

**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 Infrastructure and Security

BILL: SB 1044

INTRODUCER: Senator Albritton

SUBJECT: Department of Transportation

DATE: March 19, 2019                      REVISED: \_\_\_\_\_

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

**I. Summary:**

SB 1044 addresses various issues relating to the Florida Department of Transportation (FDOT). Specifically, the bill:

- Requires the FDOT to consist of a central office that establishes policies and procedures and districts that carry out projects as authorized under those policies and procedures.
- Removes the Florida Transportation Commission’s responsibility to nominate three persons for appointment by the Governor as secretary of the FDOT.
- Requires the FDOT secretary to be a licensed professional engineer, or to hold an advanced degree in a related discipline, or have ten years of relevant experience.
- Requires mileage for official state travel to be calculated using the most commonly used maps, instead of the FDOT’s current highway map.
- Requires that 80 percent of the pavement in each of the FDOT’s districts (instead of statewide) meets the FDOT’s standards by the end of fiscal year 2023.
- Prohibits a local government from adopting standards and specifications for aggregates and materials that are contrary to the FDOT’s standards or specifications.
- Prohibits a contractor who has not satisfactorily completed two projects, each in excess of \$25 million, from bidding on FDOT contracts in excess of \$50 million.
- Requires the liquidated damages schedule incorporated into FDOT construction and maintenance contracts to include a reduction of the daily liquidated damage charges to construction engineering and inspection costs when traffic is in its final configuration and the project is functional for its intended use.
- Revises the dollar value of claim amounts for additional compensation arising out of a construction or maintenance contract that may be submitted to the State Arbitration Board to up to \$1 million per contract at the claimant’s option or up to \$2 million per contract if the parties agree.

- Prohibits the FDOT from using toll revenue from a high-occupancy toll (HOT) lane or express lane to offset funding that the facility would receive if the facility were not a HOT lane or express lane.
- Requires 75 percent of transportation capacity funds, with certain exceptions, to be spent on the Strategic Intermodal System.
- Requires certain projects on Strategic Intermodal System Highway Corridors to be given priority based on high accident rates.

The bill has an indeterminate, but likely negative, fiscal impact to the FDOT, as several provisions in the bill require the FDOT to make changes in its operations. See the Fiscal Impact Statement heading for more details.

The bill takes effect July 1, 2019.

## II. Present Situation:

This bill revises various provisions relating to the FDOT. For ease of organization and readability, the Present Situation for the provisions in each section of the bill is discussed in conjunction with the Effect of Proposed Changes.

## III. Effect of Proposed Changes:

### **FDOT Organization, Secretary Appointment, and Secretary Qualifications**

#### *Present Situation*

Section 20.23, F.S., creates the FDOT, “which shall be a decentralized agency.” The FDOT is statutorily organized into seven districts, each of which is headed by a district secretary, as well as a turnpike enterprise and a rail enterprise, each of which is headed by an executive director.<sup>1</sup> The FDOT’s *central office* is directed to establish departmental policies, rules, procedures, and standards and to monitor the implementation of such policies, etc., in order to ensure uniform compliance and quality performance by the districts and *central office units*.<sup>2</sup> Additionally, to provide for efficient operations and expedite the decision-making process, the FDOT is directed to provide for maximum decentralization to the districts.<sup>3</sup> Units of the FDOT’s central office also carry out projects, as is recognized in the statute by distinguishing the “central office” from “central office units.”<sup>4</sup>

The secretary, appointed by the Governor from among three persons nominated by the Florida Transportation Commission and subject to confirmation, must be a proven, effective administrator who by education and experience clearly possesses broad knowledge of the administrative, financial and technical aspects of the development, operation, and regulation of

<sup>1</sup> Section 20.23(4)(a), F.S.

<sup>2</sup> Section 20.23(3)(a), F.S.

<sup>3</sup> Section 20.23(4)(a), F.S.

