

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 Transportation

BILL: CS/SB 1118

INTRODUCER: Transportation Committee and Senator Gainer and others

SUBJECT: Transportation

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1118 reflects the Florida Department of Transportation's (FDOT) 2017 Legislative Package. More specifically, the bill:

- Increases the allowable gross vehicle weight for vehicles using natural-gas fueling systems by up to 2,000 pounds under certain conditions, resulting in a reduced overweight penalty and avoiding a potential loss of federal funds;
- Aligns state and federal law by mandating bridge inspections at regular intervals as required by the Federal Highway Administration, as opposed to intervals not exceeding two years, resulting in compliance with revised national bridge inspection requirements and avoiding a potential but likely insignificant diversion of federal funds;
- Increases the current \$120,000 cap on "fast response" contracts to \$250,000 to account for increased construction costs due to inflation;
- Allows turnpike bonds to be validated at the option of the Division of Bond Finance and limits the location of publication of certain related notices to Leon County;
- Exempts certain work program amendments related to emergency repairs from Legislative Budget Commission review;
- Repeals the Florida Highway Beautification Council and creates the Florida Highway Beautification Grant Program within the FDOT.
- Defines "department" to mean the FDOT for purposes of part II of ch. 343, F.S., relating to the South Florida Regional Transportation Authority (SFRTA);

- Prohibits the SFRTA from entering into, extending, or renewing any contract without the FDOT's prior review and written approval of the proposed expenditures if such contract may be funded with FDOT-provided funds;
- Prohibits the SFRTA from committing FDOT-provided funds without the FDOT's prior review and written approval of the authority's expenditures and requires the SFRTA to promptly provide the FDOT with any additional documentation or information necessary to evaluate the SFRTA's proposed uses of state funds.
- Prohibits the FDOT from providing funding to the SFRTA until the authority withdraws, cancels, or otherwise terminates a specified Notice of Intent of Contract Award; and requires the SFRTA, before entering into a new contract for the same services, to obtain the FDOT's written approval of all terms and conditions of the new procurement and contract.
- Deletes and revises cross-references to conform to changes made in the act.
- Provides the bill take effect on July 1, 2017

The FDOT is expected to absorb insignificant administrative expenses in implementing various provisions of the bill, offset by potential savings. The bill also has an indeterminate fiscal impact relating to specific provisions. See Section V., "Fiscal Impact Statement," for details.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Natural Gas-Fueled Vehicle Weight (Section 1)

Present Situation:

Motor Vehicle Weights and Overweight Penalties

The rate of damage to roads and bridges generally increases as vehicle weight increases, resulting in higher maintenance and replacement costs and potentially creating unsafe conditions. Maximum legal vehicle weights are established for all public roads and bridges and allow compliant vehicles to travel most public highways of the state without causing excessive road damage or bridge failures. However, some roads and bridges have lower weight limits due to their age, condition, or design, and these facilities have posted weight limits; *i.e.*, their lower weight limits are identified through signage at the facility. Vehicles exceeding the maximum weight limits on a facility, including posted facilities, are presumed to have damaged the highways of the state and are subject to fines.¹

Gross vehicle weight is the total weight of a vehicle (or combination of vehicles) and any cargo carried by the vehicle.² Federal and state law generally provide that gross vehicle weight may not exceed 80,000 pounds for both the Interstate and non-interstate highway system,³ or the

¹ See ss. 316.545 and 316.555, F.S.

² Section 316.003(27), F.S.

³ See 23 U.S.C. 127 (2015) and s. 316.535, F.S.

maximum allowed by the Federal Bridge Formula.⁴ In Florida, the maximum weight limit is 22,000 pounds on a single axle, and 44,000 pounds on a tandem axle.⁵ These limits do not apply to those vehicles and loads that cannot be easily dismantled or divided (*i.e.*, “non-divisible”), or to other vehicles exceeding the maximum weight limits, if a special permit has been issued in accordance with applicable state laws.⁶

However, the vehicle’s number of axles and the distance between the axles in part controls a vehicle’s maximum allowable weight. Thus, a vehicle’s maximum allowable gross weight may be reduced because the concentration of weight on a particular axle may reach unacceptable limits. For example, pavement and bridge stress is greater for a 30-foot truck with two axles and a gross vehicle weight of 50,000 pounds than a 54-foot tractor-trailer combination of the same weight because the tractor-trailer distributes the load over a greater area. Therefore, the 30-foot truck will have a lower maximum allowable weight.

For weight violations, including violations of weight criteria contained in a special permit, the penalty is as established in s. 316.545(3)(a), F.S., *i.e.*, \$10 for 200 pounds or less and 5 cents per pound for each pound over 200 pounds. Unlawful axle weights are penalized at \$10 for the first 600 pounds, if the gross weight of the vehicle (or vehicle combination) does not exceed the maximum allowable gross weight.⁷

For each violation of the operational or safety restrictions established in a special permit, *e.g.*, using a restricted bridge, the penalty may be as high as \$1,000. However, the cumulative total for multiple violations may not exceed \$1,000.⁸

These penalties are deposited into the State Transportation Trust Fund and used for roadway maintenance and repair.⁹

Cargo Capacity of Vehicles Fueled by Natural Gas Compared to Gasoline or Diesel-Fueled Vehicles

According to the U.S. Department of Energy, about 150,000 vehicles in this country are powered by natural gas, many of which are heavy-duty vehicles.¹⁰ Natural gas vehicles (NGVs) are reported to be similar to gasoline or diesel-fueled vehicles with respect to power, acceleration, and cruising speed; and the use of natural gas as fuel provides additional advantages, such as its domestic availability, its relative low cost, and lower emissions.¹¹ However, these advantages

⁴ This formula is used to determine the maximum allowable weight that any set of axles on a motor vehicle may carry on the Interstate Highway System. For further detail, see the Federal Highway Administration website:

http://ops.fhwa.dot.gov/freight/sw/brdgc/calc_page.htm. (Last visited January 20, 2017.)

⁵ See the Florida Highway Patrol *Commercial Motor Vehicle Manual*, July 2016, at p. 8, available at:

<https://www.flhsmv.gov/fhp/CVE/2015truckingmanual.pdf>. (Last visited January 26, 2017.)

⁶ 23 U.S.C. 127(a) (2015) and s. 316.550, F.S..

⁷ Section 316.545(3)(a), F.S.

⁸ 316.550(10)(c), F.S.

⁹ Section 316.545(6), F.S.

¹⁰ See the U.S. Department of Energy Alternative Fuels Data Center website available at:

http://www.afdc.energy.gov/vehicles/natural_gas.html. (Last visited November 18, 2016.)

