

**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: SB 182

INTRODUCER: Senator Rodriguez

SUBJECT: Small Business Roadway Construction Mitigation Grant Program

DATE: February 5, 2018      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

**I. Summary:**

SB 182 directs the Florida Department of Transportation (FDOT) to create a Small Business Roadway Construction Mitigation Grant Program using funds allocated to the FDOT by the Legislature. The program is to provide grants to qualified businesses negatively impacted by state construction projects for the purpose of maintaining the business during construction. A “qualified business” is defined as one that is engaged in a for-profit business enterprise, employs up to 40 full-time or part-time employees, and is located in a “construction zone,” defined as a geographic area with a high concentration of qualified businesses which is designated by the FDOT as being impacted by an FDOT construction project.

A grant may not exceed the decline in profits demonstrated by the business or \$15,000 per calendar year, whichever is less. A qualified business may apply for a grant only for a construction project lasting 90 days or more, and the application must demonstrate a significant decline in revenue in a format and manner prescribed by the FDOT. The bill provides certain grant eligibility criteria, and the FDOT is required to determine the eligibility of a qualified business for a grant on a case-by-case basis using all of the criteria.

The FDOT must initiate rulemaking to implement the bill’s provisions by August 31, 2018. By January 31, 2019, the FDOT must submit to the Senate President and House Speaker a report detailing best practices and methods to reduce the negative impacts of construction projects on qualified businesses, including recommendations.

The bill has an indeterminate fiscal impact, as it is dependent on the availability of funds and on the number of qualifying businesses. The FDOT will incur indeterminate expenses associated with administration of the grant program, the required rulemaking, and with preparing the required best practices and methods report. Qualified business owners may receive a grant of up to \$15,000, offset by costs associated with completing grant applications. See the “Fiscal Impact Statement” heading below.

## II. Present Situation:

Current law authorizes the payment of full compensation to private property owners for the taking of their property by an entity with the power of eminent domain.<sup>1</sup> In some cases, a business may qualify for business damages if the business meets the following conditions:

- The business must hold a property interest in the portion of the property being acquired by FDOT.
- The acquisition must be a partial acquisition of the property on which the business is located; the business will not qualify for damages if FDOT acquires all of the real estate on which the business is located.
- The business must have been in operation on the site for at least five years immediately prior to FDOT's acquisition.<sup>2</sup>
- The damages claimed must result directly from the loss of property taken.<sup>3</sup>

With respect to business damages, the claim is not for revenue that may have been lost by a business as a result of an FDOT construction project.<sup>4</sup> No current provision of law requires the FDOT to compensate a small business for the financial impact of a construction project on business revenue, but according to FDOT, owners of such businesses may bring a civil action in state court.<sup>5</sup>

The FDOT advises that it employs “an extensive public involvement process that is integral to all project evaluation and development” and typically scales its public involvement efforts to the magnitude or complexity of the project, including potential issues or challenges. The issues are used to help shape how the FDOT develops projects and determines necessary and appropriate mitigation of potential negative impacts.<sup>6</sup> Additionally, during a construction project, the FDOT works with business and property owners to minimize disruption. This includes project updates, addressing specific concerns, notifying business and property owners of certain activities, and working during nighttime hours. The FDOT also works to provide business access at all times by using pedestrian barricades and installing signage at business entrances.<sup>7</sup>

## III. Effect of Proposed Changes:

The bill creates s. 339.28154, F.S., expressing the Legislative finding that it is in the best interest of the state to support small businesses that are negatively impacted by state construction projects and to mitigate those impacts. Further, while construction and development by the state

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<sup>1</sup> U.S.C.A. Const. Amend V.; Fla. Const., Article X., S. 6(a); and Section 73.071, F.S.

<sup>2</sup> On or after July 1, 2005. Before that date, an established business of more than four years' standing. Section 73.071(3)(b), F.S.

<sup>3</sup> Section 73.071(3)(b), F.S.

<sup>4</sup> “The damages must result from the acquisition of the property and not from the proposed construction or from activities associated with construction of the project.” The FDOT's *Right of Way Manual, Section 7.9, Business Damages*, at 7.9.3, available at: <http://www.fdot.gov/rightofway/documents/ROWmanual/ch07s09.pdf>. (Last visited February 1, 2018.)

<sup>5</sup> See the FDOT's SB 182 Bill Analysis, p. 2, available at: <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=20891&yr=2018>. (Last visited February 1, 2018.)

<sup>6</sup> *Id.*

<sup>7</sup> See FDOT's *FY 2017-18 Design Standards, General Information For Traffic Control Through Work Zones*, Index #600, available at: <http://www.fdot.gov/roadway/DS/18/IDx/00600.pdf>. (Last visited February 1, 2018.)

ultimately helps small business growth, small businesses may experience short-term decreased revenue that may decrease economic activity, state revenue, and employment.

The bill directs the FDOT to create a Small Business Roadway Construction Mitigation Grant Program to provide support for small businesses impacted by state construction projects.

The bill provides the following definitions:

- “Construction mitigation zone” means a geographic area with a high concentration of qualified businesses, which is designated by the FDOT as being impacted by an FDOT construction project.
- “Qualified business” means an entity that:
  - Is engaged in a for-profit business enterprise;
  - Employs up to 40 full-time or part-time employees; and
  - Is located in a construction mitigation zone.

The bill directs disbursement of grants from the grant program, using funds allocated to the FDOT by the Legislature, to any qualified business located in a construction mitigation zone affected by an FDOT construction project, for the purpose of maintaining the business during construction. A grant to each qualified business may not exceed the lesser of the decline in profits demonstrated by the business or \$15,000. A qualified business may apply for a grant only for a construction project lasting 90 days or more. The bill requires a qualified business to demonstrate in its application a significant decline in revenue, including timelines connecting the loss of revenue to the project, in a format and manner prescribed by the FDOT.

The FDOT is required to determine the eligibility of a qualified business for a grant on a case-by-case basis using all of the following criteria:

- Construction duration.
- Proximity to construction.
- Severity of traffic disruption.
- Lack of access to parking.
- Lack of access for pedestrian traffic.
- Any other criteria the FDOT determines to be relevant.

By January 31, 2019, the bill directs the FDOT to prepare a report, including a list of recommendations, detailing best practices and methods to reduce the negative impacts of construction projects on qualified businesses in construction mitigation zones.

Lastly, the bill directs the FDOT to initiate rulemaking to implement the new section of law by August 31, 2018.

#### **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:

Qualified businesses that apply for a grant will incur expenses associated with demonstrating a significant decline in revenue in a format and manner prescribed by the FDOT, and in preparing applications for grants. Such businesses may see a positive fiscal impact of up to \$15,000 each in the form of a grant. However, the potential number of such businesses is unknown.

C. Government Sector Impact:

The FDOT will incur indeterminate expenses associated with administration of the grant program, the required rulemaking, and with preparing the required best practices and methods report.

The bill directs disbursement of grants from the grant program *using funds allocated to the FDOT by the Legislature*. It is unclear whether funds currently allocated to the FDOT would be available for use in the grant program. According to the FDOT, no existing appropriation relates to this activity.<sup>8</sup> To the extent that the grants are funded from existing FDOT resources, fewer resources for other state transportation purposes would be available. The extent of any program fiscal impacts is therefore dependent on the availability of funding resources and on the number of qualifying and applying businesses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>8</sup> *Supra* note 5, at p. 4.

**VIII. Statutes Affected:**

This bill creates the following section of the Florida Statutes: 339.28154.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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