

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: PCS/SB 1126 (300690)

INTRODUCER: Appropriations Subcommittee on Transportation, Tourism, and Economic Development and Senator Harrell

SUBJECT: Department of Transportation

DATE: March 26, 2021 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Favorable
2.	McAuliffe	Hrdlicka	ATD	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1126 represents the Florida Department of Transportation’s (FDOT) legislative proposals for the 2021 Legislative Session. The bill contains a number of FDOT-related revisions to current law including:

- Increases from \$275 to \$300 million the authorized dollar amount representing an alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds issued to finance or refinance the cost of acquiring real property for state roads or the cost of bridge construction.
- Removes the expiration date for the Legislative Budget Commission (LBC) chair and vice chair’s authority to approve amendments to the FDOT’s work program that transfer fixed capital outlay appropriations between categories or increase an appropriation category.
- Clarifies that the Department of Revenue is the entity responsible for transferring a portion of documentary stamp tax revenues distributed to the State Treasury and credited to the State Transportation Trust Fund (STTF) from the State Treasury to the General Revenue Fund.
- Revises from October 1 to August 1 the date for metropolitan planning organization (MPO) annual submissions of project priorities to the FDOT districts for purposes of developing the FDOT’s tentative work program and MPO transportation improvement programs.
- Removes provisions requiring the FDOT to provide space and video conference capability at each FDOT district office for persons requesting a hearing before the Commercial Motor Vehicle Review Board, instead requiring the FDOT to allow such persons to appear remotely

before the board via communications media technology already authorized by Administration Commission rule.

- Grants the FDOT rulemaking authority for the purpose of implementing statutory provisions relating to airport zoning.
- Revises provisions relating to a notice and hearing the FDOT is required to provide when a transportation project on the State Highway System modifies an existing access to an abutting property owner to provide clarity and improve readability.
- Removes obsolete references to a previously expired general service revenue service charge from specified collected revenue deposited into the STTF.

The extent of any potential fiscal impact to the FDOT resulting from the increased alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Trust Fund bonds is unknown. The remaining revisions are primarily administrative and housekeeping in nature and are expected to present no immediate fiscal impact to state or local revenues.

The bill takes effect July 1, 2021.

II. Present Situation:

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

III. Effect of Proposed Changes:

Debt Service Cap on Right-of-Way Acquisition and Bridge Construction Bonds (Section 2)

Present Situation

Section 215.605, F.S., authorizes the issuance of state bonds to finance or refinance the cost of acquiring real property for state roads or to finance or refinance the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, the Legislature must authorize bonds, which must be issued pursuant to the State Bond Act.¹ The proceeds from the sale of issued bonds must be deposited into the Right-of-Way Acquisition and Bridge Construction Trust Fund.²

Section 206.46, F.S., authorizes the FDOT to transfer up to 7 percent of the revenues deposited into the STTF in each fiscal year into the Right-of-Way Acquisition and Bridge Construction Trust Fund to meet outstanding or proposed bond obligations; or, at a minimum, an amount sufficient to pay for the debt service coverage of outstanding bonds.³ The annual transfer amount, however, may not exceed that which is necessary to provide the required debt service coverage levels for a maximum debt service of \$275 million. Thus, debt service may not exceed 7 percent of the revenues deposited into the STTF or \$275 million, whichever is less.

¹ Sections 215.57-215.83, F.S.

² Section 215.605(4), F.S.

³ The transfer is required to be payable primarily from the motor and diesel fuel taxes transferred to the STTF.

The FDOT noted in 2020 that no adjustment has been made to the \$275 million cap since 2007. The FDOT provided information that based on the FDOT's most recent bond sale and Revenue Estimating Conference projections [at that time], the limit on debt service based on the 7-percent-of-revenue threshold would have been \$287 million in Fiscal Year 2019-2020 (based on revenues of \$4.1 billion), growing to \$350 million in Fiscal Year 2028-2029 (based on revenues of \$5 billion). Additionally, the FDOT advised that under the current statutory limit, the \$275 million cap leaves the FDOT with only about \$100 million of available bonding capacity.⁴

Effect of Proposed Changes

Section 2 of the bill amends s. 206.46, F.S., to increase the authorized dollar amount representing an alternative debt service cap on Right-of-Way Acquisition and Bridge Construction Bonds. Thus, under the bill, debt service could not exceed 7 percent of the revenues deposited into the STTF or \$350 million, whichever is less.

Work Program Amendments (Section 10)

Present Situation

Current law authorizes the FDOT to amend its adopted work program and provides procedures for such amendments.⁵ However, any work program amendment that transfers fixed capital outlay appropriations between categories or increases an appropriation category is subject to approval by the LBC.