<sup>4</sup> For more information on central office letting and project information, see FDOT, Contracts Administration, *Central Office Letting and Project Information*, available at <https://www.fdot.gov/contracts/lettings/letting-project-info.shtm> (last viewed March 15, 2019). See also the FDOT’s 2019 Agency Legislative Bill Analysis of SB 1044 at p. 4. (On file in the Senate Infrastructure and Security Committee.)

transportation systems and facilities.<sup>5</sup> Current law does not otherwise specify any educational or licensing requirements with respect to qualification of the FDOT secretary. The district secretaries and the executive directors must be registered professional engineers or, in lieu of professional engineer registration, may hold an advanced degree in an appropriate related discipline, such as a Master of Business Administration.<sup>6</sup>

### *Effect of Proposed Changes*

**Section 1** of the bill amends s. 20.23(1), F.S., to provide that the FDOT shall consist of:

- A central office that establishes policies and procedures; and
- Districts that carry out projects as authorized or required under the policies and procedures of the central office.

This revision appears to be clarifying in nature, as current law requires the FDOT's central office to monitor the implementation of the central-office established policies, rules, procedures, and standards to ensure compliance by the districts *and* central office *units* that also carry out projects. The bill does not revise these provisions in current law.

This section of the bill also removes the requirement that the FDOT secretary be appointed by the Governor from among three persons nominated by the Florida Transportation Commission. Under the bill, the FDOT secretary would be appointed by the Governor at the Governor's discretion, subject to confirmation by the Senate.

This bill section also requires the FDOT secretary to be a professional engineer licensed under ch. 471, F.S.,<sup>7</sup> or the laws of another state or, instead of such licensure, to hold an advanced degree in a related discipline, such as a Master of Business Administration, or have ten years of relevant experience.

### **Computation of Mileage for Reimbursement of Official State Travel Expenses**

#### *Present Situation*

Section 112.061, F.S., governs the reimbursement of public officers, employees, and other authorized persons for per diem and travel expenses while on official state travel. Section 112.061(7)(d), F.S., authorizes the use of privately owned vehicles for official travel if approved by the agency head or designee. When travel is by privately owned vehicle, a traveler is entitled to:

- A mileage allowance at a rate of 44.5 cents per mile, or
- The common carrier fare for such travel if the agency head determines the fare to be more economical.

When a traveler seeks reimbursement for travel expenses incurred using a privately owned vehicle to travel on official state business, all mileage must be shown from the point of origin to

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<sup>5</sup> Section 20.23(1)(b), F.S.

<sup>6</sup> Section 20.23(4)(a), F.S.

<sup>7</sup> Chapter 471, F.S., prohibits any person, other than a duly licensed engineer, from practicing engineering in this state. *See* s. 471.003, F.S., for a description of qualifications to practice engineering, as well as exemptions from licensing requirements.

the point of destination and, when possible, must be computed on the basis of the current map of the FDOT, which is the Florida Official Transportation Map.

The FDOT describes the map as “the most detailed and up-to-date highway map of Florida, featuring roads, airports, insets of select cities, tourist information, and official highway mileage between cities in Florida.” The FDOT provides on its website an online calculator and an Excel spreadsheet for calculating the distance between cities in Florida which includes the city-to-city mileage matrix, a list of intersections within each city that define the city location, and an information page.<sup>8</sup>

### *Effect of Proposed Changes*

**Section 2** of the bill amends s. 112.061(7)(d), F.S., to remove the requirement that travel mileage submitted for reimbursement of travel expenses incurred while on authorized travel be computed on the basis of the FDOT’s current Florida Official Transportation Map. The bill requires the computation to be based on the “most commonly used” maps.

### **FDOT Mission, Goals, and Objectives**

#### *Present Situation*

Section 334.046, F.S., sets out the prevailing principles to be considered by the FDOT in planning and developing an integrated, balanced statewide transportation system. These are:

- Preserving the existing transportation infrastructure,
- Enhancing Florida’s economic competitiveness, and
- Improving travel choices to ensure mobility.

The preservation principle includes:

- Ensuring that 80 percent of the pavement on the State Highway System (SHS) meets FDOT standards,
- Ensuring that 90 percent of department-maintained bridges meet FDOT standards, and
- Ensuring that the FDOT achieves 100 percent of the acceptable maintenance standard on the SHS.