¹¹ *Id.* at: http://www.afdc.energy.gov/fuels/natural_gas_benefits.html. (Last visited November 18, 2016.)

may be offset by displacement of cargo capacity, due to the heavier weight of NGV fueling systems relative to gasoline or diesel systems.¹²

Fast Act Natural Gas Vehicle Weight Allowance

The Fixing America's Surface Transportation Act (FAST Act), which authorized Federal surface transportation programs for fiscal years 2016-2020, contained a number of incentives for natural gas. In apparent recognition of the potential displacement of cargo capacity due to the heavier weight of NGVs, the FAST Act authorized a vehicle, if operated by an engine fueled primarily¹³ by natural gas, to exceed any (single axle, tandem axle and bridge formula) weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by an amount that is equal to the difference between:

- The weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle, and
- The weight of a comparable diesel tank and fueling system.¹⁴

The Federal Highway Administration (FHWA) has advised states to review state statutes, regulations, and procedures, as well as load rating and posting calculations and enforcement practices, for necessary updating.¹⁵ Further, the FHWA noted that while the federally increased weight allowance does not preempt a state from enforcing *state* weight limits on all highways, it does “prevent[] the FHWA from imposing funding sanctions if a state authorizes the additional weight limit on its Interstate system.”¹⁶

Florida law has long adhered to the general maximum weight limits contained in the Federal law,¹⁷ and the FDOT issues special permits for vehicles transporting non-divisible loads and for other vehicles exceeding maximum weight limits.¹⁸ Florida law currently grants a 500-pound weight allowance for idle reduction technology consistent with federal law, but does not authorize the additional weight for NGVs allowed in the FAST Act.¹⁹

FDOT Permitting of NGVs

In response to the FAST Act, the FDOT performed an assessment to determine if any bridges, other than those currently posted for weight, would require posting because of the additional

¹² *Id.*. “The driving range of NGVs is generally less than that of comparable conventional vehicles because of the lower energy density of natural gas. Extra storage tanks can increase range, but the additional weight may displace cargo capacity.”

¹³ Some NGVs are fueled solely by natural gas, some are bi-fueled with two separate fueling systems that enable them to run on either natural gas or gasoline, and some are dual-fueled. Dual-fueled vehicles “are traditionally limited to heavy-duty application, have fuel systems that run on natural gas, and use diesel fuel for ignition assistance.” *Supra* note 8.

¹⁴ P.L. 114-94, s. 1410 (2015). *See also* the Federal Highway Administration Memorandum dated February 24, 2016, *Information: Fixing America's Surface Transportation Act (FAST Act) Truck Size and Weight Provisions*. (On file in the Senate Transportation Committee.)

¹⁵ *Id.*, Memorandum Question and Answer 16.

¹⁶ *Id.*, Question and Answer 14.

¹⁷ *See* s. 316.535, F.S.

¹⁸ *See* s. 316.550, F.S.

¹⁹ Section 316.545(3)(b), F.S.

weight allowance for NGVs authorized in the Act. The FDOT advises that the study concluded that the additional weight of NGVs would not require bridges to be re-load rated or posted.²⁰ The FDOT also developed a permit process in June of 2016 to allow the operation of NGVs at the new Federal weight limits, but no permits were issued, perhaps because the industry is unaware of the need for such a permit.²¹ As a result, the FDOT estimates that approximately 292 citations²² have been issued, totaling \$375.00 in fines, 15 of which have been contested before the Commercial Motor Vehicle Review Board.²³ The FDOT advises no relief was granted for any of the 15 contested citations.²⁴

Effect of Proposed Changes:

Section 1 of the bill amends s. 316.545(3), F.S., to provide for a specified reduction in the actual gross weight of an NGV, when calculating the penalty for exceeding maximum weight limits, so long as the actual gross weight of the vehicle does not exceed 82,000 pounds, exclusive of the existing 500-pound weight allowance for idle reduction technology. The bill will create greater uniformity between federal and state law, which is especially important for truck drivers doing interstate business, and avoids a potential withholding of federal funds.

If an NGV is found to be overweight, then the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the natural gas tank and fueling system carried by that vehicle, and a comparable diesel tank and fueling system, before applying the currently applicable penalty. If the actual gross weight of the NGV exceeds 80,000 pounds plus the certified weight difference, a penalty of \$.05 per pound of excess weight could be assessed.

If the NGV is also equipped with idle reduction technology, the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the natural gas tank and fueling system carried by that vehicle and a comparable diesel tank and fueling system, and by an additional 500 pounds. If the actual gross weight of the NGV with idle reduction technology exceeds 80,500 pounds plus the certified weight difference, a penalty of \$.05 per pound of excess weight could be assessed.

The bill contains a proof requirement; *i.e.*, the vehicle operator must present a written certification that identifies the weight of the natural gas tank and fueling system, and the difference in weight of a comparable diesel tank and fueling system, upon request of a weight inspector or a law enforcement officer. The certification must originate from the vehicle manufacturer or the installer of the natural gas tank and fueling system.

The bill excludes vehicles described in s. 316.535(6), F.S., from qualifying for the reduced calculation. These vehicles, typically called straight trucks, include dump trucks, concrete

²⁰ See the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

²¹ *Id.*

²² The FDOT notes this estimate is based on a search for companies that utilize NGVs and received an overweight citation in the last year. Because the citation form is not designed to specify this particular infraction, some of the 292 cases may not be related to the FAST Act. *Id.*

²³ Section 316.545(7), F.S., establishes the Board within the FDOT and authorizes the Board to review any penalty imposed under chapter 316, F.S.

²⁴ *Supra* note 11.

mixing trucks, trucks engaged in waste collection and disposal, and fuel oil and gasoline trucks designed and constructed for special type work. The cargo unit and the power unit on these trucks sit on the same frame,²⁵ meaning that the concentration of weight is greater than, for example, a combination vehicle with an axle configuration that distributes the weight over a greater area. These vehicles continue to be limited to a gross weight of 70,000 pounds.

Bridge Inspection Frequency (Section 2)

Present Situation:

National Bridge Inspection Standards

Federal law requires the U.S.D.O.T. Secretary, in consultation with states and Federal agencies having jurisdiction, to inventory all highway bridges on public roads; to classify the bridges according to serviceability, safety, and essentiality for public use; and to assign each bridge a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation.²⁶ The Federal-aid Highway Act of 1968 required the Secretary to develop regulations establishing national bridge inspection standards with the primary purpose of locating and evaluating existing bridge deficiencies to ensure the safety of the traveling public. The current standards are specified in 23 C.F.R. 650, Subpart C, and apply to all highway bridges located on all public roads.