Prior to 2016, if a meeting of the LBC could not be held within 30 days after the FDOT submitted an amendment, the chair and vice chair of the LBC could approve the amendment.⁶ In 2016, the Legislature repealed the authorization for LBC chair and vice chair approval if the LBC could not meet.⁷ In 2019, this authorization was reinstated with an expiration date of July 1, 2020.⁸ In 2020, the authorization was reinstated with an expiration date of July 1, 2021.⁹

Effect of Proposed Changes

Section 10 of the bill amends s. 339.135(7)(g), F.S., to remove the expiration of authorization for LBC chair and vice chair approval of the identified amendments to the FDOT's adopted work program, thereby making the provision permanent.

Documentary Stamp Tax/General Revenue Fund Transfer (Section 1)

Present Situation

Chapter 201, F.S., levies an excise tax (documentary stamp tax) on documents such as deeds, stocks and bonds, notes and written obligations to pay money, mortgages, liens, and other evidences of indebtedness. The Florida Department of Revenue (DOR) administers the

⁴ See the FDOT's 2020 Legislative Proposal, *Change the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap* (on file in the Senate Transportation Committee).

⁵ Section 339.135(7), F.S.

⁶ Section 339.135(7)(g), F.S. (2015).

⁷ Chapter 2016-181, s. 16, Laws of Fla.

⁸ Chapter 2019-116, s. 11, Laws of Fla.

⁹ Chapter 2020-144, s. 93, Laws of Fla.

provisions of that chapter,¹⁰ including provisions governing the collection of documentary stamp taxes, which are distributed each fiscal year to the General Revenue Fund and various other trust funds.

After certain required distributions to the Land Acquisition Trust Fund,¹¹ approximately 24 percent of the remainder of the taxes collected or \$541.75 million, whichever is less, is paid into the State Treasury to the credit of the STTF, \$75 million of which must be transferred to the General Revenue Fund. The remaining amount credited to the STTF must be used to fund certain transportation-related programs.¹² Although current law specifies the DOR as the administering agency of that chapter, the DOR is not expressly identified as the entity responsible for making the \$75 million transfer each fiscal year.

Effect of Proposed Changes

Section 1 of the bill amends s. 201.15(4)(a), F.S., to expressly require the DOR to make the \$75 million transfer each fiscal year from funds credited to the STTF in the State Treasury to the General Revenue Fund.

Metropolitan Planning Organizations Project Priority Submissions to the FDOT (Sections 10 and 11)

Present Situation

The FDOT's adopted work program is the 5-year work program adopted by the FDOT pursuant to s. 339.135, F.S. In developing the adopted work program, each of the FDOT districts submits an annual district work program, which is the 5-year listing of transportation projects planned for each fiscal year, to the FDOT's central office for review and development of the tentative work program. The tentative work program is the 5-year listing of all transportation projects planned for each fiscal year which is developed by the FDOT's central office based on the district work programs.¹³ Each year, a new fifth year is added for purposes of developing the tentative and adopted work programs.

With respect to development of the tentative work program, as outlined in s. 339.135(4), F.S., the district work program is developed cooperatively with the various metropolitan planning organizations (MPOs) around the state and must include, to the maximum extent feasible, the project priorities submitted by the MPOs to the FDOT's districts by October 1 of each year. The FDOT and an MPO may agree in writing to vary the submission date.¹⁴

The FDOT advises that during a "normal" work program development cycle, submission of MPO project priorities by October 1 allows sufficient time for development of the tentative work program cycle. However, because the Legislature meets beginning in January in even-numbered

¹⁰ Section 201.11, F.S.

¹¹ Section 201.15(1) and (2), F.S.

¹² Section 201.15(4)(a), F.S. The programs include the New Starts Transit Program, the Small County Outreach Program, the Strategic Intermodal System, and the Transportation Regional Incentive Program.

¹³ Section 339.135(1), F.S.

¹⁴ Section 339.135(4)(c)2., F.S.

years,¹⁵ the tentative work program cycle is “compressed” by two months, creating a need for earlier submission of project information. The FDOT notes that no failure to submit a priority list has occurred, but earlier submission has been provided as a courtesy, rather than a mandate.¹⁶

The MPOs are also required, in cooperation with the state and affected public transportation operators, to develop a transportation improvement program for the area within the jurisdiction of the MPO. Similar to work program development, each MPO is required to submit to the appropriate FDOT district a list of project priorities by October 1 of each year. Again, the FDOT and an MPO may agree in writing to vary the submission date. The MPO-approved lists must be used by the FDOT districts in developing the district work programs.¹⁷

Effect of Proposed Changes

Sections 10 and 11 of the bill, respectively, amend ss. 339.135(4)(c) and 339.175(8)(b), F.S., to revise from October 1 to August 1 the deadline for MPOs to submit their project priority lists for purposes of developing the FDOT’s tentative work program and for purposes of development of MPO transportation improvement programs.