#### *Effect of Proposed Changes*

**Section 3** of the bill amends s. 334.046(4), F.S., relating to the preservation principle of the FDOT’s goals, to add to the principle ensuring that 80 percent of the pavement *in each of the FDOT’s districts* meets the FDOT’s standards by the end of fiscal year 2023.

The FDOT advises it currently plans and finances specific projects in the first three years of the work program to ensure the statewide target for pavement is accomplished, with the outer two years being supported by an allocation that only estimates an aggregate number of lane miles which may become deficient. According to the FDOT, “This will likely result in more funding

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<sup>8</sup> FDOT, *FDOT Official Highway Mileage Viewer*, available at <http://fdotewp1.dot.state.fl.us/CityToCityMileage/viewer.aspx> (last viewed March 16, 2019).

being allocated for resurfacing which will reduce the amount of funding available for capacity improvements.”<sup>9</sup>

## **FDOT Regulation of Construction Aggregate Materials**

### ***Present Situation***

Construction aggregate materials are a critical need with respect to construction of the state’s transportation system.<sup>10</sup> The FDOT has a standardized method for producers<sup>11</sup> of construction aggregate materials to apply for, receive, and maintain the FDOT’s approval of construction aggregate sources for use on FDOT projects. According to the FDOT:

Source and product approval, and maintenance of an on-going effective Quality Control Program, as monitored by the Department, comprise the Department’s primary methods of determining acceptability of aggregate on Department projects. The Quality Control Program requires producers of construction materials to be responsible for their products; to establish, maintain, and implement their own individualized process control system; and to certify to the Department compliance of their product with applicable standards and contract specifications.

In this context, “certify” means that the producer affixes the statement “CERTIFIED FOR FDOT” or “CERT. FOR FDOT” to a shipping ticket to attest that this specific aggregate shipment was produced and shipped under a Department approved Quality Control Program and for which Quality control tests indicate that the specific aggregate meets Department specifications and Department quality and uniformity requirements set out in Section 2.2 of the Construction Aggregates Manual.<sup>12</sup>

Currently, no provision in state law requires local governments to accept aggregates certified pursuant to the FDOT rules.<sup>13</sup> The extent to which local governments have not allowed transportation contractors to use FDOT-approved aggregates in construction of local government transportation facilities is unknown.

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<sup>9</sup> See the FDOT’s 2019 Agency Legislative Bill Analysis of SB 1044 at p. 6. (On file in the Senate Infrastructure and Security Committee.)

<sup>10</sup> Section 337.0261, F.S. That section defines these materials are “crushed stone, limestone, dolomite, limerock, shell rock, cemented coquina, sand for use as a component of mortars, concrete, bituminous mixtures, or underdrain filters, and other mined resources providing the basic material for concrete, asphalt, and road base.”

<sup>11</sup> A “producer” is any business or individual seeking to supply aggregate to the FDOT or to FDOT contractors. See the FDOT’s 2019 Agency Legislative Bill Analysis of SB 1044 at p. 3. (On file in the Senate Infrastructure and Security Committee.)

<sup>12</sup> *Id.* The Manual is available at <https://www.fdot.gov/materials/administration/resources/library/publications/aggregates/index.shtm> (last viewed March 15, 2019).

<sup>13</sup> Fla. Admin. Code R. 14-103.

### *Effect of Proposed Changes*

**Section 4** of the bill creates s. 334.179, F.S. The bill prohibits a local government from adopting standards or specifications that are contrary to the FDOT standards or specifications for permissible use of aggregates and materials that have been certified for use. For purposes of the newly created section of law, the bill provides that “certified for use” means that the aggregates and materials have been approved for use by the FDOT through its certification process. To the extent that a local government currently does not allow transportation contractors to use FDOT-approved aggregates in construction of local government transportation facilities, that practice would be prohibited by the bill.

### **Qualification to Bid on FDOT Contracts**

#### *Present Situation*

Section 337.14(1), F.S., requires any person<sup>14</sup> desiring to bid on any construction contract in excess of \$250,000 which the FDOT proposes to let to first be certified by the FDOT pursuant to s. 337.14, F.S., and applicable rules.<sup>15</sup> The rules must address the qualification of persons to bid on construction contracts in excess of \$250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification. The FDOT may limit the dollar amount of any contract upon which a person is qualified to bid, or limit the aggregate total dollar volume of contracts such person is allowed to have under contract at any one time.

