

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1385 Department of Transportation

SPONSOR(S): LaMarca

TIED BILLS: **IDEN./SIM. BILLS:** SB 1126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 0 N	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N	Hicks	Davis
3) Commerce Committee	18 Y, 0 N	Johnson	Hamon

SUMMARY ANALYS

The bill addresses several matters related to the Department of Transportation (DOT). DOT's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities. In summary, the bill:

- Clarifies that the Department of Revenue is responsible for transferring a portion of documentary stamp tax revenues distributed to the General Revenue Fund.
- Removes obsolete references to the general revenue service charge from specified transportation-related state revenues.
- Increases the authorized dollar amount of the alternative debt service cap on Right-of-Way Acquisition and Bridge Construction bonds.
- Amends the Move Over Law to include road and bridge maintenance or construction vehicles displaying warning lights.
- Authorizes persons to appear before the Commercial Motor Vehicle Review Board via communications media technology, including video conference technologies.
- Restores DOT's rulemaking authority relating to airport zoning.
- Clarifies provisions relating to the notice and hearing that DOT is required to provide when a transportation project on the State Highway System modifies an existing access to an abutting property.
- Revises from October 1 to August 1, the date for metropolitan planning organization annual submissions of project priorities to the DOT districts.
- Removes the expiration date for Legislative Budget Commission chair and vice chair authority to approve certain amendments to DOT's work program.

The bill may have an indeterminate, positive impact on state and local government revenues and an insignificant negative impact on state government expenditures. See Fiscal Analysis section for details.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Documentary Stamp Tax/General Revenue Fund Transfer

Current Situation

Chapter 201, F.S., imposes an excise tax on certain documents, known as the documentary stamp tax. The Department of Revenue (DOR) administers ch. 201, F.S.,¹ including the collection of documentary stamp taxes, which are distributed each fiscal year to the General Revenue Fund and various state trust funds.²

After certain required payments to the Land Acquisition Trust Fund³ and the deduction of the General Revenue service charge,⁴ the lesser of 24.18442 percent of the remainder or \$541.75 million is allocated to the State Transportation Trust Fund (STTF) in each fiscal year. Of such funds, \$75 million must be transferred to the General Revenue Fund in each fiscal year. The remaining amount is credited to the STTF and must be used for the following programs: New Starts Transit Program, the Small County Outreach Program, the Strategic Intermodal System, the Transportation Regional Incentive Program, and the Florida Rail Enterprise.⁵

While ch. 201, F.S., specifies that DOR administers the documentary stamp tax, DOR is not expressly identified as the entity responsible for making the \$75 million transfer to the General Revenue Fund each fiscal year.

Effect of the Bill

The bill clarifies that DOR is the entity responsible for transferring the \$75 million each fiscal year to the General Revenue Fund.

Obsolete General Revenue Surcharge References

Current Situation

Section 215.20(1), F.S., establishes an eight percent service charge to the General Revenue Fund from all revenues deposited into most state trust funds,⁶ representing the estimated pro rata share of the cost of general government.

Section 215.211, F.S., eliminates or reduces the general revenue service charge for specified proceeds. Effective July 1, 2002, the service charge for taxes distributed under s. 206.606(1), F.S., relating to the distribution of motor fuel taxes, s. 212.0501(6), F.S., relating to taxes on diesel fuel for business purposes, and s. 319.32(5), F.S., providing for the disposition of fees from certificate of title transactions, were eliminated.⁷ Additionally, the service charge was eliminated beginning July 1, 2001, on taxes distributed under s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.⁸ While the service charge on the specified taxes was eliminated, obsolete references to the service charge remain in statute.⁹

Effect of the Bill

The bill amends ss. 206.606(1), 206.608, 212.0501(6), and 319.32(5), F.S., to remove obsolete references to the general revenue service charge.

¹ S. 201.11, F.S.

² S. 201.15, F.S.

³ S. 201.15(1) and (2), F.S.

⁴ The General Revenue service charge is imposed by s. 215.20(1), F.S.

⁵ S. 201.15(4)(a), F.S.

