the FDOT and its contractors.
- Defining the term "borrow pit" and requiring a borrow pit operator to provide a notice of intent to extract to the DEP.
- Prohibiting the FDOT, and its contractors and subcontractors, from purchasing or using specified substances extracted from a borrow pit unless certification is provided by the operator showing the borrow pit is in compliance with certain existing requirements and proof is provided of currently valid permits required by the Florida Department of Environmental Protection (DEP) and the appropriate water management district.
- Requiring the FDOT, if it determines substances are being obtained and used from a noncompliant borrow pit, to cease accepting any substances within 48 hours. The FDOT may resume acceptance of substances from the borrow pit once the pit is in compliance.
- Requires the FDOT to create and implement a publicly accessible electronic database for sign permit information; specifies requirements for the database; prohibits the department from furnishing permanent metal permit tags or replacement tags and from enforcing related provisions once the department creates and implements the database.

The bill does not appear to impact state and local revenues but may present other fiscal impacts. See the "Fiscal Impact Statement" for further information.

The bill takes effect July 1, 2021.

II. Present Situation:

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

III. Effect of Proposed Changes:

Closing and Abandonment of Roads/Optional Conveyance to a Community Development District (Section 1)

Present Situation

Community Development Districts

Community development districts (CDD) are a type of special-purpose local government intended to develop and provide basic urban community services cost-effectively. These independent special districts are created pursuant to and governed by the Uniform Community Development District Act of 1980.[1] The act lays out the exclusive and uniform procedures for establishing and operating a CDD.[2] CDDs provide a means to manage and finance the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.[3] As of April 15, 2021, there are 755 active CDDs in Florida.[4]

Powers of CDD Board of Supervisors

A CDD board is authorized to exercise general and special powers within the constraints of applicable comprehensive plans, ordinances, and regulations of the general-purpose local government.[5] General powers include the authority to assess and impose ad valorem taxes within the district and to issue bonds.[6] In part, the special powers over public improvements and community facilities include, unless prohibited elsewhere,[7] the power to finance, fund, plan, establish, acquire, construct, equip, operate, and maintain facilities and basic infrastructures for:[8]

- Water management and control for the lands within the district;
- Water supply, sewer, and wastewater management, reclamation, and reuse; and
- District roads and road improvements.[9]

CDDs are specifically granted "the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for…security, including, but not limited to, *guardhouses, fences and gates*, electronic intrusion-detection systems, and patrol cars, when authorized by proper governmental agencies."[10]

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[1] Chapter 190, F.S.
[2] *See* ss. 190.004 and 190.005, F.S.
[3] Section 190.002(1)(a), F.S.
[4] Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, *available at*: http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited April 14, 2021).
[5] *See* s. 190.004(3), F.S.
[6] Section 190.011, F.S.
[7] Sections 190.005(1)(f) and (2)(d), F.S.
[8] A CDD board may authorize general obligation, benefit, or revenue bonds by one or more resolutions approved by a majority of the members in office. Section 190.016(2), F.S. Although the statute allows boards to authorize benefit bonds, these bonds are not defined nor discussed any further in the chapter.
[9] Section 190.012, F.S.
[10] Section 190.012(2)(d), F.S. (emphasis added).

Closing and Abandonment of Roads/Optional Conveyance to Homeowner's Association

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, s. 1 of the Florida Constitution endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

County governing bodies are statutorily authorized to abandon the roads and rights-of-way dedicated in a recorded residential plat and simultaneously convey the county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a homeowners' association for the subdivision, if the following conditions have been met:

- The homeowners' association has requested the abandonment and conveyance in writing for the purpose of converting the subdivision to a gated neighborhood with restricted public access.
- No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and simultaneous conveyance to the homeowners' association.
- The homeowners' association is both a corporation nonprofit organized and in good standing under ch. 617, F.S., and a "homeowners' association" as defined in s. 720.301(9), F.S., with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision.
- The homeowners' association has entered into and executed such agreements, covenants, warranties, and other instruments; has provided, or has provided assurance of, such funds, reserve funds, and funding sources; and has satisfied other requirements and conditions as may be established or imposed by the county with respect to the ongoing operation, maintenance, and repair and the periodic reconstruction or replacement of the roads, drainage, street lighting, and sidewalks in the subdivision after the abandonment by the county.[11]

The homeowners' association is required to install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the private roads unless an agreement has been entered into between the county and the homeowners' association, as authorized under s. 316.006(3)(b), F.S., expressly providing that the county has traffic control jurisdiction.

Upon abandonment of the roads and rights-of-way and the conveyance thereof to the homeowners' association, the homeowners' association has all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the county. The homeowners' association holds the roads and rights-of-way in trust for the benefit of the owners of the property in the subdivision and operates, maintains, repairs, and, from time to time, replaces and reconstructs the roads, street lighting, sidewalks, and drainage

[11] Section 336.125, F.S.

facilities as necessary to ensure their use and enjoyment by the residents. These provisions are supplemental and additional to the provisions of s. 336.12, F.S.[12]

Municipalities likely have the same power under the broad home rule authority granted by the Florida constitution, as well as authorization in ch. 163, F.S., to enter into interlocal agreements.

Traffic Control Jurisdiction

Generally, municipalities and counties may exercise traffic control jurisdiction over any roads located within their respective jurisdictions. This includes exercising jurisdiction over any private road or roads, or any limited access road or roads owned or controlled by a special district, if the municipality or county enters into a written agreement approved by the respective governing body.[13]

As to municipalities, the agreement with the party owning or controlling the road at issue:

- May include provision for reimbursement for actual costs of traffic control and enforcement and for liability insurance and indemnification by the party, and such other terms as are mutually agreeable.
- May provide for the installation of multiparty stop signs by the parties controlling the roads covered by the agreement if a determination is made by such parties that the signage will enhance traffic safety.

The exercise of jurisdiction is in addition to jurisdictional authority exercised by municipalities under law, and nothing limits or removes any such jurisdictional authority. Such jurisdiction includes regulation of access to such road or roads by security devices or personnel. In addition, the board of directors of a homeowners' association as defined in ch. 720, F.S., may, by majority vote, elect to have state traffic laws enforced by local law enforcement agencies on private roads that are controlled by the association. A municipality may also, by interlocal agreement with a county, agree to transfer traffic regulatory authority over areas within the municipality to the county.[14]

As to counties, the agreement with the party owning or controlling the road at issue may include the same two provisions identified above. The exercise of jurisdiction is likewise additional authority for counties, and a homeowner's association board may also elect to have state traffic laws enforced by local law enforcement agencies on private roads that are controlled by the association. However, prior to entering into any agreement, the governing body of the county must consult with the county sheriff.[15]

If the county governing body abandons the roads and rights-of-way dedicated in a recorded residential subdivision, and simultaneously conveys the county's interest to a homeowners'

[12] That section provides the act of any commissioners in closing or abandoning any such road, or in renouncing or disclaiming any rights in any land delineated on any recorded map as a road, abrogates the easement held by or on behalf of the public and the title of fee owners is released. If the fee title to the road space has been vested in the county, the same is surrendered and vests in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.
[13] Section 316.006(2)(b) and (3)(b), F.S.
[14] Section 316.006(2)(b), F.S.
[15] Section 316.006(3)(b), F.S.

association for the subdivision in the manner prescribed in s. 336.125, F.S., that county's traffic control jurisdiction over the abandoned and conveyed roads ceases unless an agreement exists for the exercise of traffic control jurisdiction in accordance with the above-described requirements.[16]