For purposes of Ch. 337, F.S., relating to contracting by the FDOT, the term “contractor” is only defined in s. 337.165(1)(d), F.S., relating to contract crime. In that provision, the term “contractor” is defined as any person who bids or applies to bid on work let by the FDOT or any counterpart agency of any other state or of the Federal Government or who provides professional services to the FDOT or other such agency.

### *Effect of Proposed Changes*

**Section 5** of the bill amends s. 337.14(1), F.S., revising references to “person” to references to “contractor.” The bill requires any contractor desiring to bid on contracts in excess of \$50 million to have satisfactorily completed two projects, each in excess of \$25 million, for the FDOT or for any other state department of transportation. The FDOT would be required to amend its rule with respect to contractors desiring to bid on contracts in excess of \$50 million to incorporate the bill’s revisions. Contractors who currently qualify to bid on such FDOT contracts but who have not satisfactorily completed two projects, each in excess of \$25 million for the FDOT or any other state department of transportation, will no longer be qualified to bid on FDOT construction contracts in excess of \$50 million.

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<sup>14</sup> Section 334.03(19), F.S., defines “person” to mean any person described in s. 1.01, F.S., or any unit of government in or outside the state. Section 1.01(3), F.S., provides that “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>15</sup> The FDOT’s rules regarding qualification to bid on highway projects are in Fla. Admin. Code R. 14-22.

## Contractor Payment of Liquidated Damages to the FDOT

### *Present Situation*

Section 337.18(2), F.S., requires every FDOT contract for the performance of work to contain a provision for payment to the FDOT by the contractor of liquidated damages<sup>16</sup> due to failure of the contractor to complete the contract work within the time stipulated in the contract or within such additional time as may have been granted by the FDOT. That contractual provision must include a reasonable estimate of the damages that would be incurred by the FDOT as a result of such failure. The FDOT is further directed to establish a schedule of liquidated damage charges, based on original contract amounts, and the schedule must be incorporated by reference into the contract.

Construction Engineering and Inspection (CEI) firms are used by the FDOT to review and inspect highway and bridge construction projects. The CEI firm administers, monitors, and inspects the project work to ensure that the project is constructed in reasonable conformity with the plans, specifications, and special provisions for the contract.<sup>17</sup> The CEI firm observes the contractor's work to determine the progress and quality of work. This includes review of plans, specifications and working drawings; control of materials used and review of material testing reports; supervision of utility relocation; supervision of contract subletting; control of contract time and time extensions; and maintenance of a project diary.<sup>18</sup>

### *Effect of Proposed Changes*

**Section 6** of the bill amends s. 337.18(2), F.S., to require the liquidated damage schedule incorporated by reference into an FDOT contract for the performance of work to include a reduction of the daily liquidated damage charges to CEI costs when traffic is in its final configuration and the project is functional for its intended purpose. This provision would allow a reduction of the amount of liquidated damages that would otherwise be assessed against a contractor, when traffic is in its final configuration and the project is functional for its intended purpose, even if *all* work to be performed by the contractor is not completed within the time stipulated in the contract or within such additional time as may have been granted by the FDOT.

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<sup>16</sup> Liquidated damages are described as “damages that are specified by the parties to a contract as they are drawing up the contract specifying that, in the event one party breaches the contract, that party must pay a specified amount to the other party for his losses.” In sum, these damages are “a monetary award to compensate a party to a contract, when the other party has breached that contract.” See Legal Dictionary, *Liquidated Damages*, available at <https://legaldictionary.net/liquidated-damages/> (last viewed March 15, 2019).

<sup>17</sup> See CEI Scope of Service Documents, *Scope of Services, Revised 8/16/18*, at p. A-7, available at <https://www.fdot.gov/construction/designbuild/consultantcei/consultantmain.shtm> (last viewed March 17, 2019).