States are required by the standards to inspect all highway bridges located on public roads that are fully or partially located within the state, except for bridges owned by Federal agencies. Inspections are to be conducted in accordance with the American Association of State Highway and Transportation Officials *Manual for Condition Evaluation of Bridges*, which “serves as a standard and provides uniformity in the procedures and policies for determining the physical condition, maintenance needs, and load capacity of the Nation’s highway bridges.”²⁷

National Inspection Frequency Revisions

Before 2005, with specific reference to frequency of bridge inspections, the national standards generally required each bridge to be inspected at regular intervals not to exceed two years but recognized that certain bridges require inspection at less than two-year intervals. Those earlier standards also recognized that the maximum inspection interval for certain bridges could be appropriately increased in cases in which past inspection reports and favorable experience and analysis justified an increase. States were authorized to submit a detailed proposal and supporting data for approval of an increased interval, but in no case could the maximum time period between inspections exceed four years.

²⁵ See s. 316.003(76), F.S.

²⁶ See 23 U.S.C. 144 (2015).

²⁷ *Federal Register*, Vol. 74, no. 246, Thursday, December 24, 2009, at 68378.

Changes to the standards, effective January 13, 2005, among other items, included expansion of the bridge inspection frequency provisions, such that the FDOT is required to:

- Inspect each bridge at regular intervals not exceeding 24 months for routine inspections;²⁸ establish criteria to determine the level and frequency of inspection of bridges at less than 24-month intervals, considering such factors as age, traffic characteristics, and known deficiencies; and seek written approval from the Federal Highway Administration (FHWA) to inspect certain bridges at greater than 24-month intervals if past inspection findings and analyses justify an increased interval.
- Inspect underwater structural elements at regular intervals not exceeding 60 months; establish criteria to determine the level and frequency of inspection of these elements at less than 60-month intervals, considering such factors as construction material, environment, age, scour characteristics, condition rating from past inspections, and known deficiencies; and seek written approval from the FHWA to inspect certain underwater structural elements at greater than 60-month intervals, but not exceeding 72 months, if past inspection findings and analysis justify an increased interval.
- Inspect fracture critical members (FCMs)²⁹ at intervals not to exceed 24 months; establish criteria to determine the level and frequency of inspection of FCMs at less than 24-month intervals, considering such factors as age, traffic characteristics, and known deficiencies; and establish criteria to determine the level and frequency of damage, in-depth, and special inspections.³⁰

Compliance Reviews

States are subject to an annual review for compliance with the national standards using 23 metrics³¹ that contain criteria for assessing a state's compliance with each metric. A state is notified of any finding of noncompliance and provided an opportunity for correction. If a state ultimately remains noncompliant, the penalty is that the state must dedicate certain funds that would otherwise be available for projects to correcting the noncompliance.³² The FDOT advises it has received no such notification.³³

²⁸ "Routine inspection" is defined as a regularly scheduled inspection consisting of observations and/or measurements needed to determine the physical and functional condition of the bridge, to identify any changes from initial or previously recorded conditions, and to ensure that the structure continues to satisfy present service requirements. 23 C.F.R. 650.305 (4-1-16).

²⁹ "Fracture critical member" is defined as a member in tension, or with a tension element, whose failure would probably cause a portion of or the entire bridge to collapse. A "fracture critical member inspection" is defined as a hands-on inspection of a fracture critical member or member components that may include visual and other non-destructive evaluation. *Id.*

³⁰ "Damage inspection" is defined as an unscheduled inspection to assess structural damage resulting from environmental factors or human actions. "In-depth inspection" is defined as a close-up inspection of one or more members above or below the water level to identify any deficiencies not readily detectable using routine inspection procedures, with hands-on inspection being necessary at some locations. "Special inspection" is defined as an inspection scheduled at the discretion of the bridge owner, used to monitor a particular known or suspected deficiency. *Id.*

³¹ See the *Federal Register*, Vol. 79, No. 91, Monday, May 12, 2014, for a listing of each metric and citations to their locations in the Code of Federal Regulations, as well as an overview of the compliance review process.

³² These are National Highway Performance Program funds and Surface Transportation Block Grant Program funds. See 23 U.S.C. 144(h)(5) (2015).

³³ Telephone conversation with the FDOT staff, January 26, 2017.

Florida Bridge Inspection Law

The existing Florida Statutes do not comply with the described national bridge inspection frequency provisions. Currently, Florida law requires the governmental entity having maintenance responsibility for each bridge on a public transportation facility to inspect such bridges at regular intervals not to exceed two years.^{34, 35}

The FDOT does have already-established criteria for routine inspections at intervals not exceeding 24 months, and for certain other inspection levels and frequencies for bridges determined to require inspection at less than 24-month intervals.³⁶ However, because of the existing state mandate for inspection of each bridge at intervals *not exceeding* 2 years, the FDOT has not developed nor sought written approval from the FHWA for the inspection intervals, criteria, and FHWA approvals required by the revised national standards.

Effect of Proposed Changes:

Section 2 of the bill amends s. 335.074(2), F.S., to require bridge inspections at regular intervals *as required by the Federal Highway Administration*, rather than at intervals not exceeding 2 years. This revision will allow the FDOT to seek FHWA approval of its existing procedures, develop and establish the criteria for the required increased inspection intervals, and obtain the FHWA's approval, consistent with the revised national standards. A potential but likely insignificant³⁷ diversion of federal funds from actual projects to noncompliance correction is avoided.

Fast Response Contracts Cap (Section 3)*Present Situation:**FDOT Contracting Authority*

Generally, the FDOT is authorized to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System, the State Park Road System, or of any roads placed under its supervision by law. This authorization includes construction and maintenance contracts for rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities. With certain exceptions, these contracts must be advertised for competitive bidding, and such contracts generally must be awarded to the lowest responsible bidder.³⁸

Required Surety Bond

A successful bidder on a construction or maintenance contract is required to post a surety bond in an amount equal to the awarded contract price with certain exceptions. One exception is the FDOT's authorization to waive all or a portion of the bond requirement if the contract price is

³⁴ Section 335.074(2), F.S.

³⁵ Section 335.074(3)(b), F.S., requires each governmental entity to report its inspections to the FDOT.

³⁶ See the FDOT Procedure 850-010-030-j, section 3.2. (Copy on file in the Senate Transportation Committee.)

³⁷ Telephone conversation with the FDOT staff February 1, 2017.