Commercial Motor Vehicle Review Board/Remote Appearance (Section 6)

Present Situation

The Commercial Motor Vehicle Review Board (the Board), established within the FDOT, is composed of three permanent members (the FDOT secretary as chair, the executive director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their designees); three members appointed by the Governor (one each from the road construction industry and the trucking industry, and one with a general business or legal background); and one member appointed by the Commissioner of Agriculture from the agriculture industry.¹⁸

The Board is authorized to review any penalty imposed upon any vehicle or person under the provisions of ch. 316, F.S., relating to weights imposed on the highways by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations, and the Board may modify, cancel, revoke, or sustain any such penalty.¹⁹ The Board is authorized to hold sessions and conduct proceedings at any place. According to the FDOT’s website, the Board meets physically in Tallahassee.²⁰

Any person against whom a penalty is imposed may apply to the Board for a modification, cancellation, or revocation of the penalty. A written explanation provided within a letter protesting a penalty is acceptable in lieu of physical attendance by a person requesting a hearing before the Board, but attendance “will provide the petitioner the opportunity to respond to

¹⁵ FLA. CONST. art. III, s. 3(b).

¹⁶ See the FDOT’s 2020 Legislative Proposal, *Advance MPO Deadline to Submit Project Priorities* (on file in the Senate Transportation Committee).

¹⁷ Section 339.175(8), F.S.

¹⁸ Section 316.545(7)(a) and (b), F.S. See the FDOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, for more details on the Board, as well as its 2021 meeting schedule, available at <https://www.fdot.gov/traffic/reviewboard.shtm> (retrieved March 12, 2021).

¹⁹ Section 316.545(4)(c), F.S.

²⁰ Section 316.545(7), F.S.

Review Board inquiries into subjects that the petitioner may have overlooked when drafting his letter of protest.”²¹ Appearance by telephone is not available, but pursuant to the provisions of s. 316.545(7)(f), F.S., the FDOT is required to provide space and video conference capability at each of its seven district offices to enable a person requesting a hearing to appear remotely before the board, provided the requester notifies the Board at least 14 calendar days before the hearing date.²²

By rule of the Administration Commission, agencies are currently authorized to conduct proceedings using communications media technology; *i.e.*, the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.²³

The current requirement for providing space and video conference capability at each of the seven FDOT district offices does not take advantage of the various forms of communications media technology authorized for use in conducting agency proceedings.

Effect of Proposed Changes

Section 6 of the bill amends s. 316.545(7), F.S., to remove the requirement that remote appearance before the Board by a person requesting a hearing must take place at one of the FDOT district offices by means of video conference capability and replace it with authorization for use of communications media technology by any means.

When using communications media technology the FDOT would be required to provide a notice to the requester specifying the address or addresses of all access points, specifically designating those which are in locations normally open to the public; the address of each access point where an interested person may go to attend the proceedings; an address, email address, and telephone number where an interested person may write or call for additional information; and an address, email address, and designated person to whom a person may submit written or other physical evidence which he or she intends to offer into evidence during the proceedings.²⁴

This revision would allow the FDOT to more efficiently conduct proceedings before the Board and reduce the burden on a person requesting a hearing to travel to one of the FDOT district offices to be heard. The FDOT advises any person requesting to appear before the Board at one of the FDOT district offices will continue to be accommodated.²⁵

²¹ FDOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*.

²² *Id.*

²³ Fla. Admin. Code R. 28-109.

²⁴ *Id.*

²⁵ Telephone conversation between Senate Transportation Committee staff and FDOT staff, February 1, 2021.

Airport Zoning/FDOT Rulemaking (Section 8)

Present Situation

The Legislature in 2016 enacted a substantial re-write of ch. 333, F.S., which contains airport zoning provisions relating to the management of airspace and land use at or near airports.²⁶ Generally, the 2016 re-write:

- Updated statutory definitions and terms in accordance with federal regulations.
- Streamlined the local airport protection zoning process to a simpler permitting model.
- Provided local governments the flexibility to structure and incorporate the airport protection zoning review process into existing local zoning review processes and repealed duplicative requirements for obtaining a variance.