<sup>18</sup> See Work Program Instructions, *Tentative Work Program – FY 19/20 – 23/24, PART III - CHAPTER 6: CONSTRUCTION ENGINEERING AND INSPECTION*, at p. 75, available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/workprogram/development/pdfinstructions/workprograminstructions.pdf?sfvrsn=c585db0d\\_25](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/workprogram/development/pdfinstructions/workprograminstructions.pdf?sfvrsn=c585db0d_25) (last viewed March 17, 2019).

## State Arbitration Board

### *Present Situation*

Section 337.185, F.S., establishes a State Arbitration Board to facilitate the prompt settlement of claims<sup>19</sup> for additional compensation arising out of construction and maintenance contracts between the FDOT and the various contractors with whom it contracts. The section requires every contractual claim in an amount up to \$250,000 per contract or, at the claimant's option, up to \$500,000 per contract or, upon agreement of the parties, up to \$1 million per contract that cannot be resolved by negotiation between the FDOT and the contractor be arbitrated by the board, with the exception that either party may request the claim be submitted to binding private arbitration. The process benefits both the FDOT and its contractors by facilitating prompt claim settlement and reducing or eliminating litigation costs. These claim amounts were last revised in 1999.<sup>20</sup>

### *Effect of Proposed Changes*

**Section 7** of the bill amends s. 337.185(1), increasing the dollar value of claims per contract that may be arbitrated using the State Arbitration Board at the claimant's option to up to \$1 million per contract, or upon agreement of the parties to up to \$2 million per contract. The requirement that all claims of up to \$250,000 be arbitrated by the State Arbitration Board remains. These changes may increase the number of claims submitted to the Board for arbitration.

## High Occupancy Toll Lanes and Express Lanes

### *Present Situation*

A high-occupancy-vehicle (HOV) lane is generally a lane of a public roadway designated for use by vehicles in which there is more than one occupant.<sup>21</sup> A high-occupancy toll lane is an HOV lane, the use of which requires payment of a toll.

Current law does not define the terms "high-occupancy toll lane" or "express lane." However, the FDOT provides the following descriptions:

Managed lanes are a [] strategy in which a set of lanes within an existing highway facility proactively implements a managed response to changing traffic conditions. A combination of tools such as access control, vehicle eligibility, and dynamic pricing<sup>22</sup> are used for a managed lane, and there are several different types of managed lanes such as High-occupancy Vehicle (HOV) lanes, high-occupancy toll lanes, express toll lanes, reversible lanes, and bus lanes.<sup>23</sup>

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<sup>19</sup> For the purpose of s. 337.185, F.S., the term "claim" means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract.

<sup>20</sup> Section 22, Ch. 99-385, L.O.F.

<sup>21</sup> Section 316.0741(1)(a), F.S.

<sup>22</sup> Also known as "variable pricing." See s. 338.165, F.S.

<sup>23</sup> See FDOT, SIS Connections, *Florida's Strategic Intermodal System*, December 2018, at p. 6, available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/systems/sis\\_newsletter\\_winter2019.pdf?sfvrsn=d6a066fc\\_4](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/systems/sis_newsletter_winter2019.pdf?sfvrsn=d6a066fc_4) (last visited February 18, 2019.)



Express lanes are a type of managed travel lane that is physically separated from the general use or general toll lanes within an existing roadway corridor. FDOT implements express lanes for congestion management purposes by designing them to operate at free-flow speed. Free-flow conditions in the express lanes are established when vehicles can safely operate at speeds of 45 miles per hour or higher, [and toll] amounts in the express lanes are dynamically updated to support free-flow conditions.<sup>24</sup>

Section 338.166, F.S., authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on HOT lanes or express lanes established on FDOT-owned facilities. The FDOT may continue to collect the tolls on HOT lanes or express lanes after any bond debt is discharged. Such tolls must first be used to pay the annual cost of operation, maintenance, and improvement of the HOT lanes or express lanes project or associated transportation system.<sup>25</sup>

The FDOT must use any remaining toll revenue from HOT lanes or express lanes for the construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Under current law, funding for expenses such as resurfacing, bridge repair and rehabilitation, and other programs, are allocated to the FDOT districts based on quantitative needs assessments.<sup>26</sup> If indicated by a needs assessment, a facility in a given FDOT district would presumably receive transportation maintenance funds for certain expenses, such as lane resurfacing, regardless of whether the facility includes a HOT lane or express lane generating toll revenues available for maintenance of the lane.