³⁸ Section 337.11, F.S.

\$250,000 or less, and if the FDOT determines that the project is of a noncritical nature and that nonperformance will not endanger public health, safety, or property.³⁹ With respect to construction contracts, the FDOT may waive all or a portion of a bond for contracts of \$150,000 or less if the FDOT makes the same determination.⁴⁰

Fast Response Contracting Cap

One of the exceptions to the competitive bidding requirement currently authorizes the FDOT, under certain conditions, to enter into construction and maintenance contracts, up to the amount of \$120,000, without advertising and receiving competitive bids. The FDOT may exercise this authority when the FDOT determines that doing so is in the best interest of the public for reasons of public concern, economy, or improved operations or safety, and only when circumstances dictate rapid completion of the work:

- To ensure timely completion of projects or avoidance of undue delay for other projects;
- To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or
- To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.⁴¹

The FDOT is required to make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract and give consideration to disadvantaged business enterprise participation. If, however, the work exists within the limits of an existing contract, the FDOT must make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract. These contracts fund projects such as sinkhole repairs that protect roadways and other infrastructure, traffic railing and guardrail repairs needed to protect the safety of the traveling public, and drainage and inlet work that prevents roadway flooding during heavy rain.

When first enacted in 1999, the threshold amount was set at \$60,000,⁴² and the Legislature increased that amount to the current \$120,000 in 2002.⁴³

Construction Costs and Inflation

The FDOT advises that the usefulness of this statute has been limited by increased construction costs due to inflation and notes the only issue with meeting the conditions outlined in the statute is the current \$120,000 cap. The FDOT performed an analysis to reach an approximate estimate of the current \$120,000 contract cap converted to present-day costs, concluding that the current cap, adjusted for inflation, amounts to over \$200,000.⁴⁴ The FDOT advises that increasing the current cap to \$250,000 “will account for increased construction costs and extend the

³⁹ Section 337.18(1), F.S.

⁴⁰ Section 337.14(2), F.S.

⁴¹ Section 337.11(6)(c), F.S.

⁴² Ch. 99-385, Laws of Fla.

⁴³ Ch. 2002-20, Laws of Fla.

⁴⁴ See the FDOT’s Office of Policy Planning document, *Advisory Inflation Factors for Previous Years (1987-2016)*, available at: <http://www.fdot.gov/planning/policy/costs/retrocostinflation.pdf>. (Last visited January 25, 2017.)

Department's ability to quickly respond to construction and maintenance needs that are in the best interest of safety and the economy."⁴⁵

Effect of Proposed Changes:

Section 3 of the bill amends s. 337.11(6)(c), F.S., to increase the current \$120,000 threshold amount to \$250,000. The FDOT will be authorized to enter into maintenance and construction contracts, after making the necessary determination and when circumstances dictate rapid completion of the work, up to a contract amount of \$250,000. The FDOT's described authority to waive all or a portion of a required surety bond remains unchanged.

Turnpike Revenue Bonds/Bond Validation (Sections 4 and 10)

Present Situation:

Bond Validation

The Division of Bond Finance (DBF) is authorized to issue revenue bonds on behalf of the FDOT to finance or refinance the cost of legislatively approved turnpike projects in accordance with s. 11(f), Art. VII of the State Constitution.⁴⁶ The state or its agencies may issue revenue bonds without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects⁴⁷ authorized by law, and purposes incidental thereto, which bonds are payable solely from funds other than state tax revenues; e.g., toll revenues.⁴⁸ The DBF must submit a proposed bond issuance for approval by the State Board of Administration.⁴⁹ The Board, by resolution, may authorize the DBF to issue bonds on behalf of a state agency at one time or from time to time,⁵⁰ and the Board must approve all bonds to be issued by the DBF as to fiscal sufficiency.⁵¹

Once approved, such bonds must be validated under ch. 75, F.S.⁵² In a bond validation proceeding, the entity authorized by law to issue bonds files a complaint to establish its authority to incur bonded debt, as well as the legality of all proceedings in connection with the bond issuance.⁵³ A final judgment validating such bonds is "forever conclusive" and may not be challenged in any court by any person or party.⁵⁴

⁴⁵ See the FDOT's 2017 Legislative Proposal, *Rapid-Response Contracts-Price Increase*. (On file in the Senate Transportation Committee.)

⁴⁶ Section 338.227(3), F.S.

⁴⁷ Defined in s. 216.011(1)(p), F.S., to mean the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.

⁴⁸ See also s. 215.59(2) and s. 215.79, F.S.

⁴⁹ The State Board of Administration, created by the Florida Constitution, is governed by the Governor as the Chair of the Board of Trustees, the Chief Financial Officer, and the Attorney General. The Board is one of several boards and commissions making up the Florida Cabinet system. The Florida Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

⁵⁰ Section 215.68, (1), F.S.

⁵¹ Section 215.73, F.S.

⁵² Section 215.82(2), F.S.

⁵³ See s. 75.02, F.S.

⁵⁴ Section 75.09, F.S.

As described by the DBF with specific reference to Turnpike bonds:

Bond validation is a judicial procedure through which the legality of a proposed bond issue may be determined in advance of its issuance. It serves to assure bondholders that future court proceedings will not invalidate a government's pledge to repay the bonds. Validation is generally not necessary for established borrowing programs, such as Turnpike bonds, where any legal issues relating to the bonds have been resolved previously. Validation is optional for almost all bonds issued by the Division of Bond Finance, including Public Education Capital Outlay Bonds and University Revenue Bonds. If a constitutional or statutory question arises for a proposed bond issue, a complaint for validation may be filed in circuit court even if validation is not required.⁵⁵

Required Notice Publication

In any action to validate bonds issued pursuant to s. 338.227, F.S., the complaint must be filed in the circuit court of Leon County, and the notice required by s. 75.06, F.S., must be published in a newspaper of general circulation *in Leon County and in two other newspapers of general circulation in the state.*⁵⁶ The complaint and order of the circuit court must be served only on the state attorney of the circuit in which the action is pending (the Second Circuit).

Section 75.06(2), F.S., requires the clerk, before the date set for hearing on a complaint to validate Turnpike bonds, to publish a copy of the court's order requiring appearance at the hearing in Leon County at least once each week for two consecutive weeks, commencing with the first publication, which may not be less than 20 days before the date set for hearing, *in a newspaper in each of the counties where the proceeds of the bonds are to be expended, and in a newspaper published in Leon County.*⁵⁷

However, if publication pursuant to s. 215.82, F.S., would require publication in more newspapers than would publication pursuant to s. 75.06, F.S., then publication pursuant to s. 75.06, F.S., controls.⁵⁸ The currently required publication is dependent upon the geographic reach of the project(s) for which funding through bond issuance is sought.

