

**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.)

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Prepared By: The Professional Staff of the Committee on Transportation

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**BILL:** CS/SB 182

**INTRODUCER:** Transportation Committee and Senator Rodriguez

**SUBJECT:** Small Business Roadway Construction Mitigation Grant Program

**DATE:** February 8, 2018      **REVISED:** \_\_\_\_\_

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

**I. Summary:**

CS/SB 182 directs the Florida Department of Transportation (FDOT) to create a Small Business Roadway Construction Mitigation Grant Program, subject to Legislative appropriation. The program is to provide grants to qualified businesses negatively impacted by state road construction projects to help maintain 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 mitigation zone,” designated by the FDOT.

A grant may not exceed the decline in revenue 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. Upon request and at no cost to the applicant, the Department of Economic Opportunity (DEO) is directed to assist in preparing documentation to demonstrate the business’s revenue decline. The bill provides certain grant eligibility criteria, and the FDOT is required to prioritize the awarding of each grant on a case-by-case basis using the criteria. Any grant received must offset any damages awarded in a civil action against the FDOT relating to the road construction project.

The FDOT must initiate rulemaking to implement the bill’s provisions by August 31, 2018. By January 31, 2019, the FDOT must submit a report to the legislature detailing best practices and methods to reduce the negative impacts of road 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. The DEO may incur indeterminate expenses associated with assisting qualified businesses in preparing documents demonstrating a decline in

revenue. Qualified business owners may receive a grant of up to \$15,000, offset by any costs incurred for 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 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 results of this process 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>

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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.) Further, according to the FDOT, in the absence of an actual taking, “businesses may not claim damages due to construction activities or performance of construction where construct is lawful and performed without negligence or misconduct. See the FDOT’s email dated January 31, 2018. (On file in the Senate Transportation Committee.)

<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.)

### 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 road construction projects and to mitigate those impacts. Further, while the benefit of road construction and development by the state 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, subject to Legislative appropriation, to create a Small Business Roadway Construction Mitigation Grant Program to provide support for qualified businesses impacted by state road 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 the FDOT to disburse grants to qualified businesses for the purpose of maintaining the businesses during a road construction project. A grant to each qualified business may not exceed the lesser of the decline in revenue demonstrated by the business or \$15,000 per calendar year. 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 project to such decline in revenue, in a format and manner prescribed by the FDOT.

The bill directs the DEO, upon request and at no cost to the applicant, to assist an applicant in preparing documentation to demonstrate the business’s revenue decline.

The FDOT is required to prioritize the awarding of each grant on a case-by-case basis using all of the following criteria:

- Rate of decline in revenue.
- 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.

Any grant received must offset any damages awarded in a civil action against the FDOT relating to the road construction project.

By January 31, 2019, the bill directs the FDOT to submit a report to the President of the Senate and Speaker of the House of Representatives, including a list of recommendations, detailing best practices and methods to reduce the negative impacts of road construction projects on qualified businesses.

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. These expenses may be offset to the degree that DEO provides assistance to the applicant. Such businesses may see a positive fiscal impact of up to \$15,000 each per calendar year, in the form of a grant. However, the potential number of qualifying 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 DEO may incur indeterminate expenses associated with assisting qualified businesses in preparing documents demonstrating a decline in revenue.

Grant program funding is subject to Legislative appropriation and the Senate's current General Appropriations bill (SB 2500) does not specifically appropriate funds for

implementation of the grant program.<sup>8</sup> The fiscal impact will be dependent on the availability of funding resources, the number of businesses requesting a grant and the amount of assistance that is awarded.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.)

**CS by Transportation on February 5, 2018:**

The committee substitute:

- Makes the FDOT’s implementation of the grant program subject to Legislative appropriation, rather than requiring the FDOT to disburse grants “using funds allocated to the FDOT by the Legislature;”
- Removes reference to a decline in “profits,” in favor of reference to a decline in “revenue.”
- Requires the FDOT to “prioritize the awarding of each grant” on a case-by-case basis, based on the specified eligibility criteria, rather than requiring the FDOT to “determine the eligibility of a qualified business” on a case-by-case basis, based on the criteria.
- Adds rate of decline in revenue to the eligibility criteria.
- Adds the requirement that any grant must offset any damages awarded in a civil action against the FDOT relating to the road construction project.
- Requires the DEO to assist an applicant in preparing documentation to demonstrate declines in revenue.

**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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<sup>8</sup> According to the FDOT, no existing appropriation relates to this activity. See the FDOT’s SB 182 Bill Analysis, p. 4, available at: <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=20891&yr=2018>. (Last visited February 8, 2018.)