### *Effect of Proposed Changes*

**Section 8** of the bill amends s. 338.166, F.S., to prohibit the FDOT from using toll revenue from a HOT lane or express lane to offset funding that the facility would receive if the facility were not a HOT lane or express lane. To the extent that the FDOT currently uses toll revenue from a HOT lane or express lane to offset the funding an FDOT district would receive for expenses such as resurfacing, such offsets would be prohibited.

## **Strategic Intermodal System Funding**

### *Present Situation*

A primary driver of the FDOT's development of and investment in Florida's transportation system, the Strategic Intermodal System (the SIS) is composed of transportation facilities and services of statewide and interregional significance. The FDOT describes the SIS as representing

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<sup>24</sup> *Id.*

<sup>25</sup> Section 338.166, F.S., expressly does not apply to the turnpike system.

<sup>26</sup> *See* s. 339.135(4)(a)1., F.S.

“an effort to link Florida’s transportation policies and investments to the state’s economic development strategy.”<sup>27</sup>

The SIS consists of appropriate components of:

- Highway corridors established under s. 339.65, F.S. (discussed below),
- The National Highway System;
- Airport, seaport, and spaceport facilities;
- Rail lines and rail facilities;
- Selected intermodal facilities; passenger and freight terminals; and appropriate components of the State Highway System, county road system, city street system, inland waterways, and local public transit systems that serve as connectors between the above components; and
- Other corridors that serve a statewide or interregional purpose.<sup>28</sup>

Section 339.135, F.S., governs the development and adoption of the FDOT’s five-year work program. Subsection (4) of that section provides for the funding and development of the FDOT’s tentative work program which, upon adoption, annually adds a new fifth year of planned transportation projects to the work program. As directed by current law, the FDOT allocates funds for new construction to its districts, except for the Turnpike Enterprise, based on equal parts of population and motor fuel tax collections.<sup>29</sup> However, the FDOT is required to allocate at least 50 percent of any new discretionary highway capacity funds<sup>30</sup> to the Strategic Intermodal System,<sup>31</sup> and any remaining new discretionary highway capacity funds must be allocated to the districts for new construction.<sup>32</sup>

### *Effect of Proposed Changes*

**Section 9** of the bill amends s. 339.135(4)(a)2., F.S., removing the term “new discretionary highway capacity funds” and requiring the FDOT to allocate at least 75 percent of all “transportation capacity funds,” with the exception of funds allocated for the transit program and for the surface transportation program attributable to areas with populations over 200,000, to the SIS, with any remaining highway capacity funds allocated to the districts for new construction.

The FDOT advises that this revision limits its important flexibility to protect projects already in the work program when allocations are reduced and may result in a shift of funding from more rural areas to areas which are urbanized.<sup>33</sup>

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<sup>27</sup> FDOT, *Work Program Instructions FY 19/20 – 23/24*, September 12, 2018, at p. 325, available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/workprogram/development/pdfinstructions/workprograminstructions.pdf?sfvrsn=c585db0d\\_23](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/workprogram/development/pdfinstructions/workprograminstructions.pdf?sfvrsn=c585db0d_23) (last viewed March 16, 2019.)

<sup>28</sup> Section 339.62, F.S.

<sup>29</sup> Section 339.135(4)(a)1., F.S.

<sup>30</sup> The term “new discretionary highway capacity funds” is defined in s. 339.135(4)(a)2., F.S., to mean “any funds available to the department above the prior year funding level for capacity improvements, which the department has the discretion to allocate to highway projects.”

<sup>31</sup> The FDOT’s established policy is to allocate 75% of all transportation capacity funds to the SIS, with the exception of funds allocated for the transit program and certain surface transportation program funds.

<sup>32</sup> Section 339.135(4)(a)2., F.S.