Effect of Proposed Changes:

The bill leaves validation of turnpike bonds to the discretion of the DBF and limits provisions relating to publication of the required notice.

⁵⁵ See copy of email from the Florida Division of Bond Finance to House staff dated January 27, 2015 (On file with the Senate Committee on Transportation).

⁵⁶ Emphasis added.

⁵⁷ Emphasis added.

⁵⁸ See s. 215.82(2), F.S.

Section 4 of the bill creates subsection (5) of s. 338.227, F.S., to:

- Provide turnpike bonds issued pursuant to that section are not required to be validated pursuant to chapter 75, F.S., notwithstanding s. 215.82, F.S.;
- Provide for validation at the option of the DBF; and
- Require the notice under s. 75.06, F.S., to be published only in Leon County.

Section 10 of the bill amends s. 215.82(2), F.S., to strike the reference to s. 338.227, F.S., and add a reference to the language in newly created s. 338.227(5), F.S.

Emergency Work Program Amendments (Section 5)

Present Situation:

The FDOT's Work Program

The FDOT is responsible for developing a five-year plan of transportation projects in partnership with other entities such as communities, metropolitan planning organizations, local governments, other state and federal agencies, modal partners, and regional entities. Each of the FDOT's districts develops a "district work program," which is a five-year listing of transportation projects planned for each fiscal year and submitted to the FDOT's central office for review. The central office then develops a "tentative work program" (TWP) based on the district work programs. The TWP is a future five-year listing of all projects planned for each fiscal year, setting forth all projects by phase to be undertaken during the ensuing fiscal year and planned for the successive four fiscal years. On July 1 of each year, the FDOT adopts the "adopted work program," (AWP) which is the five-year listing of all projects planned for each fiscal year, including the current fiscal year.⁵⁹

The TWPs and AWP's must set out the proposed commitments and planned expenditures for the projects listed and be based on a complete, balanced financial plan.⁶⁰ Commitments⁶¹ generally must be planned so as to deplete the estimated resources for the fiscal year.⁶² Budgeting in excess of revenues received from various sources is prohibited.⁶³ The FDOT may include in each new TWP proposed changes to the projects contained in the previous AWP but is required to minimize changes to the four common fiscal years contained in the previous AWP and the new TWP.⁶⁴

⁵⁹ See s. 339.135, F.S.

⁶⁰ Section 339.135(3)(a), F.S.

⁶¹ The FDOT operates on a cash flow-commitment basis. Multi-year transportation projects begin before the total amount of cash is available to fund the entire project. Future revenues are used to pay for a project as actual expenditures occur. The FDOT measures and evaluates anticipated future revenues against total and planned project commitments. See the FDOT's *Work Program 101* computer based training available at: <http://wbt.dot.state.fl.us/ois/WorkProgram101CBT/index.shtm>. (Last visited December 2, 2016.)

⁶² Section 339.135(3)(b), F.S.

⁶³ Section 339.315(3)(c), F.S.

⁶⁴ Section 339.315(4)(b)3., F.S.

Amending the Adopted Work Program

The AWP may be amended, subject to certain procedures. The FDOT may amend the AWP to transfer fixed capital outlay appropriations for projects within the same appropriations category or between appropriations categories, including the following:

- To delete any project or project phase estimated to cost over \$150,000;
- To add a project estimated to cost over \$500,000;
- To advance or defer to another fiscal year a right-of-way phase, a construction phase, or a public transportation project phase estimated to cost over \$1.5 million, with certain exceptions; or
- To advance or defer to another fiscal year any preliminary engineering phase or design phase estimated to cost over \$500,000, with certain exceptions.^{65, 66}

If the FDOT proposes any amendment to the AWP described above the FDOT must submit the proposed amendment to the Governor for approval.⁶⁷ The FDOT must notify:

- The chairs of the appropriations and transportation committees;
- Each member of the Legislature representing a district affected by the proposed amendment; and
- Each affected metropolitan planning organization (MPO) and unit of local government, if not notified in connection with the 14-day comment period.⁶⁸

Current law prohibits the Governor from approving a proposed amendment until 14 days following the notification to the committee chairs, Legislative members, MPOs, and local governments.⁶⁹ If either of the appropriations committee chairs, the Senate President, or the House Speaker objects in writing to a proposed amendment within 14 days following the notification and specifies the reason for the objection, the Governor must disapprove the proposed amendment.⁷⁰

Any work program amendment that also requires the transfer of fixed capital outlay⁷¹ appropriations between categories within the FDOT, or the increase of an appropriation category, is subject to the approval of the Legislative Budget Commission (LBC), if not subject to

⁶⁵ Section 339.135(7)(c), F.S.

⁶⁶ FDOT Districts may loan funds between districts, under specified conditions. Such loans constitute an amendment to the AWP per s. 339.135(7)(b), F.S., and are subject to the same budget amendment threshold amounts contained in s. 339.135(7)(c), F.S. The FDOT is required to index the thresholds to the Consumer Price Index or similar inflation indicators no more frequently than once a year, subject to specified notice and review procedures

⁶⁷ If the amendment deletes or defers a capacity project construction phase, affected counties and cities must be given a 14-day comment period prior to the amendment being submitted to the Governor. Section 339.135(7)(d)1., F.S.

⁶⁸ Section 339.135(7)(d)2., F.S.

⁶⁹ Section 339.135(7)(d)3., F.S.

⁷⁰ Section 339.135(7)(d)4., F.S.