Effect of Proposed Changes

Section 1 creates s. 177.107, F.S., primarily, but not identically, modeled after s. 336.125, F.S. The bill authorizes a municipal or county governing body to abandon the roads and rights-of-way dedicated in a recorded residential subdivision plat and simultaneously convey the municipality's or county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a community development district established under ch. 190, F.S., in which the subdivision is located, if all of the following conditions are met:

- The CDD has requested the abandonment and conveyance by written resolution for the purpose of converting the subdivision to a gated neighborhood with monitored (as opposed to "restricted," in the case of a homeowner's association) public access.
- The CDD has received approval for the conveyance by a vote of two-thirds (four-fifths in the case of a homeowner's association) of the landowners who are subject to the non-ad valorem assessments of the community development district and who are present by person or proxy at a properly noticed landowners meeting.
- The CDD has executed an interlocal agreement with the municipality or county, as applicable, requiring the CDD to do all of the following:
    - Maintain the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.
    - Every 5 years, conduct a reserve study of the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement.
    - Levy annual special assessments in amounts sufficient to maintain the roads and any drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.
    - Annually fund the amounts set forth in the reserve study.

The CDD must install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the roads unless an agreement has been entered into between the municipality or county and the CDD, as authorized under s. 316.006(2)(b) and (3)(b), respectively, expressly providing that the municipality or county has traffic control jurisdiction.

Upon abandonment of the roads and rights-of-way and the conveyance to the CDD, the CDD has all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the municipality or county. Thereafter, the CDD holds the roads and rights-of-way in trust for the benefit of the public and owners of the property in the subdivision and shall operate, maintain, repair, and from time to time replace and reconstruct the roads and any associated street lighting, sidewalks, or drainage facilities identified in the interlocal agreement as necessary to ensure their use and enjoyment by the public and property owners, tenants, and residents of the subdivision and their guests and invitees.

[16] Section 316.006(3)(c), F.S.

The bill provides that the new provisions are supplemental and additional to the powers of municipalities and counties.

Procurement of Public Construction Services (Section 2)

Present Situation

Procurement Methods

Chapter 287, F.S., sets out provisions governing agency[17] procurement of personal property and services. Agencies may use different methods, depending on the cost and characteristics of the goods or services being procured, which include:

- Invitations to bid, used when an agency is capable of specifically defining the scope of work for which a contractual service is required or of establishing precise specifications defining the actual commodity or group of commodities required.[18]
- Requests for proposals, used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Responsive vendors may propose various combinations or versions of commodities or contractual services to meet the agency's specifications.[19]
- Invitations to negotiate, used to determine the best method for achieving a specific goal or solving a particular problem. This procurement method identifies one or more responsive vendors with which the agency may negotiate to receive the best value.[20]
- Single source contracts, used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase and which may be excepted from competitive-solicitation requirements.[21]

FDOT Certificate of Qualification

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified pursuant to s. 337.14, F.S., and the FDOT's rules.[22] Those rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. The rules also apply to applicants seeking to bid on road, bridge, or public transportation construction contracts in excess of $250,000.[23]

[17] "Agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government," but does not include university and college boards of trustees or the state universities and colleges. Section 287.012(1), F.S.
[18] Section 287.057(1)(a), F.S.
[19] Section 287.057(1)(b), F.S.
[20] Section 287.057(1)(c), F.S.
[21] Section 287.057(3)(c), F.S.
[22] Chapter 14-22, F.A.C.
[23] Section 337.14(1), F.S., and Rule 14-22.0011(1), F.A.C.

Licensure: Construction, Electrical and Alarm System, and Septic Tank Contracting

Chapter 489, F.S., is administered by the Department of Business and Professional Regulation and, in general, requires licensure of various types of contractors before contracting to perform work of the type for which they are licensed. Part I of ch. 489, F.S., relating to construction contracting, expressly does not apply to contractors in work on bridges, roads, streets, highways, or railroads, and services incidental thereto.[24] "Services incidental thereto" specifically includes storm drainage and excavation work necessary for the construction of bridges, roads, streets, highways, and railroads, and those subcontractor categories, defined in s 489.105(3)(d)-(q), F.S., and includes directly contracting with a governmental entity for such work.[25] Section 489.105(3)(d)-(q), F.S., includes a wide variety of contractors including roofing, air-conditioning, plumbing, underground utility and excavation, and solar.

Effect of Proposed Changes

Section 2 of the bill creates s. 287.05705, F.S., to provide that if a competitive solicitation is limited to the classes of work for which the FDOT issues certificates of qualification and does not involve the construction, remodeling, repair, or improvement of any building, or if a vendor holds an FDOT certificate of qualification or license under ch. 489, F.S., corresponding to the contractual service being procured, the procuring governmental entity may not prohibit a vendor from responding (*e.g.*, submitting a bid or proposal) to that entity's competitive solicitation. The bill applies these provisions to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Lights on Vehicles (Section 3)

Present Situation

Current law generally prohibits a person from driving or otherwise moving on a road any vehicle or equipment that has a lamp or device that displays red, red and white, or blue lights visible from directly in front of such vehicle or equipment, with certain exceptions.[26] The display of blue lights on any vehicle or equipment is prohibited, except police vehicles and vehicles owned, operated, or leased by the Department of Corrections (DOC) or any county correctional agency when responding to emergencies.[27]

The display of flashing lights on vehicles is also prohibited, except:[28]

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicles is lawfully stopped or disabled upon the highway.
- When a motorist intermittently flashes his or her vehicles' headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so.
- Flashing blue lights on police, DOC, or county correctional agency vehicles.
- Flashing amber lights on road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier

[24] Section 489.103(1)
[25] Rule 61G4-12.011(9), F.A.C.
[26] Section 316.2397(1), F.S.
[27] Section 316.2397(2), F.S.
[28] Section 316.2397(7), F.S.

vehicles when in operation or when a hazard exists; and on commercial motor vehicles or trailers designed to transport unprocessed logs or pulpwood.
- Flashing red or red and white lights on vehicles such as those of a fire department or medical staff or facilities and ambulances.
- Flashing red lights on emergency response vehicles used by the Fish and Wildlife Conservation Commission, the DEP, and the Department of Health when responding to an emergency in the line of duty.
- Flashing white lights or flashing white strobe lights on road maintenance and construction equipment and vehicles when in operation and where a hazard exists; and on school buses and vehicles used to transport farm workers.
- Flashing white and red lights on bicycles and bicycle riders.
- Additional flashing lights authorized under s. 316.235, F.S., relating to additionally authorized lighting equipment on vehicles such as running board or fender lights.

Effect of Proposed Changes

Section 3 amends s. 316.2397, F.S., to authorize on roadways with a posted speed limit of 55 miles per hour or more:
- Flashing green, amber, and red lights on construction equipment within a work zone[29] during periods when workers are present.
- Flashing lights on vehicles during periods of extremely low visibility.[30]

Salvage Certificate of Title or Certificate of Destruction (Section 4)

Present Situation

In order to receive a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home that does not carry an electronic lien on the title under current law, among other requirements, an insurance company must provide proof of payment of the total loss claim and must provide an affidavit to the DHSMV stating that attempts have been made to obtain the title from the owner or lienholder to no avail.[31]

Effect of Proposed Changes

Section 4 amends s. 319.30(3)(b), F.S., to remove the requirement for an affidavit, instead requiring that the insurance company has *attested* on a form provided by the DHSMV stating that attempts have been made to obtain the title from the owner or lienholder to no avail, and has *attested* on a form provided by the DHSMV stating that attempts to obtain the title have failed.