<sup>33</sup> See the FDOT’s 2019 Agency Legislative Bill Analysis of SB 1044 at p. 8. (On file in the Senate Infrastructure and Security Committee.)

Additionally, the FDOT advises:

The difference between “new discretionary highway capacity funds” in current law and “all transportation capacity funds” could result in a significant shift of funding away from district arterials<sup>34</sup> to the SIS. For example, the Statewide Comprehensive Enhanced Transportation System (SCETS) tax is supposed to be used, to the maximum extent feasible, in the county where the revenue is collected. The department requires a certain percentage of each districts SCETS tax allocation, their DDR,<sup>35</sup> to be applied for resurfacing needs. The remainder of the funds available are for discretionary/capacity projects and are currently at the districts discretion.

## **Strategic Intermodal System Highway Corridors**

### *Present Situation*

#### SIS Corridors

Section 339.65, F.S., requires the FDOT to plan and develop SIS highway corridors, including limited access and controlled access facilities, allowing for high-speed and high-volume traffic movements within the state. SIS highway corridors include components of:

- Interstate highways,
- The Florida Turnpike System,
- Interregional and intercity limited access facilities,
- Existing interregional and intercity arterial highways previously upgraded or upgraded in the future to limited access or controlled access facility standards, and
- New limited access facilities necessary to complete a balanced statewide system.

The FDOT is required to adhere to certain policy guidelines in the development of SIS highway corridors, one of which is to make capacity improvements to existing facilities where feasible to minimize costs and environmental impacts.<sup>36</sup>

#### Highway Congestion

According to the FDOT, “Non-recurring congestion is caused by accidents, broken-down vehicles, debris on the road, work zones, special events, and other incidents which temporarily

<sup>34</sup> Section 334.03(1), F.S., defines “arterial road” to mean “a route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance. In addition, every United States numbered highway is an arterial road.”

<sup>35</sup> “DDR,” or “district dedicated revenue,” is described by the FDOT as “a straight-forward representation of SCETS tax actual receipts less commitments plus estimated receipts -- attributed to individual counties within the department's districts.” See FDOT, *Office of Work Program and Budget Program Allocation Guide*, at p. 4, available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/workprogram/development/schedule/a1-allocationguide.pdf?sfvrsn=e4c09042\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/workprogram/development/schedule/a1-allocationguide.pdf?sfvrsn=e4c09042_2) (last viewed March 17, 2019.)

<sup>36</sup> Section 339.65(3), F.S.

and abruptly disrupt the normal flow of traffic.” Recurring congestion “is caused by demand exceeding the capacity of the roadway (typically during peak periods of operations).

#### Project Development and Environment Study

A project development and environment (PD&E) study is the formal process that transportation entities use to ensure that consideration is given to engineering design, project costs, environmental and social impacts, and public input in the development of major transportation projects.<sup>37</sup>

#### *Effect of Proposed Changes*

**Section 10** of the bill amends s. 339.65(3)(a), F.S., amending the policy guideline that the FDOT make capacity improvements to existing SIS highway corridors when feasible to minimize costs and environmental impacts. In carrying out the policy, the bill requires the FDOT to give priority to correcting or improving sections of interstate highway that experience unusually high accident rates. For a section of interstate highway that experiences high levels of both recurring and non-recurring congestion and in which non-recurring congestion accounts for more than 75 percent of the total congestion of the section, PD&E studies must begin within three years after an analysis of the section is complete.

The FDOT advises:

A three-year time to start PD&E may not be realistic as project development process includes planning, programming, and consultant acquisition stages that may take longer. The also may require PD&E studies on projects that are developed without a PD&E phase, such as Transportation Systems and Operations that incorporate multimodal, intermodal, and cross-jurisdictional systems. Funding the PD&E phase alone is not enough to meet Federal Highway Administration fiscal constraints (or planning consistency) requirements for approval of the PD&E Study.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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<sup>37</sup> For more information, see FDOT, *Project Development and Environment Manual, Introduction*, at p. 3., available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/2019/links/pt1ch1\\_011419-current.pdf?sfvrsn=58fe3091\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/environment/pubs/pdeman/2019/links/pt1ch1_011419-current.pdf?sfvrsn=58fe3091_2) (last viewed March 20, 2019).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 6: Requiring the liquidated damage schedule incorporated by reference into an FDOT contract for the performance of work to include a reduction of the daily liquidated damage charges to construction, engineering, and inspection costs when traffic is in its final configuration and the project is functional for its intended purpose may reduce the amount of liquidated damages paid by contractors to the FDOT.