⁷¹ Defined in s. 216.011(1)(p), F.S., to mean the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.

legislation enacted in 2016.⁷² The 2016 legislation required LBC approval of any work program amendment in excess of \$3 million that also adds a new project, or phase thereof, to the AWP.⁷³

Emergency Work Program Amendments

Recognizing that circumstances can arise that would make the above-described processes unworkable, existing law makes provision for emergencies. Notwithstanding the notification and approval requirements described above and the requirement for LBC review of amendments transferring fixed capital outlay appropriations between categories,⁷⁴ current law authorizes the FDOT secretary to request AWP amendments when an emergency⁷⁵ exists and the emergency relates to the repair or rehabilitation of any state transportation facility. The Governor may grant approval and amend the FDOT's approved budget if a delay due to the notification requirements described above would be detrimental to the interests of the state. The FDOT must immediately notify the committee chairs and the affected Legislative members, MPOs, and local governments, and provide written justification for the emergency action within seven days after approval.⁷⁶

The FDOT notes that this exemption ensures that emergency repairs proceed quickly, protecting the safety and convenience of the traveling public.⁷⁷ However, when the 2016 legislation was enacted to require LBC approval of any work program amendment in excess of \$3 million that also adds a new project, or phase thereof, to the AWP, no exception from the notification, approval, and LBC-review requirements was granted for emergencies. The FDOT seeks to clarify that emergency work program amendments are also exempt from the LBC approval requirement of the 2016 legislation. In Fiscal Year 2016-2017 so far, the FDOT advises only one work program amendment was submitted for LBC review that, under the proposed revision, would not have been submitted.⁷⁸

Effect of Proposed Changes:

Section 5 of the bill amends s. 339.135(7)(e), F.S., relating to emergency amendment of the FDOT's work program, to insert a cross-reference to subsection (h), relating to the 2016 requirement for LBC review and approval of any work program amendment in excess of \$3 million that also adds a new project, or phase thereof, to the AWP. This revision results in an exception to LBC review and approval of such amendments in the case of emergencies, under the conditions specified in current law.

⁷² Section 339.135(7)(g), F.S.

⁷³ Section 339.135(7)(h), F.S.

⁷⁴ Section 339.135(7)(e), F.S., also expressly notwithstanding the provisions of s. 216.772(2), F.S., relating to certain other notice, review, and objection procedures with respect to appropriations, and s. 216.351, F.S., providing that subsequent inconsistent laws supersede that chapter only by express reference to that section.

⁷⁵ Defined by s. 252.34(4), F.S., to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

⁷⁶ Current law prohibits amending the AWP for emergency purposes unless the FDOT's comptroller certifies the availability of sufficient funds. Section 339.135(7)(e), F.S.

⁷⁷ See the FDOT's 2017 Legislative Proposal, *Work Program Amendments-LBC/Emergency Projects*. (On file in the Senate Transportation Committee.)

⁷⁸ See the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

Florida Highway Beautification Council Repeal/FDOT Grant Program (Section 6)

Present Situation:

The Council's Role

Section 339.2405, F.S., established the Florida Highway Beautification Council (Council) within the FDOT in 1987. The Council consists of seven members appointed by and serving at the pleasure of the Governor, with each chair selected by the Council members and serving a two-year term. Currently, all appointed members must be residents of this state. Of the seven members, two must be private citizens and one each must be:

- A licensed landscape architect;
- A representative of the Florida Federation of Garden Clubs, Inc.;
- A representative of the Florida Nurserymen and Grower Association;
- An FDOT representative designated by the FDOT secretary; and
- A representative of the Department of Agriculture and Consumer Services.

The Council is required to meet at least semiannually and may prescribe, amend, and repeal bylaws. The Council's duties are to:

- Provide information to local governments and local highway beautification councils about the state highway beautification grants program;
- Accept and review grant requests from local governments;
- Establish rules for evaluating and prioritizing the grant requests;
- Maintain a prioritized list of approved grant requests;
- Assess the feasibility of planting and maintain indigenous wildflowers and plants, instead of sod groundcovers, along the rights-of-way of state roads and highways;
- At the request of the FDOT secretary, review and make recommendations on any other highway beautification matters; and
- Annually submit to the FDOT secretary a proposal recommending the level of grant funding.

Local councils may be created by local governmental entities or by the Legislature. The local government or governments of the area in which the project is located must approve a grant request before its submission to the Council. After receiving recommendations from the Council, the FDOT secretary must award grants to local governmental entities in the order they appear on the Council's prioritized list and in accordance with available funding.⁷⁹

Beautification grants may be requested only for projects to beautify through landscaping roads on the State Highway System. A grant request must identify all costs associated with the project, including sprinkler systems, plant materials, equipment, and labor. Grant funds must provide for the costs of purchase and installation of a sprinkler system and the cost of plant materials and fertilizer. Grant funds may provide for the costs for labor associated with the installation of plantings.

⁷⁹ Section 334.044(26), F.S., requires the FDOT to allocate no less than 1.5 percent of the amount contracted for roadway and bridge construction projects for the purchase of plant materials. The FDOT advises that highway beautification grant funds are included in its calculation of the 1.5 percent requirement. *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

Each local government that receives a grant is responsible for paying any costs for water, sprinkler system maintenance, and landscaped area maintenance in accordance with a maintenance agreement with the FDOT. Except as provided in the grant, each local government is also responsible for paying any costs for labor associated with plant installation. The FDOT is authorized to provide by contract services to maintain such landscaping at a level not to exceed the cost of routine maintenance of an equivalent un-landscaped area.

The FDOT’s Role

The FDOT reports that each FDOT District appoints a District Highway Beautification Council Grant Manager (District Manager). The District Manager works with the District Landscape Architect and the State Transportation Landscape Architect (STLA), promoting the grant program and assisting applicants through the grant process. Each District Manager compiles and submits to the STLA a district-wide list of all applications received, and the STLA then compiles a statewide list. After the Council ranks each project, the STLA produces a Ranked Listing of the projects. Grants are awarded in the ranked order until the remaining budget is insufficient to fund the next ranked project.⁸⁰

Recent Grant Funding and Council Expenses

The line items for highway beautification included in the FDOT’s budget for the most recent five Fiscal Years is as follows:

<u>Fiscal Year</u>	<u>Line-Item</u>
2012-2013	\$1,000,000
2013-2014	\$1,000,000
2014-2015	\$1,800,000
2015-2016	\$1,817,000
2016-2017	\$1,800,000 ⁸¹

The FDOT is required to provide staff support services to the Council. For Fiscal Years 2012-13 through 2016-17, the FDOT advises it expended \$167,500 for administrative costs and travel to support the Council.⁸²

Effect of Proposed Changes

The bill repeals the Florida Highway Beautification Council and creates the Florida Highway Beautification Grant Program within the FDOT, with the FDOT secretary awarding grants to local governmental entities for beautification of roads on the State Highway System based on the FDOT’s prioritized list.

⁸⁰ See the FDOT’s 2017 Legislative Proposal, *Repeal of the Florida Highway Beautification Council*. (On file in the Senate Transportation Committee.)

⁸¹ *Id.*

⁸² See the FDOT’s *Estimated Admin and Travel Expense to Administer the Grants*. (On file in the Senate Transportation Committee.)

Section 6 of the bill amends s. 339.2405, F.S., creating the Grant Program within the FDOT and repealing all of the provisions relating to the Council, its membership, chair selection, meeting frequency, quorum requirements, compensation, and bylaws, etc.