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[29] Section 316.003(105) defines "work zone *area*" to mean "the area and its approaches on any state-maintained highway, county-maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes are closed to traffic."
[30] With the exception of vehicles in funeral processions as provided in 316.1974(4)(c), F.S., Florida law does not expressly authorize the use of hazard lights on moving vehicles. The Florida Driver Handbook indicates that a driver should not use emergency flashers in instances of low visibility or rain and may only use emergency flashers when a vehicle is disabled or stopped on the side of the road. Department of Highway Safety and Motor Vehicles, *Florida Driver Handbook*, at p. 48, available at https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited April 7, 2021).
[31] Section 319.30(3)(b), F.S.

Permanent Motor Vehicle Registration (Section 5)

Present Situation

Currently, upon application for registration of a motor vehicle and payment of the appropriate license tax, the DHSMV generally issues one registration license plate.[32] Generally, upon registration renewal (and replacement of the license plate after a ten-year period), a validation sticker is issued based on the applicant's renewal period. The period is 12 months, the extended period is 24 months, and all expirations occur based on the applicant's appropriate registration period.[33] Owners of motor vehicles for hire taxed under s. 320.08(6), F.S., are authorized to elect a permanent registration period if payment of the appropriate license taxes and fees occurs annually.[34] According to the DHSMV, for-hire vehicles include both short-term and long-term *leased* vehicles,[35] and the department proposes clarifying that permanent registration is available only to rental vehicles.[36]

Effect of Proposed Changes

Section 5 amends s. 320.06(1)(b)1., F.S., providing that owners of *rental* vehicles taxed under s. 320.06(8), F.S., may elect a permanent registration period upon annual payment of the appropriate license taxes and fees.

Garage Liability Insurance (Section 6)

Present Situation

Motor vehicle dealers are required to have garage liability insurance or general liability insurance coupled with a business automobile policy in order to ensure a licensed dealer[37] has coverage for the day-to-day operations of businesses in the automotive industry that are not covered under most commercial or business liability insurance, including providing coverage for all dealer-owned vehicles driven by prospective purchasers.[38]

While the Florida law requires a dealer to provide at the time of licensure application proof of the required coverage for the duration of the licensure period and again at the beginning of each licensure renewal period, the statute does not cover the issue of a gap in coverage during the licensure period. Gaps in coverage can, and do, occur as a result of various actions - a dealer may cancel a policy in the middle of the term or the insurer itself may cancel the policy in the middle of the term for nonpayment of the premium or for other reasons.

This technicality may allow a motor vehicle dealer to meet the requirement of proof of coverage at the beginning of the licensure period but allow the coverage to lapse during the licensure

[32] Section 320.06(1)(a), F.S.
[33] Section 320.06(1)(b)1., F.S.
[34] *Id.*
[35] Section 320.01(15)(a), F.S., defines "for-hire vehicle," in part, as any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration, or offered for rent or hire as a means of transportation for compensation.
[36] *See* DHSMV email dated April 5, 2021 (on file in the Senate Transportation Committee).
[37] Section 320.27, F.S.
[38] Section 320.27(3), F.S.

period and then reinstate coverage at the beginning of the next licensure period. The cancellation and later reinstatement of a policy creates a gap wherein the dealer has no insurance coverage. A gap in insurance coverage at any time during the licensure period has the potential to result in direct consumer harm, as any dealer-owned vehicles taken for test drives or driven as program models by the dealer, or any consumer-owned vehicles damaged while on the dealer's lot, or any other property or personal injury situations that would otherwise be covered under a garage liability policy are not otherwise covered. Currently, over 14,500 dealers are required to carry appropriate insurance coverage.[39]

The DHSMV currently advises vehicle dealers and recreational vehicle dealers about upcoming policy expirations by generating a list of dealers whose policies are set to expire. The DHSMV then sends out three separate notices that ask each dealer to submit an updated or current policy to the DHSMV. Additionally, after the policy has expired, the DHSMV sends a follow-up letter that indicates the DHSMV will take administrative action against the licensee for non-compliance with the insurance requirement if an updated policy is not received within fourteen days. In addition to this written communication, the DHSMV field offices follow up with telephone calls and emails to the dealers, attempting to bring them into compliance with the insurance requirement. Ultimately, if the dealer is unresponsive and does not provide the DHSMV with proof of the required coverage, the Bureau of Dealer Services forwards the relevant information to the Office of the General Counsel with a request to initiate an administrative action against the dealer under ch. 120, F.S.[40]

Currently, the DHSMV has no enforcement authority permitting it to take administrative action against a dealer's license for not timely providing proof of coverage. The only enforcement authority available lies in the ability to seek administrative action if the dealer has a gap in coverage or does not obtain and maintain coverage.[41]

Effect of Proposed Changes

Section 6 amends s. 320.27(3) and (10), F.S., requiring motor vehicle dealer licensees to deliver to the FDHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.

Innovative Transportation Projects (Section 7)

Present Situation

The FDOT is currently authorized to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must intend to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction

[39] Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 1500*, (March 5, 2021), p. 4 (on file in the Senate Committee on Transportation).
[40] *Ibid.*
[41] *Ibid.*

procedures; and techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the FDOT must use existing processes to award and administer construction and maintenance contracts. [42]

The FDOT is limited to $120 million in contracts annually for the purposes of innovative transportation projects. This annual cap on contracts for innovative transportation projects does not apply to:

- Turnpike Enterprise projects.
- Transportation projects funded by the American Recovery and Reinvestment Act of 2009.

Currently, minor design-build contracts are included in the annual cap for innovative transportation projects. These projects are bridges under $10 million and other transportation projects (resurfacing) that are not considered to be major design-build.[43]

Effect of Proposed Changes

Section 7 amends s. 337.025, F.S., to repeal redundant language relative to exclusion of Turnpike Enterprise projects and obsolete language relative to exclusion of transportation projects funded by the American Recovery and Reinvestment Act of 2009 from the annual $120 million cap.

The bill also excludes low-bid design-build milling and resurfacing contracts from the annual cap. Such contracts would not be counted toward the annual cap for innovative transportation projects, possibly resulting in increased opportunities for the FDOT to engage in innovative transportation projects.

Whether all low-bid milling and resurfacing contracts are "innovative," even with the design-build element, is unclear. The FDOT's work program instructions state that resurfacing deals with improvements to the structural condition of existing pavement, intended to preserve the pavement's structural integrity. The program provides for pavement milling and pavement resurfacing, among other activities.[44]

FDOT Certificates of Qualification (Section 9)

Present Situation

FDOT Certificate of Qualification

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified to perform the specific class of work for which the contractor seeks certification. A contractor who is not already qualified and in good standing with the FDOT as of January 1, 2019, and who desires to bid on FDOT contracts

[42] Section 337.025(1), F.S.
[43] FDOT Construction, *Design-Build Minor*, available at https://www.fdot.gov/construction/AltContract/General/DBMinor.shtm (last visited April 7, 2021).
[44] FDOT, *Work Program Instructions Tentative Work Program – FY 21/22-25/26*, Part III – Chapter 27: Resurfacing, (rev. April 1, 2021) available at https://fdotewp1.dot.state.fl.us/fmsupportapps/Documents/development/WorkProgramInstructions.pdf (last visited April 7, 2021).

in excess of $50 million must have satisfactorily completed two projects, each in excess of $15 million, for the FDOT or for any other state's department of transportation.[45]

When applying to the FDOT, each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which the FDOT receives the application, the contractor must also submit an interim financial statement and an updated application.[46] Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.