The FDOT has a long-standing rule that pre-dates the 2016 substantial re-write: Florida Administrative Code Rule Chapter 14-60, “*Airport Licensing, Registration, and Airspace Protection*,” the purpose of which is “to promote safe civil aviation by eliminating hazards; to provide airfield standards for airports; to provide standards for airport marking and lighting; to license and register airports, pursuant to the licensing and registration requirements of Chapter 330, F.S., and to promote flight safety by providing for airspace protection, pursuant to the requirements of Chapter 333, F.S.”²⁷ The provisions of the rule appear to be critical to promotion of safe civil aviation. However, in the midst of the 2016 re-write, authority for the long-standing rule was apparently inadvertently overlooked.

Effect of Proposed Changes

Section 8 of the bill creates s. 333.14, F.S., to provide the FDOT with express authority to adopt rules to implement the provisions of ch. 333, F.S., thereby providing specific authorization for Florida Administrative Code Rule Chapter 14-60.

Transportation Projects/Modifying Access/Abutting Property Owners (Section 9)

Present Situation

Under current law, when the FDOT proposes a project on the State Highway System that will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or modifying an existing access to an abutting property owner, the FDOT is required to notify all affected property owners, municipalities, and counties at least 180 days before the design of the project is finalized. The notice must include a written explanation regarding the need for the project and an indication that all affected parties will be given an opportunity to provide comments to the FDOT regarding potential impacts of the change. The FDOT must hold at least one public hearing in the jurisdiction where the project is located to receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community. The FDOT must review all comments from the public hearing and take the comments and any alternatives

²⁶ Chapter 2016-239, Laws of Fla.

²⁷ Fla. Admin. Code R. 14-60.003(1) (2004).

presented by a local government during the hearing into consideration in the final design of the highway project.²⁸

Effect of Proposed Changes

Section 9 of the bill amends s. 335.199, F.S., to make editorial revisions and improve readability. The bill clarifies that the FDOT must provide the required notice at least 180 days before the design phase of the project is completed, rather than finalized. The bill also revises all occurrences of the word “hearing” to “meeting,” to remove any sort of legal connotation, as the required events are not in the nature of any sort of judicial proceeding but are more closely akin to informational “meetings.”

The bill clarifies that the FDOT must hold at least one public meeting *prior to completing* the design phase of the project, so that the FDOT reviews all comments from the public meeting and takes the comments and any alternatives presented by a local government during the meeting into consideration in the *final* design of the project.

Obsolete References to the General Revenue Service Charge (Sections 3, 4, 5, and 7)

Present Situation

Section 215.20(1), F.S., appropriates from revenue deposited into most state trust funds²⁹ an 8 percent service charge, which represents the estimated pro rata share of the cost of general government. All such appropriations are deposited into the General Revenue Fund.

Section 215.211(1), F.S., however, eliminated the service charge beginning July 1, 2000, for taxes distributed under:

- Section 206.606(1), F.S., relating to the distribution of motor and diesel fuel taxes;
- Section 212.0501(6), F.S., relating to taxes on diesel fuel used in self-propelled off-road equipment for business purposes; and
- Section 319.32(5), F.S., relating to the disposition of fees from certificate of title transactions.

Additionally, s. 215.211(2), F.S., eliminated the service charge beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.

Although the service charge on the specified taxes has been eliminated, references to the service charge remain in statute for the described taxes or fees.

Effect of Proposed Changes

Sections 3, 4, 5, and 7, respectively, remove the obsolete references to the general revenue service charge that remain in ss. 206.606(1), 206.608, 212.0501(6), and 319.32(5), F.S.

²⁸ Section 335.199, F.S.

²⁹ Section 215.22, F.S., sets out a list of items and trust funds that are exempt from the service charge, including trust funds administered by the Department of Transportation.

Effective Date (Section 12)

The bill is effective July 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Individuals requesting a hearing before the Commercial Motor Vehicle Review Board who are authorized to appear remotely via communications media technology may experience reduced expenses associated with travel to an FDOT district office to appear.

C. Government Sector Impact:

Currently, the amount transferred by the FDOT into the Right-of-Way Acquisition and Bridge Construction Trust Fund may not exceed 7 percent of the revenues deposited into the STTF, or \$275 million, whichever is less. The bill provides that the amount transferred may not exceed 7 percent of the revenues deposited into the STTF or \$350 million, whichever is less. This revision may provide the FDOT with additional bonding capacity. However, the resulting impact of any additional bonding capacity is unknown.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 201.15, 206.46, 206.606, 206.608, 212.0501, 316.545, 319.32, 335.199, 339.135, and 339.175.

This bill creates the following sections of the Florida Statutes: 333.15.

VIII. Additional Information:

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

CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 24, 2021:

The committee substitute clarifies that when FDOT submits a work program amendment to the Legislative Budget Commission, but the commission does not consider the amendment within 30 days after submittal, the chair and vice chair of the commission may approve the amendment.

- B. **Amendments:**

None.