The current Council duties are transferred to the FDOT, with the exception of assessing the feasibility of planting and maintaining indigenous wildflowers and plants, instead of sod groundcovers, using data from other states. The bill removes the required assessment, as it has been accomplished. The FDOT continues its efforts to improve aesthetics and driver safety while lowering maintenance costs through its Wildflower and Natural Areas Program.⁸³

Also removed to conform to the repeal of the Council is its authorization to make recommendations on other highway beautification matters and direction to the FDOT secretary to provide staff support services to the Council. Authorization to create local councils remains in place. The FDOT would rank the requests, rather than the Council, and the FDOT secretary would award grants based on the FDOT's prioritized list of approved grant requests, until the remaining budget is insufficient to fund the next ranked project.

South Florida Regional Transportation Authority (SFRTA) Funding and Contracting (Sections 7 – 9)

Present Situation:

The SFRTA and Funding

The SFRTA, created in 2003, is an agency of the state established in part II of ch. 343, F.S. The governing body of ten voting members includes:

- One county commissioner each, elected by the county commission from Broward, Miami-Dade, and Palm Beach Counties;
- One citizen who is not a commission member, appointed by each county commission;
- An FDOT district secretary or his designee appointed by the FDOT secretary; and
- Three citizens appointed by the Governor.

Members serve four-year terms, except that the terms of the Governor's appointees must be concurrent.

The SFRTA is authorized to coordinate, develop, and operate a regional transportation system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties. The SFRTA provides commuter rail service (Tri-Rail) for residents and visitors in the area served. Statutory provisions require each of the three counties served to provide no less than \$2.67 million annually, dedicated by each governing body by October 1 of each year, which funds may be used for capital, operations, and maintenance.⁸⁴ Additionally, current law requires each county to annually fund SFRTA operations in an amount no less than \$1.565 million.⁸⁵

⁸³ See the FDOT website for further information on the current program, including links to the referenced report, a history of the program, the FDOT's current wildflower procedure, and other related details available at: <http://www.fdot.gov/designsupport/wildflowers/default.shtm>. (Last visited March 2, 2017.)

⁸⁴ Section 348.58(1), F.S.

⁸⁵ Section 348.58(3), F.S.

Further, if the SFRTA, by December 31, 2015, had not received federal matching funds based on the dedicated \$2.67 million in tri-county funding, current law provides that funding is repealed. The SFRTA's 2016 Comprehensive Annual Financial Report reflects that the three counties contributed approximately \$1.6 million each towards the SFRTA's operating budget in Fiscal Years 2015 and 2016.⁸⁶ Thus, it appears the SFRTA received no federal matching funds, and the counties are no longer required to provide the annual \$2.67 million to the SFRTA.

The SFRTA is currently responsible for dispatching, maintenance, and inspection of the South Florida Rail Corridor.⁸⁷ Having assumed such responsibility, the FDOT is required to annually transfer to the SFRTA a total of \$42.1 million as follows:

- \$15 million for SFRTA operations, maintenance, and dispatch; and
- \$27.1 million for operating assistance, corridor track maintenance, and contract maintenance for the SFRTA.⁸⁸

According to a Florida Transportation Commission report, the FDOT has agreed to cover 100 percent of annual maintenance costs up to \$14.4 million, with shared costs in excess of that amount, pursuant to an Operating Agreement between the FDOT and the SFRTA setting out agreed-upon percentages.⁸⁹ The SFRTA's 2016 Comprehensive Annual Financial Report indicates that of the \$102,201,506 million in total revenue for 2016, the FDOT contributed \$55,260,036 million or 54.1 percent.⁹⁰

The FDOT's Oversight Role

The SFRTA may not commit any funds provided by the FDOT without the FDOT's approval. The FDOT may not unreasonably withhold approval. At least 90 days before advertising any procurement or renewing any existing contract using state funds for payment, the SFRTA must notify the FDOT of the proposed procurement or renewal and the proposed terms. If the FDOT objects in writing within 60 days of receipt of the notice, the SFRTA may not proceed. Failure of the FDOT to object within 60 days is deemed consent.⁹¹ To enable the FDOT's evaluation of the SFRTA's proposed uses of state funds, the SFRTA must annually provide the FDOT with its proposed budget and with any additional documentation or information required by the FDOT.⁹²

Recent Contracting

According to the SFRTA, services for the operation of Tri-Rail are currently provided through four separate contracts covering train operations, maintenance of equipment, train dispatching, and station maintenance. Those contracts expire in June of this year. The SFRTA made a

⁸⁶ *Supra* note 89.

⁸⁷ *Transportation Authority Monitoring and Oversight Fiscal Year 2015 Report*, pp. 197-199, available at: <http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf>. (Last visited March 2, 2017.)

⁸⁸ Section 348.58(4)(a)1., F.S.

⁸⁹ *Supra* note 86, p. 197.

⁹⁰ At p. 25, available at: <http://www.sfrta.fl.gov/docs/overview/Fiscal-Year-2016-Comprehensive-Annual-Financial-Report-FINAL.pdf>. (Last visited March 2, 2017.)

⁹¹ Section 348.58(4)(c)1., F.S.

⁹² Section 348.58(4)(c)2., F.S.

decision to bundle the four contracts into one and, on September 22, 2016, issued a Request for Proposals (RFP). Eighty percent of the scoring of the proposals was to be based on technical ability to do the work; 20 percent was to be based on price. The RFP cautioned proposers not to condition their prices. Proposals were due by December 16, 2016.⁹³

According to the SFRTA, five of the six proposers submitted with their price proposals “extraneous” pages with labels such as “Proposal Exceptions,” “Exceptions to RFP,” and “Pricing Assumptions.”⁹⁴ Other examples included pages indicating that their price did not include the cost of certain requirements in the RFP or that the price assumed facts that contradicted the RFP.⁹⁵ The SFRTA’s procurement director determined five of the six proposers had materially and significantly conditioned their proposals — specifically, their price — and that the proposals were therefore nonresponsive and should be rejected, based on requirements in the RFP.⁹⁶

On January 27, 2017, the SFRTA’s governing board approved a Notice of Intent of Contract Award for Request for Proposal 16-010 “Operating Services,” reflecting a determination to enter into a contract with an initial seven-year term, plus a three-year renewal option, for a price of \$511,418,271.65.⁹⁷

A request for an injunction to block Tri-Rail from awarding the contract was rejected following issuance of a temporary injunction to enable judicial review of allegations of unfair disqualification. The judge in the case ruled that the plaintiff failed to show any entitlement to a preliminary injunction and had not established a likelihood of success on the merits of their case.”⁹⁸ Four of the five rejected bidders have timely filed a bid protest with the SFRTA, which is currently under review.⁹⁹

Effect of Proposed Changes:

The bill places restrictions on the SFRTA’s contracting authority and use of state funds and revises the FDOT’s oversight role.