Contractor Maximum Capacity Rating

The FDOT's rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. In so doing, the FDOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.[47]

Part of the latter inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating (MCR), which is defined as the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.[48]

According to the FDOT's rules, the MCR is established by a formula, one element of which is the "ability factor." For example, for new applicants and applicants not qualified under the rule for more than two years, the "ability score" determines the ability factor, which is determined from the total ability score resulting from evaluations of the applicant's organization, management, work experience, and letters of recommendation.[49]

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, the FDOT must issue the applicant a certificate, which, unless revoked by the FDOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as the FDOT prescribes. Submission of an application does not affect expiration of the certificate.[50]

[45] Section 337.14(1), F.S.
[46] The interim statement must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date the FDOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the FDOT within 15 days after either four-month period is considered timely.
[47] Rule 14.22-003(1), F.A.C.
[48] Rule 14.22-003(1)(d) and (2), F.A.C.
[49] *Id*.
[50] Section 337.14(4), F.S.

Effect of Proposed Changes

Section 9 amends s. 337.14(1) and (4), F.S., to clarify that any contractor desiring to bid on contracts in excess of $50 million must first be certified by the FDOT as qualified, in addition to the existing requirement relating to satisfactory completion of two projects, each in excess of $15 million.

The bill requires each application for certification to be accompanied by *audited, certified* financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The applying contractor's audited, certified financial statements must specifically address the applying contractor and must have been prepared within the immediately preceding 12 months. The FDOT may not consider any financial information relating to the parent entity of the applying contractor, if any, and may not certify as qualified any applying contractor that fails to submit the required audited, certified financial statements.

If the application or the annual financial statement shows the applying contractor's financial condition more than four months before the date on which the FDOT receives the application, the applying contractor must also submit interim *audited, certified* financial statements prepared in accordance with generally accepted accounting and auditing principles and standards by a certified public accountant licensed in this state or another state.

The bill provides that submission of an application *and subsequent approval* do not affect expiration of a contractor's certificate of qualification and, additionally, do not affect a contractor's ability factor or maximum capacity rating.

Construction, Engineering, and Inspection Services (Section 9)

Construction, engineering, and inspection (CEI) services include the activities required to review and inspect highway and bridge construction performed by a construction contractor for compliance with contract requirements. These services are critical to ensuring the safety of the traveling public.

Currently, a contractor[51] or affiliate[52] holding an FDOT certification of qualification may not also qualify to provide testing services or CEI services to the FDOT in connection with a construction contract under which the contractor is performing any work.[53] Simply stated, the contractor is prohibited from performing both the construction work *and* the CEI services on the same project, to avoid any conflict of interest that may arise in inspecting one's own work.[54]

Legislation enacted in 2019 restated the prohibition with respect to projects funded by the FDOT and administered by a local governmental entity; *i.e.,* that the entity performing design services

[51] Section 337.165(1)(d), F.S.
[52] Section 337.165(1)(a), F.S.
[53] Section 337.14(7), F.S.
[54] This limitation does not apply to any design-build prequalification pursuant to s. 337.11(7), F.S., and does not apply when the FDOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services or CEI services.

and CEI services may not be the same entity.[55] Specified seaports were made exempt from the prohibition in that legislation, but airports were not.[56]

According to the Florida Airports Council, the current prohibition increases airport project construction costs, lengthens project schedules due to additional coordination with consultants, and reduces project efficiency. Further:

- Florida airports leverage many different delivery methods for conducting CEI activities, depending on the project.
- Airports deliver more than road projects, such as building, hangars, ramps, and runways, and the CEI methods and processes the FDOT uses do not accommodate airport construction projects.
- "Airports need to remain agile with the many types of projects that they deliver, particularly as it pertains to the unique and specialized nature of airport projects, to ensure that each project is completed safely, timely and cost effectively."[57]

Effect of Proposed Changes

Section 9 amends s. 337.14(7), F.S., to provide that with respect to projects funded by the FDOT and administered by a local governmental entity, airports as defined in s. 332.004, F.S.,[58] are likewise exempt from the prohibition against the same entity performing design services and CEI services.

State Arbitration Board (Section 10)

Present Situation

Current law creates the State Arbitration Board (SAB) within the FDOT to facilitate the prompt settlement of claims[59] for additional compensation arising out of construction and maintenance contracts between the FDOT and its various contractors.[60] Every contractual claim in an amount up to $250,000 per contract or, at the claimant's option, up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract, which cannot be resolved by negotiation between the FDOT and the contractor must be arbitrated by the SAB after the FDOT's acceptance of the project. However, either party may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of a claim until the SAB process has been exhausted.[61]

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[55] Chapter 2019-153, L.O.F.
[56] Those listed in s. 311.09, which include the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.
[57] *See* email to House committee staff relating to HB 1441 (2020) (on file in the Senate Transportation Committee).
[58] That section defines the term "airport" to mean "any area of land or water, or any manmade object or facility located therein, which is used, or intended for public use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for public use, for airport buildings or other airport facilities or rights-of-way."
[59] For the purpose of s. 337.185, F.S., the term "claim" means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract.
[60] Section 337.185(1), F.S.
[61] Section 337.185(1), F.S.

The SAB is composed of three members: one member is appointed by the FDOT Secretary; one member is elected by those construction or maintenance companies who are under contract with the FDOT; and the third member is chosen by agreement of the other two members. Whenever the third member has a conflict of interest regarding an affiliation with one of the parties, the other two members select an alternate member for that hearing. The FDOT secretary may select an alternative or substitute to serve as the FDOT's member for any hearing or term. Each member serves a two-year term. The SAB elects a chair, each term, who is the administrator of the SAB and custodian of its records.[62]

An arbitration hearing may be requested by the FDOT or by a contractor who has a dispute with the FDOT.[63] For all contracts entered into after June 30, 1993, the request must be made to the SAB within 820 days after the final acceptance of the work. The SAB must conduct the hearing within 45 days of the request. The party requesting the SAB's consideration must give notice of the hearing to each SAB member. If the SAB finds that a third party is necessary to resolve the dispute, the SAB may vote to dismiss the claim, which may thereafter be pursued in accordance with Florida law.[64] All members must be present to conduct a meeting. Upon being called into session, the SAB must promptly proceed to a determination of the issue or issues in dispute.[65]

When a valid contract is in effect defining the rights, duties, and liabilities of the parties with respect to any matter in dispute, the SAB may only determine the proper interpretation and application of the appropriate contract provisions. Any investigation made by less than the whole membership of the SAB must be by authority of a written directive by the chair, and the investigation must be summarized in writing and considered by the SAB as part of the record of its proceedings.[66] The SAB must hand down its order within 60 days after it is called into session. If all three SAB members do not agree, the order of the majority constitutes the order of the SAB.[67]

The SAB members may receive compensation for the performance of their duties from administrative fees received by the SAB, except that an FDOT employee may not receive compensation. The compensation amount is determined by the SAB, but may not exceed $125 per hour, up to $1,000 per day for each member authorized to receive compensation. This does not prevent the member elected by construction or maintenance companies from being an employee of an association affiliated with the industry, even if the sole responsibility of that member is service on the SAB. Travel expenses for the industry member may be paid by an industry association, if necessary. The SAB may allocate funds annually for clerical and other administrative services.[68]

[62] Section 337.185(2), F.S.
[63] Current State Arbitration Board procedures are available at: https://cdn.ymaws.com/ftba.site-ym.com/resource/resmgr/website_files/arbitration_board/11-19-20_State_Arbitration_B.pdf (last visited April 8, 2020).
[64] Section 337.185(3), F.S.
[65] Section 337.185(4), F.S.
[66] Section 337.185(5), F.S.
[67] Section 337.185(6), F.S.
[68] Section 337.185(7), F.S.