⁶ Exceptions are enumerated in s. 215.22, F.S., including trust funds administered by the Department of Transportation.

⁷ S. 215.211(1), F.S.

⁸ S. 215.211(2), F.S.

⁹ DOT 2020 Legislative Proposal, *Remove Obsolete Language Relating to Service Charge*.

Right-of-Way Acquisition and Bridge Construction Bonds-Debt Service Cap

Current Situation

The Department of Transportation (DOT) is authorized to issue Right-of-Way Acquisition and Bridge Construction bonds to finance or refinance the cost of acquiring real property for state roads or the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, bonds must be authorized by the Legislature and must be issued pursuant to the State Bond Act.^{10,11}

Section 206.46, F.S., authorizes DOT to transfer up to seven percent of the revenues deposited into the STTF in each fiscal year to the Right-of-Way Acquisition and Bridge Construction Trust Fund, to meet the requirements of outstanding or proposed bond obligations. Notwithstanding this authorized annual transfer, the annual amount transferred may not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service of \$275 million,¹² which was last set in 2005.¹³

Section 339.139, F.S., requires DOT to manage all levels of debt to ensure that no more than 20 percent of total projected available state and federal revenues from the STTF, together with any local funds committed to DOT projects, are committed to certain obligations in any year. Right-of-Way Acquisition and Bridge Construction Bonds are included in DOT's overall debt assessment.

In 2020, based on DOT's most recent bond sale and Revenue Estimating Conference projections at the time, the limit on debt service based on the seven-percent threshold would have been \$287 million in Fiscal Year 2019-2020 (based on revenues of \$4.1 billion), growing to \$350 million in Fiscal Year 2028-2029 (based on revenues of \$5 billion).¹⁴

Under the current statutory limit, the \$275 million cap leaves DOT with about \$100 million of available bonding capacity.¹⁵

Effect of the Bill

The bill amends s. 206.46, F.S., to increase DOT's maximum debt service coverage level from \$275 million to \$350 million. Under the bill, debt service may not exceed seven percent of the revenues deposited into the STTF or \$350 million, whichever is less. The increase of the debt service cap will provide DOT with additional bonding capacity, offering it more flexibility in financing certain projects.

Move Over Law

Current Situation

Under Florida's Move Over Law, if an emergency vehicle, a sanitation vehicle, a utility service vehicle, or a wrecker is working along the side of the road, every other driver must vacate the lane closest to the vehicle when driving on a highway with two or more lanes traveling in the direction of the vehicle. If such movement cannot be safely accomplished, the driver must reduce his or her speed to a speed that is 20 miles per hour less than the posted speed limit when the posted speed limit is 25 miles per hour or greater, or travel at 5 miles per hour when the posted speed limit is 20 miles per hour or less.¹⁶ The purpose of the Move Over Law is to protect workers stopped along the road performing their jobs.¹⁷

¹⁰ The State Bond Act is codified in ss. 215.57-215.83, F.S.

¹¹ S. 215.605, F.S.

¹² S. 206.46(2), F.S.

¹³ Ch. 2005-290, L.O.F.

¹⁴ DOT 2020 Legislative Proposals, *Change in the Right-of-Way Acquisition and Bridge Construction Bonds Debt Service Cap*.

¹⁵ *Id.*

¹⁶ S. 316.126(1)(b), F.S.

¹⁷ Florida Driver Handbook, 2020, p. 44, available at <https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf> (last visited Feb. 17, 2021).

A violation of the Move Over Law is a noncriminal traffic infraction, punishable as a moving violation.¹⁸ The statutory base fine for a moving violation is \$60, but with additional fees assessed by the state and local governments, the total fine increases to up to \$158.¹⁹

According to DOT, for the safety of both workers and the public, temporary traffic control²⁰ is required for maintenance and construction activities. However, due to the risks associated with setting up temporary traffic controls for short duration work activities, such as fence repair, ditch repair, or tree trimming, such controls may be omitted. This places road and bridge maintenance or construction vehicles in situations similar to vehicles identified in the Move Over Law, where they are working along the road without protection from adjacent traffic.