Section 8 of the bill creates new subsection (4) of s. 343.54, F.S., prohibiting the SFRTA from entering into, extending, or renewing any contract or other agreement under that part without the FDOT’s prior review and written approval of the SFRTA’s proposed expenditures, if such

⁹³ See the SFRTA presentation to the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 16, 2017, available at:

http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2017021204. (Last visited March 2, 2017.)

⁹⁴ *Id.* at (52:29).

⁹⁵ *Id.* at (53:18).

⁹⁶ *Id.* at (51:15).

⁹⁷ Available at: <http://www.sfrta.fl.gov/docs/Procurement/Posting-Notice-Operating-Services.pdf>. (Last visited March 3, 2017.)

⁹⁸ See *Transdev Services, Inc., et al., v. South Florida Regional Transportation Authority*, Case No.: 17-000877 CACE(21), Broward County Circuit Court, public copy available at:

<https://www.browardclerk.org/Web2/WebForms/Document.aspx?CaseID=ODc4NTc2MA%3d%3d-%2fxl4ct%2bcVyo%3d&CaseNumber=CACE17000877&FragmentID=MjM3NTk1MzQ%3d-tV6MANspieA%3d&DtFile=01/17/2017&DocName=Order&PgCnt=22&UserName=&UserType=Anonymous>. (Last visited March 24, 2017.)

⁹⁹ Telephone conversation with the SFRTA staff, March 24, 2017.

contract or agreement may be funded, in whole or in part, with FDOT-provided funds. The prohibition applies notwithstanding any provision of that part, which contains the SFRTA's authorization to enter into contracts. The SFRTA must obtain the FDOT's approval, under the funding condition specified, to enter into, extend, or renew any contract or other agreement.

Section 9 of the bill amends s. 343.48(4)(c)1., F.S., revising the FDOT oversight provisions. The bill *removes* the current language:

- Prohibiting the FDOT from unreasonably withholding its approval of the SFRTA's commitment of FDOT-provided funds;
- Requiring the SFRTA to notify the FDOT of a proposed procurement or renewal before advertising any procurement or renewing any existing contract that will rely on state funds;
- Requiring the FDOT to object in writing and, if timely, prohibiting the SFRTA from proceeding with the procurement or renewal;
- Providing that the FDOT's failure to timely object constitutes consent; and
- Removing no-impairment-of-contract language for contracts existing as of June 30, 2012.

The bill replaces the notice and objection process with language prohibiting the SFRTA from committing the annual FDOT-provided \$42.1 million without the FDOT's prior review and written approval of the proposed expenditures.

The bill prohibits the FDOT from providing that annual funding until the SFRTA withdraws, cancels, or otherwise terminates its Notice of Intent of Contract Award. The bill also requires the SFRTA to obtain the FDOT's written approval of a new procurement and contract for the services that were the subject of the RFP to ensure the SFRTA has sufficient revenue to fund the contract.

Section 7 of the bill defines "department" to mean the Department of Transportation.

Section 12 provides the act take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Section 1: The trucking industry may realize an insignificant positive fiscal impact resulting from the additional weight allowance for natural gas vehicles due to potentially fewer overweight citations.

Section 3: The FDOT notes an indeterminate positive fiscal impact to the extent a private sector company is awarded a fast response contract and is not required to obtain a surety bond.¹⁰⁰

C. Government Sector Impact:

Section 1: The FDOT may realize an insignificant negative fiscal impact resulting from the additional weight allowance for natural gas vehicles due to potentially fewer overweight citations, offset by reduced costs associated with no-longer-needed permits. A potential withholding of federal funds is avoided.

Section 2: The FDOT will experience administrative expenses associated with developing the federally required bridge inspection policies and criteria, seeking FHWA approval, and revising relevant policies and procedures, which expenses are expected to be absorbed within existing resources. The FDOT does expect an indeterminate positive fiscal impact to the extent the FHWA approves bridges for extended inspection frequencies. The FDOT estimates approximately \$500,000 in inspection services could be redirected to bridge repair, rehabilitation, and/or replacement.¹⁰¹

Section 4: The DBF may realize an insignificant positive fiscal impact resulting from reduced demand on staff resources for bond validation proceedings.

Section 6: Based on costs for Fiscal Years 2012-13 through 2016-17, the FDOT is expected to realize a positive fiscal impact of approximately \$33,400 annually resulting from repeal of the Florida Highway Beautification Council, due to removal of the FDOT's duty to provide for administrative costs and travel to support the Council. The FDOT will absorb administrative expenses associated with revising Rule Chapter 14-40, F.A.C., and implementing the grant program, within existing resources.

Sections 8 and 9: The FDOT and the SFRTA may experience administrative expenses associated with the FDOT's review and written approval of the SFRTA's proposed

¹⁰⁰ See the FDOT's 2017 Legislative Proposal, *Rapid Response Contracts – Price Cap Increase*. (On file in the Senate Transportation Committee.)

¹⁰¹ See the FDOT's 2017 Legislative Proposal, *Bridge Inspection Frequency*. (On file in the Senate Transportation Committee.)

expenditures using any funding provided to the SFRTA under s. 343.58(4), F.S. However, the bill prohibits the FDOT from providing funding to the SFRTA under that section until the authority withdraws, cancels, or otherwise terminates the authority's Notice of Intent of Contract Award.

The fiscal impact of this termination requirement is unclear for a number of reasons. First, the outcome of the ongoing bid protest is unknown. Second, regardless of the outcome of the bid protest, the contract may or may not be subject to termination, depending on the contract terms. Those terms may include provisions allowing termination for convenience or termination due to uncontrollable forces such as governmental action. Finally, any action on the part of the SFRTA with respect to withdrawal, cancellation, or termination of the Notice of Intent effectively terminates the underlying contract. In such case, the SFRTA may be subject to a breach of contract claim, depending on the specific language in the RFP and the contract, and on the validity of the underlying contract.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 316.545, 335.074, 337.11, 338.227, 339.135, 339.2405, 343.52, 343.54, 343.58, 215.82, and 343.53.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation March 28, 2017:

A technical amendment to the original bill was adopted to clarify that the 2,000-pound weight allowance for natural gas-powered trucks is in addition to the 500-pound weight allowance for idle reduction technology.

B. Amendments:

None.