The party requesting arbitration must pay a fee to the SAB in accordance with a schedule established by it, to cover the cost of administration and compensation of the SAB, not to exceed:

- $500 per claim which is $25,000 or less;
- $1,000 per claim which is in excess of $25,000 but not exceeding $50,000;
- $1,500 per claim which is in excess of $50,000 but not exceeding $100,000;
- $2,000 per claim which is in excess of $100,000 but not exceeding $200,000;
- $3,000 per claim which is in excess of $200,000 but not exceeding $300,000;
- $4,000 per claim which is in excess of $300,000 but not exceeding $400,000; or
- $5,000 per claim which is in excess of $400,000.[69]

The SAB in its order may apportion the above fees, and the cost of recording and preparing a transcript of the hearing, among the parties in accordance with the SAB's finding of liability.[70]

Effect of Proposed Changes

Section 10 substantially revises s. 337.185, F.S., relating to the SAB. The bill creates the following definitions:

- "Claim" means the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed by the FDOT and could not be resolved by negotiations between the FDOT and the contractor.
- "Contractor" means a person or firm having a contract for rendering services to the FDOT relating to the construction or maintenance of a transportation facility.
- "Final acceptance" means that the contractor has completely performed the work provided for under the contract, the FDOT or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and the FDOT or its agent has submitted written notice of final acceptance to the contractor.

The bill requires every claim of up to $250,000 per contract that cannot be resolved by negotiations between the FDOT and the contractor to be arbitrated by the SAB. Authorization for either party to request that a claim be submitted to binding private arbitration is removed. An award issued by the SAB is final and enforceable by a court of law.

A contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the SAB. An award issued by the SAB is final if a request for a trial de novo[71] is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure.[72] At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence

[69] Section 337.185(8), F.S.
[70] Section 337.185(9), F.S.
[71] A trial de novo refers to a new trial on the entire case and is conducted as if there had been no trial in the first instance.
[72] Rule 1.830, Florida Rules of Civil Procedure, relates to voluntary binding arbitration. The rule provides that a voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in s. 44.104(10), F.S.

Code.[73] If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of law.

An arbitration request may not be made to the SAB before final acceptance, but must be made within 820 days after final acceptance. The SAB must still schedule a hearing within 45 days after an arbitration request but, if possible, must now conduct the hearing within 90 days after the request instead of the previous 45-day deadline.

The bill authorizes the SAB to administer oaths and conduct the proceedings as provided by court rules. The bill requires the hearing to be conducted informally, with the presentation of testimony and evidence being kept to a minimum. The bill requires matters to be presented to the arbitrators primarily through the statements and arguments of counsel. The SAB must address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the SAB, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the SAB for orders compelling such attendance and production at the arbitration. Subpoenas must be served and are enforceable in the manner provided by law.

The SAB must issue its award within 45 days after the conclusion of the arbitration hearing (rather than within 60 days after being called into session under current law). If all three members of the board do not agree, the award agreed to by the majority of the board constitutes the award of the board.

The board is still composed of three members who are selected in the same manner as in current law. If the first or second member has a conflict of interest regarding affiliation with one of the parties, the appointing entity must appoint an alternate member for that hearing. If the third member has such a conflict, the first and second members must select an alternate. Each member serves a 4-year term, instead of the current 2-year term. As under current law, the SAB still elects a chair for each term, and the chair is the SAB administrator and custodian of its records. The presence of all SAB members is required to conduct a meeting, whether in person or via videoconferencing.

The bill requires that SAB members receive compensation from deposits made by the parties based on an estimate of compensation by the SAB, except that, again, an FDOT employee may not receive SAB compensation. All deposits must be held in escrow by the chair in advance of the hearing. Each member eligible for compensation must be compensated at $200 per hour, up to a maximum of $1,500 per day (currently not to exceed $125 per hour up to a maximum of $1,000 per day), and a member must be reimbursed for the actual cost of his or her travel expenses. The SAB is authorized to allocate funds annually for clerical and other administration services.

The bill effectively maintains the same schedule of filing fees as in current law, based on the dollar amount of a claim, and authorizes the SAB to apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

[73] Chapter 90, F.S.

Surplus Revenue/High-Occupancy Toll Lanes or Express Lanes (Section 11)

Present Situation

Current law authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on high-occupancy toll lanes (HOT lanes) or express lanes established on FDOT-owned facilities.[74] All collected tolls must first be used to pay the annual cost of operation, maintenance, and improvement of the HOT or express lanes project or associated transportation system. The FDOT may continue to collect tolls on HOT or express lanes after the discharge of any bond indebtedness related to such project.[75] The FDOT must use any remaining toll revenue from the HOT or express lanes for the construction, maintenance, or improvement of any road on the State Highway System (SHS) within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.[76]

Effect of Proposed Changes

Section 11 amends s. 338.166(3), F.S., providing that remaining toll revenue from HOT or express lanes, after payment of the annual cost of operation, maintenance, and improvement of the HOT or express lanes project and associated transportation system, the FDOT must use any remaining toll revenue to support public transportation projects that benefit the operation of HOT or express lanes on the State Highway System within the county or counties in which the toll revenues were collected. Use of the remaining revenue for such purpose is in addition to expenditures as currently specified for any road on the SHS within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Metropolitan Planning Organizations Member Fees (Section 12)

Present Situation

The FDOT is currently required to allocate to each metropolitan planning organization (MPO) for the purpose of accomplishing its transportation planning and programming duties, an appropriate amount of federal transportation planning funds,[77] which generally make up the largest portion of MPO funding. However, governmental entity members of an MPO may, from time to time, voluntarily contribute various sums to an MPO to supplement the federal funding received through the FDOT, and an MPO may assess fees for municipalities, counties, or other governmental entities that are members of the MPO. Under current law, the MPO in a county as defined in s. 125.011(1), F.S. (*i.e.,* Miami-Dade County) is prohibited from assessing any fees for municipalities, counties, or other governmental entities that are members of that MPO.[78]

[74] Section 338.166(1), F.S.
[75] Section 338.166(2), F.S.
[76] Section 338.166(3), F.S.
[77] Section 339.175(6)(f)1., F.S.
[78] *Id.*

Effect of Proposed Changes

Section 12 amends s. 339.175(6)(f), F.S., to remove the current prohibition against the MPO in Miami-Dade County assessing any fees for municipalities, counties, or other governmental entities that are members of the MPO.