Section 316.2397, F.S., prohibits certain lights on vehicles and provides certain exceptions. With regard to road and bridge construction or maintenance vehicles, the statute provides that:

- Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may show or display amber lights when in operation or a hazard exists.
- Road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists.²¹

Effect of the Bill

The bill amends the Move Over Law to include road and bridge maintenance or construction vehicles displaying warning lights consistent with s. 316.2397, F.S., and operating on the roadside without advance signs and channelizing devices (such as traffic cones or barricades). This will require drivers to move over to a different lane or decrease their speed when road and bridge maintenance or construction vehicles are displaying warning lights on the roadside.

Commercial Motor Vehicle Review Board

Current Situation

Section 316.545(7), F.S., creates the Commercial Motor Vehicle Review Board (board) within DOT, consisting of three permanent members who are the Secretary of Transportation, the executive director of the Department of Highway Safety and Motor Vehicles, and the Commissioner of Agriculture, or their authorized representatives, and four additional members appointed by the Governor or the Commissioner of Agriculture representing various industries. The board may review any penalty imposed upon any vehicle or person relating to the weight imposed on the roads by the axles and wheels of motor vehicles, to special fuel and motor fuel tax compliance, or to violations of safety regulations. The board is authorized to hold sessions and conduct proceedings at any place.²² According to DOT's website, the board meets in Tallahassee.²³

Any person against whom a penalty is imposed may apply to the board for a modification, cancellation, or revocation of the penalty. A written explanation provided within a letter protesting a penalty is acceptable in lieu of physical attendance by a person requesting a hearing before the board, but attendance "will provide the petitioner the opportunity to respond to board inquiries into subjects that the petitioner may have overlooked when drafting his letter of protest."²⁴ Appearance by telephone is

¹⁸ S. 316.126(6), F.S.

¹⁹ Florida Court Clerks and Comptrollers Association, *2020 Distribution of Court Related Filing Fees, Service Charges, and Fines*, p. 23, available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf (last visited Feb. 17, 2021).

²⁰ Temporary traffic control refers to the devices and personnel that change road conditions for a work zone or following an incident. Email from John Kotyk, Deputy Director Legislative Affairs, Department of Transportation, Questions, January 31, 2020.

²¹ Ss. 316.2397(4) and (5), F.S.

²² S. 316.545(8), F.S.

²³ Commercial Motor Vehicle Review Board, <https://www.fdot.gov/traffic/reviewboard.shtm> (last visited March 11, 2021)

²⁴ See DOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, for more details on the Board, as well as its 2021 meeting schedule, available at Commercial Motor Vehicle Review Board <https://www.fdot.gov/traffic/reviewboard.shtm> (last visited March 11, 2021).

not available, but DOT is required to provide space and video conference capability at each of its seven district offices²⁵ to enable a person requesting a hearing to appear remotely before the board, provided the requester notifies the board at least 14 calendar days before the hearing date.²⁶

By rule of the Administration Commission, agencies are currently authorized to conduct proceedings using communications media technology, *i.e.*, the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.²⁷ This definition appears to include commonly available video conferencing programs.

Effect of the Bill

The bill authorizes a person appearing before the board to appear remotely via communications media technology. The bill also removes the requirement that DOT provide space in its district offices for persons to appear via video conference.

Airport Zoning-Rulemaking

Current Situation

In 2016, the Legislature amended²⁸ chapter 333, F.S., which contains airport zoning provisions relating to the management of airspace and land use at or near airports. In general, the 2016 law:

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

DOT has a long-standing rule²⁹ “*Airport Licensing, Registration, and Airspace Protection*,” the purpose of which is “to promote safe civil aviation by eliminating hazards; to provide airfield standards for airports; to provide standards for airport marking and lighting; to license and register airports, pursuant to the licensing and registration requirements of chapter 330, F.S., and to promote flight safety by providing for airspace protection, pursuant to the requirements of chapter 333, F.S.” However, the 2016 amendments to ch. 333, F.S., eliminated this authority.