Section 7: To the extent that increasing the dollar value of claims per contract that may be arbitrated using the State Arbitration Board results in more claims being submitted to the Board, which claims are promptly settled, contractors may experience reduced or eliminated litigation costs.

C. Government Sector Impact:

Section 1: Removing responsibility of the Florida Transportation Commission to nominate three persons for potential appointment by the Governor as secretary of the FDOT may reduce the Commission's expenses.

Section 3: According to the FDOT, ensuring that 80 percent of the pavement in each FDOT district meets the FDOT's standards by 2023 presents an indeterminate significant fiscal impact. Further, this section of the bill "Impacts financing of the current Five-Year Work Program – if implemented, currently scheduled capacity projects will need to be deferred to the outer five years of the 10-year plan."

Section 5: Requiring contractors to have completed two projects, each in excess of \$50 million, to be eligible to bid on FDOT contracts in excess of \$250,000 may limit the pool of eligible contractors according to FDOT, thereby decreasing competition and potentially leading to inflated bids.

Section 6: Requiring the liquidated damage schedule incorporated by reference into an FDOT contract for the performance of work to include a reduction of the daily liquidated damage charges to construction, engineering, and inspection costs when traffic is in its final configuration and the project is functional for its intended purpose may result in a reduction of liquidated damages collected by the FDOT.

Section 7: The FDOT advises that increasing the dollar value of claims per contract that may be arbitrated using the State Arbitration Board “may better align arbitration thresholds with current contract costs, but it does qualify more claims as able to go before the board.”<sup>38</sup> To the extent that a higher number of claims submitted to the Board are promptly settled, the FDOT may experience reduced or eliminated litigation costs.

Section 8: The FDOT advises the prohibition against using toll revenue from HOT lanes or express lanes to offset funding the facility would receive if the facilities were not such lanes “[I]n effect, removes the payback to the State Transportation Trust Fund for any statewide funds which would be used to help get an express lane started. The districts which get statewide funding to help build an express lane would also get the benefit of having excess revenues available for additional projects only in the county or counties where the revenue for the express lanes are collected. This would benefit regions of the state which have or plan to have express lanes and would be detrimental to those which are not yet ready for express lanes.” Additionally, the FDOT advises this revision would require operating and maintenance costs for the lanes to be covered with “regular” transportation revenues, rather than being covered by toll revenues, as is currently the case.

Section 9: With respect to the revisions requiring allocation of 75 percent of all transportation capacity funds to the SIS, the FDOT advises the bill could result in a significant shift of funding from district arterial roads to the SIS.

Section 10: This section requires the FDOT to give priority to improving sections of interstate highway that experience unusually high accident rates, and also requires that PD&E studies for interstate highway sections meeting certain congestion criteria begin within 3 years after a completed analysis. The FDOT advises that these revisions “will establish priorities that may or may not have gone through the MPO priority process or through the SIS analysis. This will have to be incorporated in and will impact how the funding is provided to these type projects over other SIS projects.”<sup>39</sup>

The FDOT also expects to incur costs associated with data collection and technology development and deployment, in indeterminate amounts.<sup>40</sup>

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<sup>38</sup> See the FDOT’s 2019 Agency Legislative Bill Analysis of SB 1044 at p. 6. (On file in the Senate Infrastructure and Security Committee.) The Board’s expenses are covered by administrative fees received by the Board through payment of fees to the Board by the party requesting the arbitration, or as apportioned among the parties in accordance with the Board’s finding of liability. Section 337.185(7), (8), and (9), F.S.

<sup>39</sup> *Supra* note 32.

<sup>40</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.23, 112.061, 334.046, 337.14, 337.18, 337.185, 338.166, 339.135, and 339.65.

This bill creates the following section of the Florida Statutes: 334.179.

**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.