Northwest Florida Transportation Corridor Authority (Sections 13 and 20)

Present Situation

The Northwest Florida Transportation Corridor Authority (NFTCA), is an agency of the State of Florida, created in 2005 pursuant to ch. 343, Part IV, F.S. One of several transportation authorities in Florida, the governing body consists of eight voting members, one each from Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla counties, appointed by the Governor to a 4-year term. The appointees are residents of their respective counties and may not hold an elected office. The district secretary of the FDOT serving Northwest Florida also serves as an ex officio, nonvoting member of the NFTCA governing body.[79]

The primary purpose of the NFTCA is to improve mobility on the U.S. 98 corridor in Northwest Florida, enhance traveler safety, identify and develop hurricane evacuation routes, promote economic development, and implement transportation projects to alleviate current or anticipated traffic congestion.[80]

The NFTCA met on September 20, 2018, and during the meeting, the NFTCA Board voted unanimously, approving Resolution 18-02, to become inactive as an authority. The NFTCA Board also voted unanimously to approve their 2019 Budget, which utilized all of their remaining funds of $1,016, with $1,015 placed under Board Expenses and $1 placed in Total Reserves for the 2019 Budget before going inactive.[81]

Effect of Proposed Changes

Section 13 repeals Part III of ch. 343, F.S., consisting of ss. 343.80, 343.805, 343.81, 343.82, 343.83, 753 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 754 343.881, 343.884, and 343.89, F.S., in which the NFTCA was established.

Section 20, notwithstanding any other law, dissolves the inactive NFTCA. The NFTCA must discharge or make provisions for the their debts, obligations, and other liabilities; settle and close the NFTCA's activities and affairs; and provide for distribution of the their assets (estimated to be $1,016),[82] or the proceeds of such assets, such that each local general-purpose government represented on the NFTCA's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

[79] Section 343.81(2), F.S.
[80] Section 343.81(1), F.S.
[81] Northwest Florida Transportation Corridor Authority, Board Meeting Minutes, September 20, 2018 (on file in the Senate Transportation Committee).
[82] *Id.*

Central Florida Expressway Authority – Lake County (Section 14)

The Central Florida Expressway Authority (CFX) is established in Part III of ch. 348, F.S., and is granted the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the CFX Expressway System. Except as otherwise provided, the area served by the CFX is that within the geographical boundaries of Orange, Seminole, Lake, Brevard, and Osceola counties.[83]

The Wekiva Parkway (State Road 429) will ultimately connect to State Road 417 and complete the beltway around Central Florida. The project is a cooperative effort between the FDOT (which is responsible for constructing portions of the parkway)[84] the CFX, and the Turnpike Enterprise. Portions of the parkway are already open, and the entire parkway is scheduled to be open to traffic in 2023.[85]

Section 348.754(1)(c), F.S., notwithstanding any other provision of that section, provides that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the CFX may not, without the prior consent of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

Effect of Proposed Changes

Section 14 amends s. 348.754(1)(c), F.S., to provide that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the CFX may not, without the prior consultation (rather than consent) of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

Jacksonville Transportation Authority (Section 15)

Present Situation

Chapter 349, F.S., creates the Jacksonville Transportation Authority (the JTA) as a body politic and corporate and an agency of the state.[86] The JTA is authorized to acquire, hold, construct, improve, maintain, operate, and own the Jacksonville Expressway System,[87] but the authority also has multi-modal responsibilities. The JTA designs and constructs bridges and highways[88] and provides varied mass transit services including, but not limited to, express and regular bus service;[89] a downtown Skyway Monorail;[90] the St. Johns River Ferry;[91] the Gameday Xpress for

[83] Section 348.754(1)(a), F.S.
[84] *See Wekiva Parkway, Sections*, available at Wekiva Parkway - FDOT Sections (last visited April 14, 2021).
[85] *See Wekiva Parkway*, available at Wekiva Parkway - Home Page (last visited April 14, 2021).
[86] Section 349.03(1), F.S.
[87] Section 349.04(1)(a), F.S.
[88] *See* the JTA website for a list of projects, available at JTA Mobility Works - Projects (jtafla.com) (last visited April 14, 2021).
[89] *See* the JTA website, *Riding JTA*, available at Jacksonville Transportation Authority - Riding JTA (jtafla.com) (last visited April 14, 2021).
[90] *See* the JTA website, *Skyway*, available at Jacksonville Transportation Authority - Skyway (jtafla.com) (last visited April 14, 2021).
[91] *See* the JTA website, *St. Johns River Ferry*, available at JTA Ferry - St. John's River Ferry | Schedule, Costs, Information, Directions | JTA (jtafla.com) (last visited April 14, 2021).

various sporting events;[92] inter-county service between points in Baker, Clay, Nassau, Putnam, and St. Johns Counties;[93] and paratransit service.[94]

Current law authorizes the JTA to enter into lease agreements, including the authority to lease:

- As a lessor, the Jacksonville Expressway System,[95] a mass transit system employing motor cars or buses, street railway systems beneath the surface, on the surface, or above the surface, or any other means determined useful to the rapid transfer of large numbers of people among the locations of residence, commerce, industry, and education in Duval County.[96]
- Public transportation projects, such as express bus services; bus rapid transit services; light rail, commuter rail, heavy rail, or other transit services; ferry services; transit stations; park-and-ride lots; transit-oriented development nodes; or feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities, that are intended to address critical transportation needs or concerns in the Jacksonville, Duval County, metropolitan area.[97]
- As lessee or lessor, and use any franchise or any property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it, including, without limitation, land, buildings, and other facilities located within or comprising transit-oriented developments which enhance the use or utility of transportation facilities owned or constructed by the authority and administrative and other buildings for the use of the authority in carrying out its powers and obligations.[98]

Various transportation, bridge, and expressway authorities are granted the power under current law to enter into agreements for similar or other types of leases, such as the South Florida Regional Transportation Authority,[99] the Central Florida Regional Transportation Authority,[100] the Tampa Bay Area Regional Transit Authority,[101] the Tampa-Hillsborough Expressway Authority,[102] and the Santa Rosa Bay Bridge Authority.[103] The authorization in each of these instances, however, is open-ended and not limited in duration. The duration for which the Central Florida Expressway Authority is authorized to enter into lease agreements is for a term not exceeding 99 years.[104]

Standing alone among these various transportation, bridge, and expressway authorities, the JTA is the only such entity with leasing authority limited to a duration of 40 years.

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[92] *See* the JTA website, *Gameday Xpress*, available at Jacksonville Transportation Authority - Gameday Xpress (jtafla.com) (last visited April 14, 2021).
[93] *See* the JTA website, *Regional Services*, available at Jacksonville Transportation Authority - Regional Services (jtafla.com) (last visited April 14, 2021).
[94] *See* the JTA website, *Paratransit*, available at Jacksonville Transportation Authority - Paratransit (jtafla.com) (last visited April 14, 2021). Some of the JTA services listed have been modified or suspended due to the COVID virus.
[95] Section 349.04(1)(a), F.S.
[96] Section 349.04(1)(b), F.S.
[97] Section 349.04(1)(e), F.S.
[98] Section 349.04(2)(c), F.S.
[99] Section 343.54(1)(b) and (3)(d), (e), and (i), F.S.
[100] Section 343.64(1)(b) and (3)(d), (e), and (i), F.S.
[101] Section 343.922(5)(d), (e), and (i), F.S.
[102] Section 348.54(3), F.S.
[103] Section 348.968(2)(c), and (d), F.S.
[104] Section 348.754(1)(a) and (2)(c), F.S.

Effect of Proposed Changes

Section 15 amends s. 349.04(2)(d), F.S., to increase from 40 years to 99 years the limitation on the term of a lease into which the Jacksonville Transportation Authority (JTA) is authorized to enter.

Borrow Pits (Sections 8, 16, 17, and 18)

Present Situation

Currently, the term "borrow pit" is not defined in Florida law.

Part III of ch. 378, F.S., contains the Resource Extraction Reclamation Act, which prohibits an operator[105] from beginning the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere in ch. 378, F.S., at a new mine[106] without notifying the secretary of the DEP of the intention to mine.[107] The operator's notice of intent to mine must consist of the operator's estimated life of the mine and the operator's signed acknowledgment of the performance standards provided in s. 378.803, F.S.[108]

The act also provides that after January 1, 1989, all operators of existing mines for the extraction of resources as described above must meet the performance standards provided by s. 378.803, F.S., for any new surface area disturbed at such mines.[109]

Section 378.803, F.S., provides the following performance standards for the reclamation of other resources:[110]

- Reclamation must achieve the stormwater, drainage, wetlands, and other surface and groundwater requirements of the DEP and the appropriate water management district.
- The final slopes must be at such an angle as to minimize the possibility of slides and may not exceed the natural angle of repose of the material being mined.
- Provisions for safety to persons, wildlife, and adjoining property must be provided.
- Any overburden and spoil must be left in a configuration which is in accordance with accepted soil conservation practices and which is suitable for the proposed future use of the land.
- Reclamation must be designed to avoid the collection of water in pools that are, or are likely to become, noxious, odious, or foul.
- All reclamation activities must, to the extent possible, be coordinated with resource extraction and in any event must be initiated at the earliest practicable time.

[105] Section 378.403(13), F.S., defines the term "operator" as any person engaged in an operation.
[106] Section 348.403(10), F.S., defines the term "mine" as an area of land upon which mining operations have been conducted, are being conducted, or are planned to be conducted, as the term is commonly used in the trade.
[107] Section 378.801(1), F.S.
[108] Section 378.801(2), F.S.
[109] Section 378.802, F.S.
[110] Section 378.403(17), F.S., defines the term "resource" as soil, clay, peat, stone, gravel, sand, limerock, metallic ore, or any other solid substance of commercial value found in natural deposits on or in the earth, except phosphate.

- Reclamation activities must be consistent with all applicable local government ordinances at least as stringent as the criteria and standards discussed above.

Effect of Proposed Changes

Section 16 amends s. 378.403, F.S., to define the term "borrow pit" as an area of land:
- Upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the mining trade; and
- Not considered a mine.

Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

Section 8 creates s. 337.0262, F.S., to prohibit the FDOT, and any contractor or subcontractor of the FDOT, from purchasing or using any clay, peat, gravel, sand, or other solid substance extracted from a borrow pit unless:
- The operator certifies to the FDOT, the contractor, or the subcontractor that the borrow pit is in compliance with the notice requirement and the substantive requirements of s. 378.801, F.S., and
- The operator is in compliance with the performance standards described above, including providing proof of currently valid permits required by the DEP and the appropriate water management district.

The bill mandates that all contracts and purchase orders executed by the FDOT, and all subcontracts and purchase orders executed by contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with the bill's provisions.

If the FDOT determines that substances are being obtained and used from a borrow pit not in compliance with the bill's provisions, the FDOT is required to cease accepting any substances from that pit within 48 hours. The FDOT is authorized to resume acceptance once the pit has reestablished compliance with the bill's provisions.

Section 17 amends s. 378.801, F.S., revising the title to address a notice of intent to extract, rather than to mine. The bill prohibits an operator from beginning the operation of a borrow pit (in addition to the current prohibition again beginning the process of extracting clay, peat, gravel, etc.) at a new *location* (instead of at a new mine) without notifying the DEP secretary of the intent to *extract* (instead of the intent to mine). The operator's notice of intent to *extract* must consist of the operator's estimated life of the *extraction location* (instead of the estimated life of the mine).

Section 18 amends s. 378.802, F.S., revising the title to address existing extraction locations (rather than existing mines). The bill requires that after January 1, 1989, all operators of existing *locations* for the extraction of the resources described in s. 378.801, F.S., must meet the performance standards in s. 378.803, F.S., for any new surface area disturbed at such *locations*.

Outdoor Advertising (Section 19)

Present Situation

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-aid Primary, Interstate, and National Highway System roads. The HBA allows the location of billboards in commercial or industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the HBA include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting, and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all interstates, federal-aid primaries, and other highways that are part of the national Highway System.
- States have the discretion to remove legal nonconforming signs[111] along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.
- States and localities may enact stricter laws than stipulated in the HBA.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.[112]

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT)[113] incorporating the HBA's required controls, the FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations and the 1972 agreement.[114] That chapter expressly provides that its provisions do not

[111] A legal "nonconforming sign" is a sign that was legally erected according to the applicable laws and regulations of the time, but which does not meet current laws or regulations. Section 479.01(16), F.S.
[112] 23 U.S.C. § 131(b).
[113] For a copy of the agreement, *see* ScenicAmerica, available at Florida Agreement (scenic.org) (last visited March 25, 2021).
[114] Some local governments have their own ordinances regulating outdoor advertising in their communities. *See* FDOT, *Outdoor Advertising*, available at Outdoor Advertising (fdot.gov) (last visited March 26, 2021). The current database may be accessed using the same link.

supersede the rights and powers of counties and municipalities to enact outdoor advertising or sign ordinances.[115]

Permitting and Metal Tags

A person is prohibited from engaging in the business of outdoor advertising in this state without first obtaining a license from the FDOT.[116] Except as otherwise provided,[117] a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System outside an urban area,[118] or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from FDOT (and paying the required annual fee).[119]

Once obtaining a license to engage in the business of outdoor advertising and having been issued a permit by the FDOT for an outdoor advertising sign, the FDOT is required to furnish to a permittee a serially numbered, permanent metal permit tag which the permittee is responsible for maintaining on each permitted sign facing at all times. The tag must be securely attached to the upper 50 percent of the sign structure in such a manner as to be plainly visible from the main traveled way.[120] The tag must be properly and permanently displayed at the permitted site within 30 days after the date of permit issuance and, if the permittee fails to erect a completed sign on the permitted site within 270 days after the date of permit issuance, the permit becomes void. The FDOT is prohibited from issuing a new permit to that permittee for the same locations for 270 days after the date on which the permit becomes void.[121] Current law also provides for the FDOT issuance of a replacement tag in the event a permit tag is lost, stolen, or destroyed. [122] The fee for a replacement tag, set by FDOT rule, is $12 per tag.[123]

At least 105 days before a license or a sign permit expires, the FDOT must send to each permittee a notice of fees due for all licenses and permits issued to a licensee/permittee before the date of the notice, and the permittee must advise the FDOT of any additions, deletions, or errors contained in the notice no later than 45 days before the expiration date.[124] Permits tags that are not renewed must be returned to the FDOT for cancellation by the expiration date. Permits that are not renewed or are canceled must be certified in writing at canceled or not renewed by

[115] Section 479.155, F.S.
[116] Section 479.04, F.S. However, a person is not required to obtain the license to erect outdoor advertising signs or structures as an incidental part of a building construction contract.
[117] *See, e.g.,* s. 479.16, F.S., for a list of signs for which permits are not required.
[118] "Urban area" means a geographic region comprising as a minimum the area inside the United States Bureau of the Census boundary of an urban place with a population of 5,000 or more persons, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations. Section 334.03(31), F.S.
[119] The annual permit fee for each sign facing is $71. See Rule 14-10.0043, F.A.C. A "sign facing" includes all sign faces and automatic changeable faces displayed at the same location and facing the same direction. Section 479.01(22), F.S. An "automatic changeable facing" means a facing that is capable of delivering two or more advertising messages through an automated or remotely controlled process. Section 479.01(2), F.S.
[120] "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system, or parking areas. Section 479.01(12), F.S.
[121] Section 479.07(5), F.S.
[122] Section 479.07(5). F.S.
[123] Rule 14-10.004(14), F.A.C.
[124] Section 479.07(8), F.S.

the permittee, and permit tags for such permits must be returned to the FDOT or accounted for in writing by the permittee.[125]

Effect of Proposed Changes

Section 19 amends s. 479.07, F.S., relating to outdoor advertising sign permits, requiring the FDOT to create and implement as soon as practicable a publicly accessible electronic database which includes permit details for each permit issued by the FDOT. The details in the database must include at a minimum the:

- Name and contact information of the permit operator;
- Structure identification number of numbers;
- Panel or face identification number or numbers;
- Latitude and longitude of the permitted sign;
- Compass bearing; and
- Most recent date the FDOT visually inspected the permitted sign.

Additionally, the database must also include images of the permitted sign once constructed.

Upon implementation of the database, the FDOT may not:

- Furnish permanent metal permit tags or replacement tags to permittees; or
- Enforce specified provisions of current law relating to permanent metal permit tags or replacement tags.

In addition, permittees are not then required to return permit tags to the FDOT, as is the case under current law.

Section 21 provides that the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[125] *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurance companies may incur insignificant expenses associated with providing the required attestation forms relating to insurance company receipt of a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home.

Motor vehicle dealer licensees may incur insignificant expenses associated with delivering to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit.

The bill increases hourly compensation for SAB members from $150 to $200, and increases the daily maximum compensation from $1,000 to $1,500 per member. Both current law and the bill require parties bringing arbitrations to the SAB to pay fees, based on the amount of the dispute, to defray the costs of operating the board. Contractors requesting arbitration through the SAB may experience indeterminate increased costs associated with submitting a claim to the SAB.

To the extent the bill results in contractors determining that the new procedural and evidentiary provisions governing SAB proceedings warrant hiring legal counsel, the bill may result in increased costs to contractors in the form of legal representation.

Contractors seeking certificates of qualification may experience indeterminate increased costs associated with the bill's requirements for audited, certified financial statements.

C. Government Sector Impact:

Municipalities, counties, and CDDs that undertake conveyance of a road and rights-of-way dedicated in a recorded subdivision plat and enter into an interlocal agreement may incur expenses in accomplishing the conveyance, which expenses are likely not significant. CDDs that choose not to enter into agreements for traffic control jurisdiction over a conveyed road will incur indeterminate expenses associated with installing, operating, maintaining, repairing and replacing all signs, signals, markings, striping, guardrails and other traffic control devices. If there is such an agreement, such costs remain with the municipality or county.

The DHSMV will incur expenses associated with creating the required attestation forms relating to insurance company receipt of a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home, which expenses are likely insignificant.

The FDOT will incur likely significant expenses associated with creating and implementing the publicly accessible electronic database for sign permit information but, as the bill allows the FDOT to do so "as soon as practicable," these significant expenses may be incurred over time.

As to the increased SAB compensation, the fees are static. The extent of time for which the fees will adequately cover SAB costs is unknown.

Local governments operating airports may experience a reduction in expenditures due to the exemption from the CEI requirements. Any reduction is dependent on project specifics and is therefore indeterminate.

The bill does not otherwise appear to impact state or local government revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDOT currently requires, by contract specification, contractors to take any dispute before what is called a Dispute Review Board (DRB) before invoking the SAB process. The DRB process establishes a per hearing cost of $9,000 to provide compensation to all DRB members for participation in an actual hearing, with the DRB chair receiving $3,500 and the other two members receiving $2,750 each. The FDOT and the contractor equally provide compensation to the DRB for participation in an actual hearing. The FDOT compensates the contractor in the amount of $4,500 as its contribution to the hearing cost. DRB rulings are not binding and can be rejected by either party.[126]

Under the revised SAB provisions, proceedings must be conducted "as provided by court rules." The bill also requires a preliminary hearing not currently required. The FDOT will presumably continue to require the DRB process, by contract, before a contractor may submit a claim to the SAB. The bill requires SAB hearings to be conducted informally, with the presentation of testimony and evidence kept to a minimum, yet matters are to be presented to the SAB primarily through the statements and arguments of counsel.

[126] *See* FDOT Dispute Review Board, *Three Party Agreement Form # 700-011-02, Section VI Payment*, at p. 5 (July 2019), available at https://www.fdot.gov/construction/constadm/drb/drbmain.shtm (last visited April 13, 2021).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.2397, 319.30, 320.06, 320.27, 337.025, 337.14, 337.185, 338.166, 339.175, 348.754, 349.04, 378.403, 378.801, 378.802, and 479.07.

This bill creates the following sections of the Florida Statutes: 177.107, 287.05705, and 337.0262.

This bill creates an undesignated section of Florida law.

This bill repeals the following sections of the Florida Statutes: 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, and 343.89.

IX. Additional Information:

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

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Authorizes a municipal or county governing body to abandon roads and rights of way dedicated in a recorded residential subdivision plat and to simultaneously convey the city's or the county's interest to a CDD under specified conditions.
- Substitutes an affidavit with an attestation on a form provided by the DHSMV as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction for motor vehicles and mobile homes from the DHSMV.
- Clarifies that the types of vehicles authorized to elect a permanent registration period are rental vehicles, making clear that the authorization does not apply to leased vehicles.
- Requires motor vehicle dealer licensees to deliver to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.
- Requires the FDOT to also use surplus toll revenues from HOT or express lanes for any public transportation project that benefits the operation of an HOV or express lane on the state highway system within the county or counties in which the revenue was collected, in addition to current use of these revenues for construction, maintenance, or improvement of any road on the state highway system, or to support express bus service on the facility, within the county or counties in which the toll revenues were collected.
- Repeals a prohibition against an MPO in Miami-Dade County assessing any fees for municipalities, counties, or other governmental entities that are members of the MPO.
- Repeals part III of ch. 343, F.S., relating to the inactive Northwest Florida Transportation Corridor Authority.

- Prohibits the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation.
- Requires the FDOT to create and implement a publicly accessible electronic database for sign permit information; specifies requirements for the database; prohibits the department from furnishing permanent metal permit tags or replacement tags and from enforcing related provisions once the department creates and implements the database.
- Increases from 40 years to 99 years an existing limitation on the term of a lease into which the Jacksonville Transportation Authority may enter.

CS by Transportation on March 24, 2021:
The committee substitute:

- Authorizes construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher to display a combination of flashing green, amber, and red lights during periods when workers are present.
- Prohibits the FDOT, and its contractors and subcontractors, from purchasing or using specified substances extracted from a borrow pit unless certification is provided by the operator showing the borrow pit is in compliance with certain existing requirements, and provides proof of currently valid permits required by the FDEP and the appropriate water management district.
- Mandates that all contracts and purchase orders executed by the FDOT, and all subcontracts and purchase orders executed by contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with the bill's provisions.
- Requires the FDOT, if it determines substances are being obtained and used from a non-compliant borrow pit, to cease accepting any substances within 48 hours. The FDOT may resume acceptance of substances from the borrow pit once the pit is in compliance.

B. Amendments:

None.