Effect of the Bill

The bill creates s. 333.15, F.S., to require DOT to adopt rules to implement ch. 333, F.S., thereby providing specific statutory authority for the rule on Airport Licensing, Registration, and Airspace Protection.

Transportation Projects Modifying Access to Adjacent Property

Current Situation

Whenever DOT proposes any project on the State Highway System which will divide a state highway, erect median barriers modifying currently available vehicle turning movements, or have the effect of closing or modifying an existing access to an abutting property owner, DOT must notify all affected property owners, municipalities, and counties at least 180 days before the design of the project is finalized. DOT’s notice must provide a written explanation regarding the need for the project and indicate that all affected parties will be given an opportunity to provide comments to DOT regarding potential impacts of the change.³⁰

DOT must also consult with the applicable local government on its final design proposal if the department intends to divide a state highway, erect median barriers, or close or modify existing access

²⁵ DOT’s district offices are located in Bartow, Lake City, Chipley, Ft. Lauderdale, Deland, Miami, and Tampa.

²⁶ See DOT, Traffic Engineering and Operations Office, *Commercial Motor Vehicle Review Board*, <https://www.fdot.gov/traffic/reviewboard.shtm> (last visited March 29, 2021).

²⁷ Fla. Admin. Code R. 28-109, F.A.C.

²⁸ Ch. 2016-239, L.O.F.

²⁹ R. 14-60, F.A.C.

³⁰ S. 335.199(1), F.S.

to abutting commercial business properties. The local government may present DOT with alternatives that relieve impacts to such business properties.³¹

DOT must hold at least one public hearing in the jurisdiction where the project is located and receive public input to determine how the project will affect access to businesses and the potential economic impact of the project on the local business community.³² DOT must review all comments from the public hearing and take the comments and any alternatives presented by a local government into consideration in the final design of the highway project.³³

Effect of the Bill

The bill clarifies that DOT must provide the required notice at least 180 days before the design *phase* of the project is *completed*, rather than finalized.

The bill revises all occurrences of the word “hearing” to “meeting.” The bill also clarifies that DOT must hold at least one public meeting prior to completing the design phase of a project, so that they can review all comments from the public meeting and take the comments and any alternatives presented by a local government into consideration in the final design of the project.

Work Program Submission Deadline

Present Situation

As part of its budgeting process, DOT prepares a tentative work program, based on the district³⁴ work programs.³⁵ Each district’s work program is developed cooperatively with the state’s metropolitan planning organizations (MPOs)³⁶ and includes, to the maximum extent feasible, the project priorities of MPOs that have been submitted to the district by October 1 of each year.³⁷ However, DOT and an MPO may agree, in writing, to vary this submittal date.³⁸

Prior to submitting the district work program to the central office, each district holds public hearings and makes a presentation to each MPO to determine the necessity of making any changes to the district work program.³⁹ Following submission of each district’s work program to the central office, DOT develops its tentative work program based on the district work programs.⁴⁰

DOT’s central office submits a preliminary copy of its tentative work program to the Executive Office of the Governor, the legislative appropriations committees, the Florida Transportation Commission, and the Department of Economic Opportunity at least 14 days prior to the convening of the regular legislative session.⁴¹ Following a public hearing and evaluation by the Florida Transportation Commission, DOT submits the tentative work program to the Executive Office of the Governor and the legislative appropriations committees no later than 14 days after the regular legislative session begins.⁴²

According to DOT, because the Legislature begins its annual session in January in even-numbered years, the period for DOT to complete its work program process has accelerated. DOT has requested

³¹ S. 335.199(2)(b), F.S.

³² S. 335.199(3), F.S.

³³ S. 335.199(4), F.S.

³⁴ DOT is a decentralized agency and most of its project development and operations are done through its seven geographic districts.

³⁵ Section 339.135(4)(b)1, F.S.

³⁶ MPOs are federally-required regional transportation planning entities in urbanized areas with populations of 50,000 or more persons.

³⁷ This is pursuant to s. 339.175(8)(b), F.S.

³⁸ S. 339.135(4)(c)2., F.S.

³⁹ S. 339.135(4)(d), F.S.

⁴⁰ S. 339.135(4)(e), F.S.

⁴¹ S. 339.135(4)(f), F.S.

⁴² S. 339.135(4)(h), F.S.

that MPOs submit their project priorities sooner than October 1 in order for DOT to have ample time to complete its required processes.⁴³

Effect of the Bill

The bill changes the deadline by which MPOs must submit their project priorities to DOT from October 1 to August 1. The change will provide DOT with additional time to complete its work program process prior to the beginning of the annual legislative session.

Work Program Amendments

Current Situation

Current law authorizes DOT to amend its adopted work program and provides procedures for such amendments.⁴⁴ However, any work program amendment that transfers fixed capital outlay appropriations between categories or increases an appropriation category is subject to approval by the Legislative Budget Commission (LBC).

Prior to 2016, if an LBC meeting could not be held within 30 days after DOT submitted an amendment, the chair and vice chair of the LBC could approve the amendment.⁴⁵ In 2016, the Legislature repealed this authorization.⁴⁶ In 2019, this authorization was reinstated with an expiration date of July 1, 2020.⁴⁷ In 2020, the authorization was reinstated with an expiration date of July 1, 2021.⁴⁸

Effect of the Bill

The bill removes the expiration of authorization for LBC chair and vice chair approval of amendments to DOT's adopted work program, thereby making the provision permanent.

Effective Date

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 201.15, F.S., relating to the distribution of taxes collected.

Section 2: Amends s. 206.46, F.S., relating to the State Transportation Trust Fund.

Section 3: Amends s. 206.606, F.S., relating to the distribution of certain proceeds.

Section 4: Amends s. 206.608, F.S., relating to the State Comprehensive Enhanced Transportation System Tax.

Section 5: Amends s. 212.0501, F.S., relating to the tax on diesel fuel for business purposes.

Section 6: Amends s. 316.126, F.S., relating to the operation of vehicles and actions of pedestrians on approach of an authorized emergency, sanitation, or utility service vehicle.

Section 7: Amends s. 316.545, F.S., relating to weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.

Section 8: Amends s. 319.32, F.S., relating to fees; service charges; disposition.

Section 9: Creates s. 333.15, F.S., providing rulemaking authority.

⁴³ Department of Transportation 2020 Legislative Proposal, *Advance MPO Deadline to Submit Project Priorities*

⁴⁴ S. 339.135(7), F.S.

⁴⁵ S. 339.135(7)(g), F.S. (2015).

⁴⁶ S. 16, Ch. 2016-181, L.O.F.

⁴⁷ S. 101, Ch. 2019-116, L.O.F.

⁴⁸ S. 93, Ch. 2020-144, L.O.F.

Section 10: Amends s. 335.199, F.S., relating to transportation projects modifying access to adjacent property.

Section 11: Amends s. 339.135, F.S., relating to DOT's work program.

Section 12: Amends s. 339.175, F.S., relating to Metropolitan Planning Organizations.

Section 13: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate, positive impact on state government revenues due to additional penalties associated with adding road and bridge construction and maintenance vehicles to the Move Over Law.

2. Expenditures:

Costs associated with enforcement and public awareness of the change to the Move Over Law would be insignificant. The Department of Highway Safety and Motor Vehicles already enforces the current law and has an existing awareness campaign.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate, positive impact on local government revenues due to additional penalties associated with adding road and bridge construction and maintenance vehicles to the Move Over Law.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals that appear before the Commercial Motor Vehicle Review Board remotely via communications media technology will likely see a savings in expenditures associated with not being required to travel to a DOT district office.

D. FISCAL COMMENTS:

Increasing the \$275 million debt cap to \$350 million on Right-of-Way and Bridge Construction Bonds will provide DOT with additional flexibility to utilize that program to meet future bridge replacement needs with minimal disruption to capacity projects in DOT's work program.⁴⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

⁴⁹ Department of Transportation, 2020 Legislative Proposal, *Change in Right-of-Way Acquisition and Bridge Construction Bond Debt Service Cap*.

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOT to establish rules regarding airport zoning.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES