HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 57 Transportation
SPONSOR(S): Commerce Committee, Tourism, Infrastructure & Energy Subcommittee, Andrade and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 1194

FINAL HOUSE FLOOR ACTION: 75 **Y's** 40 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 57 passed the House on April 28, 2021, as CS/CS/CS/SB 1194, as amended. The bill was further amended in the Senate on April 28, 2021, and the Senate concurred with the House amendment as amended. The House concurred with the Senate amendment and passed the bill as amended on April 28, 2021. The bill also includes all or part of CS/CS/CS/SB 267, SB 376, HB 389, SB 422, CS/CS/CS/SB 426, CS/SB 1500, CS/SB 1670, and HB 6015.

The bill contains various provisions related to transportation. The bill:

- Provides terms for counties and municipalities to convey roads to community development districts.
- Prohibits governmental entities from prohibiting certain entities holding a certificate of qualification from the Department of Transportation (DOT) or the appropriate construction license from bidding on road, bridge, and other specified public construction projects.
- Authorizes vehicles to display flashing lights on high-speed roads during low visibility.
- Authorizes construction vehicles to display flashing green, amber, and red lights when workers are present.
- Increases the penalties for modifying a motor vehicle exhaust system in a certain manner.
- Requires certain notifications to the Department of Highway Safety and Motor Vehicles (DHSMV) regarding salvage titles to be on DHSMV-provided forms.
- Clarifies that permanent registration stickers for for-hire vehicles are only available for rental vehicles.
- Closes a gap in the law regarding insurance and surety bond requirements for motor vehicle dealers.
- Revises statutory provisions regarding innovative transportation projects.
- Revises financial statement requirements for certificates of qualification of DOT contractors.
- Clarifies that the submission of an application for qualification and subsequent approval does not affect an applicant's ability factor or maximum capacity rating.
- Revises construction, engineering, and inspection requirements for airports.
- Revises provisions regarding the State Arbitration Board within DOT.
- Requires the Central Florida Expressway Authority to consult with, instead of obtain consent from, the Secretary of DOT prior to conducting specified activities in Lake County.
- Defines the term "borrow pit," requires notification for certain activities relating to borrow pits, and authorizes DOT and its contractors to extract certain materials.
- Authorizes revenues from high-occupancy toll lanes and express lanes to be used for certain public transportation projects.
- Allows the metropolitan planning organization in Miami-Dade County to assess membership fees.
- Repeals the inactive Northwest Florida Transportation Corridor Authority.
- Revises appointments to the Greater Miami Expressway Agency's governing board.
- Provides that, for any seaport that has received or is eligible for specified state funding, a local ballot initiative or referendum, or a measure adopted under one, may not restrict specified activities.
- Revises provisions governing the Tampa Bay Area Regional Transit Authority.
- Extends the maximum term for Jacksonville Transportation Authority leases to 99 years.
- Requires DOT to create and implement an electronic database of outdoor advertising permits.

The bill does not appear to impact state or local government revenues, but may impact state and local government expenditures. *See* Fiscal Analysis for details.

The bill was approved by the Governor on June 29, 2021, ch. 2021-188, L.O.F., and became effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Conveyance of Roads to Community Development Districts

Current Situation

A community development district (CDD) is a local unit of special-purpose government which is created pursuant to the Uniform Community Development District Act of 1980[1] (Act) and limited to the performance of those specialized functions authorized by the Act.[2]

A CDD is authorized to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain district roads equal to or exceeding the applicable specifications of the county in which such roads are located.[3] However, current law does not authorize the transfer of a municipal or county road to a CDD.

Section 336.125, F.S., authorizes a county to abandon roads and rights-of-way dedicated in a residential subdivision and simultaneously convey the county's interest in such roads and rights-of-way to a subdivision's homeowners' association (HOA), if the following conditions have been met:

- The HOA has requested the abandonment and conveyance in writing for the purpose of converting the subdivision to a gated neighborhood with restricted public access.
- No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and simultaneous conveyance to the HOA.
- The HOA is a corporation not-for-profit with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision.
- The HOA has entered into and executed agreements, covenants, warranties, and other instruments; has provided, or has provided assurance of, such funds, reserve funds, and funding sources; and has satisfied other requirements and conditions established or imposed by the county with respect to the ongoing operation, maintenance, and repair and the periodic reconstruction or replacement of the roads, drainage, street lighting, and sidewalks in the subdivision after the abandonment by the county.[4]

The HOA must install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the private roads unless an agreement has been entered into between the county and the HOA expressly providing that the county has traffic control jurisdiction.[5]

Upon abandonment of the roads and rights-of-way and their conveyance, the HOA has all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the county. Thereafter, the HOA must hold the roads and rights-of-way in trust for the benefit of the owners of the property in the subdivision, and must operate, maintain, repair, and, from time to time, replace and reconstruct the roads, street lighting, sidewalks, and drainage facilities as necessary to ensure their use and enjoyment by the property owners, tenants, and residents of the subdivision and their guests and invitees.[6]

Effect of the Bill

Similar to the law that authorizes a county to convey roads and rights-of-way to an HOA, the bill authorizes the governing body of a municipality or county to abandon roads and rights-of-way

[1] Ch. 190, F.S.
[2] S. 190.003(6), F.S.
[3] S. 190.012(1)(d)1., F.S.
[4] S. 336.125(1)(a), F.S.
[5] S. 336.125(1)(b), F.S.
[6] S. 336.125(2), F.S.

dedicated in a recorded subdivision plat and simultaneously convey its interest in such roads, rights-of-way, and appurtenant drainage facilities to a CDD in which the subdivision is located if all of the following conditions are met:

- The CDD has requested the abandonment and conveyance by written resolution for the purpose of converting the subdivision to a gated neighborhood with monitored public access.
- The CDD has received approval of the conveyance by a vote of two-thirds of the landowners who are subject to the non-ad valorem assessment of the CDD and who are present by person or by proxy at a properly noticed landowners meeting.
- The CDD has executed an interlocal agreement with the municipality or county, as applicable, requiring the CDD to do all of the following:
    - Maintain the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.
    - Every five years, conduct a reserve study of the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement.
    - Levy special assessments in amounts sufficient to maintain the roads and any drainage, street lighting or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.
    - Annually fund the amounts set forth in the reserve study.

The CDD must install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the roads unless an agreement has been entered between the municipality or county and the CDD,[7] expressly providing that the municipality or county has traffic control jurisdiction.

Upon abandonment of the roads and rights-of-way and the conveyance to the CDD, the CDD has all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the municipality or county. Thereafter, the CDD must hold the roads and rights-of-way in trust for the benefit of the public and owners of the property, and must operate, maintain, repair, and from time to time, replace and reconstruct the roads and any associated street lighting, sidewalks, or drainage facilities identified in the interlocal agreement as necessary to ensure their use and enjoyment by the public and property owners, tenants, and residents and their guests and invitees.

This provision is supplemental and additional to powers of counties and municipalities.

Procurement of Public Construction Services

Current Situation

State Procurement Law
Chapter 287, F.S., governs the state's procurement of personal property and services.

> The Legislature recognizes that fair and open competition is a basic tenet of public procurement. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures utilized by state agencies in managing and procuring commodities and contractual services, that detailed justification of agency[8] decisions in the procurement of commodities and contractual services be maintained, and that adherence by the agency and the vendor to specific ethical considerations be required.[9]

[7] This is as authorized in s. 316.006(2)(b) and (3)(b), F.S.
[8] Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[9] S. 287.001, F.S.

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.[10]

Construction Contracting

Administered by the Department of Business and Professional Regulation, ch. 489, F.S., relates to various forms of construction contracting and generally requires licensing of construction contractors. However, there is an exemption for road and railroad construction and services incidental to such work.[11]

Department of Transportation Certification for Qualification

Florida law requires that any contractor desiring to bid on any Department of Transportation (DOT) construction contract in excess of $250,000 must first be certified by DOT as qualified pursuant to state law[12] and DOT's rules.[13] DOT's rules must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification.[14] DOT's rules provide the requirements for contractors to be certified as qualified to bid for the performance of road, bridge, or public transportation construction contracts in excess of $250,000.[15]

Effect of the Bill

The bill provides that a governmental entity[16] procuring certain services via a competitive solicitation[17] may not prohibit a response from a vendor that possesses a valid certificate of qualification from DOT or license under ch. 489, F.S., corresponding to the contractual services being procured. Specifically, this provision applies to procurement of contractual services[18] that are limited to the classes of work for

[10] *See* ss. 287.012(6) and 287.057, F.S.

[11] S. 489.103(1), F.S. Rule 61G4-12.011, F.A.C., defines the term "services incidental thereto" for the purpose of s. 489.103(1), F.S., only, to mean all work on bridges, roads, streets, highways, and railroads except building construction and those subcontract or categories, defined in s. 489.105(3)(d)-(q), F.S. However, notwithstanding the previous provision, services incidental thereto specifically includes storm drainage and excavation work necessary for the construction of bridges, roads, streets, highways, and railroad s; and includes directly contracting with a governmental entity for work on bridges, roads, street, highways, and railroads when any building construction included in the contract is subcontracted to a contractor appropriately licensed under ch. 489, Part I, F.S., to perform building construction or those subcontractor categories defined in s. 489.105(3)(d)-(q), F.S., and such building construction does not constitute more than 50 percent of the total contract amount.

[12] S. 337.14, F.S.

[13] DOT's rules regarding contractor qualification are codified in Rule 14-22, F.A.C.

[14] S. 337.14(1), F.S.

[15] R. 14-22.0011(1), F.A.C.

[16] Section 287.102(14), F.S., defines the term "governmental entity" as a political subdivision or agency of this state or of any state of the United States, including, but not limited to, state government, county, municipality, school district, nonprofit public university or college, single-purpose or multipurpose special district, single-purpose or multipurpose public authority, metropolitan or consolidated government, separate legal entity or administrative entity, or any agency of the Federal Government.

[17] Section 287.012(6), F.S., defines the term "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

[18] Section 287.012(8), F.S., defines the term "contractual service" as the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the

which DOT issues certificates of qualification and that do not involve the construction, remodeling, repair, or improvement of any building. This applies to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Flashing Lights on Construction Equipment

Current Situation
Road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier vehicles may display amber lights when in operation or where a hazard exists.[19] Additionally, 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.[20]

Effect of the Bill
The bill authorizes construction equipment in a work zone[21] on roadways with a posted speed limit of 55 mph or higher to show or display a combination of flashing green, amber, and red lights when workers are present.

Flashing Lights on Vehicles

Current Situation
Florida law prohibits the use of flashing lights on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- For certain lamps authorized in statute, which may flash, including various types of emergency vehicles.[22]

With the exception of funeral processions,[23] Florida law does not expressly authorize the use of hazard lights on moving vehicles. The Florida Driver Handbook indicates that a driver should not use emergency flashers in instances of low visibility or rain, and may only use emergency flashers when a vehicle is disabled or stopped on the side of the road.[24]

Effect of the Bill
The bill authorizes the use of flashing lights on vehicles during periods of extreme low visibility on roadways with a posted speed limit of 55 mph or higher.

Motor Vehicle Noise

Current Situation
Current law prohibits a person from modifying the exhaust system of a motor vehicle or any other noise-abatement device of a motor vehicle in such a manner that the noise emitted is above that

findings of consultants engaged thereunder; and professional, technical, and social services. The term does not include a contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of a facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to Ch. 255, F.S., and rules adopted thereunder.
[19] S. 316.2397(4), F.S.
[20] S. 316.2397(5), F.S.
[21] Section 316.003(105), F.S., defines the term "work zone area" as the area and its approaches on any state-maintained highway, county-maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes are closed to traffic.
[22] S. 316.2397(7), F.S.
[23] S. 316.1974(3)(c), F.S.
[24] Department of Highway Safety and Motor Vehicles, *Florida Driver Handbook,* https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited May 11, 2021).

emitted by the vehicle as originally manufactured.[25] Certain vehicles are exempted from this prohibition.[26] A violation is a noncriminal traffic infraction, punishable as a nonmoving violation, with a statutory penalty of $30. With additional fees and surcharges, the total penalty may be up to $108.[27]

Effect of the Bill

The bill provides that, in addition to any penalties imposed, violators of this prohibition are subject to a fine of $200 for a first offense and $500 for a second or subsequent offense.

Salvage Certificates of Title

Current Situation

Under Florida law, the owner of a motor vehicle or mobile home that is considered to be salvage[28] must, within 72 hours after the motor vehicle or mobile home becomes salvage, forward its title to the Department of Highway Safety and Motor Vehicles (DHSMV) for processing. However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home must obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System,[29] and, within 72 hours after receiving such certificate of title, forward such title to DHSMV for processing. The owner or insurance company may not dispose of a vehicle or mobile home that is a total loss before it obtains a salvage certificate of title or certificate of destruction from DHSMV. Effective January 1, 2020:

- Thirty days after payment of a claim for compensation, the insurance company may receive a salvage certificate of title or certificate of destruction from DHSMV if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:
  - Has obtained the release of all liens on the motor vehicle or mobile home;
  - Has provided proof of payment of the total loss claim; and
  - Has provided an affidavit on letterhead signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail.
- If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title.
- The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home.[30]

Effect of the Bill

The bill provides that an insurance company may receive a salvage certificate of title or certificate of destruction from DHSMV if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of a motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

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[25] S. 316.293(5), F.S.

[26] Vehicles exempted from this prohibition include emergency vehicles; any motor vehicle engaged in a professional or amateur sanctioned, competitive sports even for which admission or entry fee is charged, or practice or time trials for such event; any motor vehicle engaged in a manufacturer's engineering, design, or equipment test; and construction or agricultural equipment either on a job site or traveling on the highways. s. 316.293(6), F.S.

[27] S. 318.18, F.S. Florida Association of Clerk of Courts, *2020 Distribution Schedule,* https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2021/21bull005_Attach_2_2020_Dist.pdf (last visited Apr. 23, 2021).

[28] Section 319.30(1)(t), F.S., defines the term "salvage" as a motor vehicle or mobile home which is a total loss as defined in s. 319.30(3)(a), F.S.

[29] The National Motor Vehicle Title Information System (NMVTIS) is overseen by the United States Department of Justice and is designed to prevent the introduction of stolen motor vehicles into interstate commerce, protect states and consumers from fraud, reduce the use of stolen vehicles for illicit purposes and provide consumers protection from unsafe vehicles. https://vehiclehistory.bja.ojp.gov/faq/list#faq-who-operates-and-manages-nmvtis (last visited Apr. 12, 2021).

[30] S. 319.30(3)(b), F.S.

- Has obtained the release of all liens on the motor vehicle or mobile home;
- Has attested on a DHSMV-provided form that payment of the total loss claim has been distributed; and
- Has attested on a DHSMV-provided form and signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail.

Rental Car Registrations

Current Situation

For purposes of motor vehicle licensing, the term "for-hire vehicle" includes any motor vehicle, when used for transporting persons or goods for compensation, that is: let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a share-expense basis.[31]

Under Florida law, registration license plates for such vehicles are issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate must be replaced. With each license plate, a validation sticker must be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The license plate and validation sticker are issued based on the applicant's appropriate renewal period.[32]

License plates equipped with validation stickers subject are valid for not more than 12 months and expire at midnight on the last day of the registration period. A registration license plate equipped with a validation sticker subject to the extended registration period[33] is valid for not more than 24 months and expires at midnight on the last day of the extended registration period.[34]

Validation stickers issued to for-hire vehicles holding less than nine passengers[35] for any company that owns 250 vehicles or more may be placed on any vehicle in its fleet so long as the vehicle receiving the validation sticker has the same owner's name and address as the vehicle to which the validation sticker was originally assigned.[36]

Effective July 1, 2021, vehicles taxed as for-hire vehicles that carry under nine passengers may elect a permanent motor vehicle registration period, provided that the appropriate license taxes and fees are paid annually. The statute also provides that these validation stickers are void if the appropriate license taxes and fees are not paid annually. The statute also requires a license plate with a permanent registration to have a validation sticker showing permanent registration.[37]

Effect of the Bill

The bill provides that the permanent registration period for for-hire vehicles applies only to rental vehicles.

Insurance and Surety Bond Requirements for Motor Vehicle Dealers

Garage Liability Insurance

[31] S. 320.01(15)(a), F.S.
[32] S. 320.06(1)(b)1., F.S.
[33] Section 320.01(19)(b), F.S., defines the term "extended registration period" as a period of 24 months during which a motor vehicle or mobile home registration is valid.
[34] S. 320.06(1)(c), F.S.
[35] These vehicles are taxed pursuant to s. 320.08(6)(a), F.S.
[36] S. 320.06(1)(c), F.S.
[37] S. 320.06(1)(b)1., F.S., effective July 1, 2021.

Under current law, motor vehicle dealers are required to have garage liability insurance or general liability insurance coupled with a business automobile policy in order to ensure a licensed dealer has coverage for the day-to-day operations of businesses in the automotive industry that are not covered under most commercial or business liability insurance, including providing coverage for all dealer-owned vehicles driven by prospective purchasers.[38]

While Florida law requires motor vehicle dealers to provide proof of coverage at the time of licensure[39] for the duration of the licensure period and again at the beginning of each licensure renewal period, the law does not cover the issue of a gap in coverage during the licensure period. Gaps in coverage may occur as a result of various actions - a dealer may cancel a policy in the middle of the term or the insurer may cancel the policy in the middle of the term for nonpayment of the premium or for other reasons.[40]

A gap in insurance coverage during the licensure period has the potential to result in direct consumer harm, as any dealer-owned vehicles taken for test drives or driven as program models by the dealer, or any consumer-owned vehicles damaged while on the dealer's lot, or any other property or personal injury situations that would otherwise be covered under a garage liability policy are not otherwise covered.[41]

Surety Bond Requirements
Under current law, motor vehicle dealers are required to provide DHSMV a surety bond or irrevocable letter of credit in the sum of $25,000 to ensure customers who suffer losses or are otherwise harmed by them in the course of doing business have an avenue to file a claim against the surety bond or irrevocable letter of credit in order to be made whole or compensated for any loss or harm. [42]

While Florida law requires dealers to provide proof of the required surety bond or irrevocable letter of credit at the time of licensure application and again at the beginning of any licensure renewal period, the law does not cover the issue of a gap in coverage during the licensure period. Gaps in coverage can, and do, occur as a result of various actions – a dealer may cancel its bond or letter of credit in the middle of the term, or the insurer itself may cancel the bond or letter of credit in the middle of the term for nonpayment of the premium or for other reasons.[43]

A gap in the surety bond coverage at any time during the licensure period has the potential to result in direct consumer harm, as a customer who has suffered loss or harm as a result of an entity's actions would have no bond or letter of credit through which to make a claim.[44]

Effect of the Bill
The bill requires motor vehicle dealers to deliver to DHSMV proof of continuous insurance coverage during the licensure period and notification to DHSMV of any change during the licensure period. The bill provides that a licensee must deliver to DHSMV a new policy or copy of the policy within ten calendar days of a renewal, continuation, or change in policy.

The bill requires continuous bond coverage by motor vehicle dealers during the licensure period and notification to DHSMV of any change during the licensure period. The licensee is required to provide proof, in a manner prescribed by DHSMV, of a renewal, continuation, or change of a surety bond or irrevocable letter of credit or surety bond and cash bond within ten calendar days of any issuance of such surety bond or irrevocable letter of credit.

[38] S. 320.27(3), F.S.
[39] Motor vehicle dealers are licensed by DHSMV.
[40] Department of Highway Safety and Motor Vehicles, Agency Analysis of SB. 1500, pp. 3-4. (Mar. 5, 2021).
[41] *Id.* at 4.
[42] S. 320.27(10), F.S.
[43] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2020 Senate Bill 1500, p.5 (Mar. 5, 2021)
[44] *Id.*

Innovative Transportation Projects

Current Situation

Innovative Transportation Projects
Current law authorizes DOT to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. These techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, DOT must use the existing standard process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, DOT is not required to adhere to provisions of law that would prevent it from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, DOT must document the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive.[45]

DOT may enter into no more than $120 million in contracts annually for the purposes of innovative transportation projects.[46] This annual cap on contracts for innovative transportation projects does not apply to:

- Turnpike enterprise projects.
- Transportation projects funded by the American Recovery and Reinvestment Act of 2009.[47]

Effect of the Bill
The bill removes redundant language regarding the exception for turnpike enterprise projects and the exception for projects funded by the American Recovery and Reinvestment Act of 2009. The bill provides that the annual cap on contracts does not apply to low-bid design-build milling[48] and resurfacing contracts.

Borrow Pits

Current Situation

Federal Law
The Federal Mine Safety and Health Act of 1977,[49] authorizes the United States Secretary of Labor to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction (mining), related operations, and preparation and milling of the minerals extracted.[50]

The Occupational Safety and Health Act of 1970[51] (OSH Act) gives the United States Secretary of Labor authority over all working conditions of employees engaged in business affecting commerce except those conditions with respect to which other Federal agencies exercise statutory authority to prescribe or enforce regulations affecting occupational safety or health. The OSH Act also provides that

[45] S. 337.025(1), F.S.
[46] *Id.*
[47] S. 337.025(2), F.S.
[48] Pavement milling, is a process that removes part of a paved surface, such as a parking lot or road. Milling can remove just the surface of the pavement, or anywhere up to the entire depth, referred to as full depth removal, https://www.dykespaving.com/blog/how-does-pavement-milling-work/ (last visited Jan. 22, 2021).
[49] Pub. L. 91-173 as amended by Pub. L. 95-164.
[50] United States Department of Labor, Mine Safety and Health Administration, *Interagency Agreement Between the Mine Safety and Health Administration and the Occupational Safety and Health Administration,* https://www.msha.gov/msha-and-osha-memorandum (last visited Jan. 21, 2021).
[51] Pub. L. 91-596.

states may operate their own occupational safety and health programs under a plan approved by the United States Secretary of Labor.[52]

Pursuant to a 1979 interagency agreement between the federal Mine Safety and Health Administration and the Occupational Safety and Health Administration (OSHA), "borrow pits" are subject to OSHA jurisdiction except those borrow pits located on mine property or related to mining.[53]

State Law
Currently, the term "borrow pit" is not defined in Florida law.

Chapter 378, part III F.S., contains the Resource Extraction Reclamation Act,[54] which prohibits an operator[55] from beginning the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere in Ch. 378, F.S., at a new mine[56] without notifying the secretary of the Department of Environmental Protection (DEP) of the intention to mine.[57] The operator's notice of intent to mine must consist of the operator's estimated life of the mine and the operator's signed acknowledgment of the performance standards provided in s. 378.803, F.S.[58]

The act also provides that after January 1, 1989, all operators of existing mines for the extraction of resources as described above must meet the performance standards provided by s. 378.803, F.S., for any new surface area disturbed at such mines.[59]

Section 378.803, F.S., provides the following performance standards for the reclamation of other resources:[60]

- Reclamation must achieve the stormwater, drainage, wetlands, and other surface and groundwater requirements of DEP and the appropriate water management district.
- The final slopes must be at such an angle as to minimize the possibility of slides and may not exceed the natural angle of repose of the material being mined.
- Provisions for safety to persons, wildlife, and adjoining property must be provided.
- Any overburden and spoil must be left in a configuration which is in accordance with accepted soil conservation practices and which is suitable for the proposed future use of the land.
- Reclamation must be designed to avoid the collection of water in pools which are, or are likely to become, noxious, odious, or foul.
- All reclamation activities must, to the extent possible, be coordinated with resource extraction and in any event must be initiated at the earliest practicable time.
- Reclamation activities must be consistent with all applicable local government ordinances at least as stringent as the criteria and standards contained in s. 378.803, F.S.

Effect of the Bill

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[52] United States Department of Labor, Mine Safety and Health Administration, *Interagency Agreement Between the Mine Safety and Health Administration and the Occupational Safety and Health Administration,* https://www.osha.gov/laws-regs/mou/1979-03-29 (last visited May 24, 2021).
[53] *Id.* For purposes of the federal interagency agreement, the term "borrow pit" means an area of land where the overburden, consisting of unconsolidated rock, glacial debris, other earth material overlying bedrock is extracted from the surface. Extraction occurs on a one-time only basis or only intermittently as need occurs, for use as fill materials by the extracting party in the form in which it is extracted. No milling is involved, except for the use of a scalping screen to remove large rocks, wood and trash. The material is used by the extracting party more for its bulk than its intrinsic qualities on land which is relatively near the borrow pit.
[54] S. 378.401, F.S.
[55] Section 378.403(13), F.S., defines the term "operator" as any person engaged in an operation.
[56] Section 348.403(10), F.S., defines the term "mine" as an area of land upon which mining operations have been conducted, are being conducted, or are planned to be conducted, as the term is commonly used in the trade.
[57] S. 378.801(1), F.S.
[58] S. 378.801(2), F.S.
[59] S. 378.802, F.S.
[60] Section 378.403(17), F.S., defines the term "resource" as soil, clay, peat, stone, gravel, sand, limerock, metallic ore, or any other solid substance of commercial value found in natural deposits on or in the earth, except phosphate, which is regulated by part III.

The bill defines the term "borrow pit" for purposes of the Resource Extraction Reclamation Act, as an area of land upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the trade, and is not considered a mine. Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

The bill prohibits DOT, and any contractor or subcontractor of DOT, from purchasing or using any clay, peat, gravel, sand, or other solid substance extracted from a borrow pit unless:

- The operator certifies to DOT, the contractor, or the subcontractor that the borrow pit is in compliance with the notice requirement and the substantive requirements of s. 378.801, F.S., and
- The operator is in compliance with the performance standards specified in s. 378.803, F.S., including without limitation, providing proof of currently valid permits required by DEP and the appropriate water management district.

The bill requires that all contracts and purchase orders executed by DOT and all subcontracts and purchase orders executed by contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with the bill's provisions.

If DOT determines that substances are being obtained and used from a borrow pit not in compliance with the bill's provisions, DOT must cease accepting any substances from that pit within 48 hours but may resume acceptance once the borrow pit has re-established compliance with the bill's provisions.

The bill provides that an operator may not begin the operation of a borrow pit at a new location without notifying the secretary of DEP of the intention to extract. The operator's notice of intent to extract must consist of the operator's estimated life of the extraction location and the operator's signed acknowledgment of the performance standards provided by s. 378.803, F.S.

The bill replaces references to the word "mine(s)" with the word "location(s)" in ss. 378.801 and 378.802, F.S., consistent with the bill's clarification that land upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted is not mining.

Application for Qualification

Current Situation

Any contractor that desires to bid for the performance of any DOT construction contract in excess of $250,000 must first be certified by DOT as qualified.[61]

A contractor who is not already qualified and in good standing with DOT as of January 1, 2019, and who desires to bid on DOT contracts in excess of $50 million must have satisfactorily completed two projects, each in excess of $15 million, for DOT or for any other state's department of transportation.[62]

Each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which DOT receives the application, the contractor must also submit an interim financial statement and an updated application. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.[63]

Effect of the Bill

[61] S. 337.14(1), F.S. DOT's rules regarding qualifications to bid are contained in Rule 14-22, F.A.C.
[62] S. 337.14(1), F.S.
[63] *Id.*

The bill provides that any contractor who desires to bid on contracts in excess of $50 million must be certified by DOT as qualified in addition to meeting existing experience requirements.

The bill requires each application for certification to be accompanied by audited, certified financial statements prepared in accordance with United States generally accepted accounting principles and United States generally accepted auditing standards by a certified public accountant licensed in this state or another state. The applying contractor's audited, certified financial statements must specifically address the applying contractor and must have been prepared within the immediately preceding 12 months. DOT may not consider any financial information relating to the parent entity of the applying contractor, if any. DOT may not certify as qualified any applying contractor that fails to submit the required audited, certified financial statements.

If the application or the annual financial statement shows the applying contractor's financial condition more than four months before the date on which DOT receives the application, the bill authorizes DOT to request, rather than require, the applying contractor to also submit interim audited, certified financial statements prepared in accordance with United States generally accepted accounting and auditing principles and standards. Financial statements must be prepared by a certified public accountant licensed in this state or another state.

Certificate of Qualification

Current Situation

Current law provides that if an applicant for a certificate of qualification is found to possess the prescribed qualifications, DOT must issue to him or her a certificate of qualification that, unless revoked by DOT for good cause, will be valid for a period of 18 months after the date of the applicant's financial statement or such shorter period as DOT prescribes. Submission of a new application does not affect expiration of the certificate of qualification.[64]

The ability factor is a performance score which a contractor receives from DOT upon completion of a project. The initial ability factor is based on the applicant's organization, management, work experience, and letters of recommendation.[65]

The maximum capacity rating is the total aggregate dollar amount of uncompleted work an applicant may have under contract at one time either as a prime contractor and/or subcontractor, regardless of its location or with whom contracted.[66]

Effect of the Bill

The bill provides that the submission of an application of qualification and subsequent approval of such application do not affect the ability factor of the applicant, or the maximum capacity rating of the applicant.

Construction, Engineering, and Inspection at Airports

Current Situation

[64] S. 337.14(4), F.S.
[65] R. 14-22.003, F.A.C.
[66] R. 14-22.003, F.A.C.

Under current law, a contractor,[67] or his or her affiliate[68] qualified with DOT may not also qualify to provide testing services, or construction, engineering, and inspection (CEI) services to DOT.[69] This limitation does not apply to any design-build prequalification[70] and does not apply when DOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services or CEI services.

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts. The procedures contain a set of matrices illustrating the variety of scenarios encountered with prime contractor or subcontractors and when DOT would consider the arrangement a conflict.[71]

In 2019, the Legislature passed HB 905,[72] which provided that for a construction project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. That bill exempted certain seaports from that provision.

According to the Florida Airports Council, the 2019 statutory changes relating to CEI requirements will increase construction costs, increase project schedules due to additional coordination with consultants, and reduce project efficiency. Depending on the project, airports may leverage different delivery methods for CEI activities. Additionally, airports indicate that they deliver more than road projects and that DOT's professional services requirements do not always accommodate airport construction projects.[73] The Florida Airports Council maintains that due to the unique and specialized nature of airports, they need to remain agile in the projects they delivery to ensure that each project is completed in a safe, timely, and cost effective manner.[74]

Effect of the Bill

The bill provides an exemption for airports from the requirement that, for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. This exemption is identical to the one currently in place for seaports.

State Arbitration Board

Current Situation

Florida law creates the State Arbitration Board (board) within DOT to facilitate the prompt settlement of claims[75] for additional compensation arising out of construction and maintenance contracts between DOT and its various contractors.[76]

Florida law provides that every contractual claim in an amount up to $250,000 per contract or, at the claimant's option, up to $1 million per contract or, upon agreement of the parties, up to $2 million per

[67] Section 337.165(1)(d), F.S., defines the term "contractor" as any person who bids or applies to bid on work let by the department or any counterpart agency of any other state or of the Federal Government or who provides professional services to the department or other such agency. The term "contractor" includes the officers, directors, executives, shareholders active in management, employees, and agents of the contractor.

[68] Section 337.165(1)(a), F.S., defines the term "affiliate" as a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

[69] S. 337.14, F.S.

[70] Design-build prequalification is pursuant to s. 337.11(7), F.S.

[71] DOT Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts. (Aug. 2008).

[72] Ch. 2019-153, L.O.F.

[73] Email from Darrick McGhee, Florida Airports Council, Re. HB: 1441-Airport Contracts (Jan. 21, 2020).

[74] Email from Darrick McGhee, Florida Airports Council, Re. House Bill: 1441-Contracted Airport Projects (Feb. 1, 2020).

[75] 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.

[76] S. 337.185(1), F.S.

contract, which cannot be resolved by negotiation between DOT and the contractor must be arbitrated by the board after DOT's acceptance of the project. However, either party may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of a claim until the board arbitration process has been exhausted.[77]

The board is composed of three members: one member is appointed by the head of DOT;[78] one member is elected by those construction or maintenance companies who are under contract with DOT; and the third member is chosen by agreement of the other two members. Whenever the third member has a conflict of interest regarding an affiliation with one of the parties, the other two members select an alternate member for that hearing. The head of DOT may select an alternative or substitute to serve as DOT's member for any hearing or term. Each member serves a two-year term. The board elects a chair, each term, who is the administrator of the board and custodian of its records.[79]

An arbitration hearing may be requested by DOT or by a contractor who has a dispute with DOT which, under the board's rules,[80] may be the subject of arbitration. For all contracts entered into after June 30, 1993, the request must be made to the board within 820 days after the final acceptance of the project. The board must conduct the hearing within 45 days of the request. The party requesting the board's consideration must give notice of the hearing to each board member. If the board finds that a third party is necessary to resolve the dispute, the board may vote to dismiss the claim, which may thereafter be pursued in accordance with Florida law.[81]

All members must be present to conduct a meeting. Upon being called into session, the board must promptly proceed to a determination of the issue or issues in dispute.[82]

When a valid contract is in effect defining the rights, duties, and liabilities of the parties with respect to any matter in dispute, the board may only determine the proper interpretation and application of the appropriate contract provisions. Any investigation made by less than the whole membership of the board must be by authority of a written directive by the chair, and the investigation must be summarized in writing and considered by the board as part of the record of its proceedings.[83]

The board must hand down its order within 60 days after it is called into session. If all three members of the board do not agree, the order of the majority constitutes the order of the board.[84]

The board members may receive compensation for the performance of their duties from administrative fees received by the board, except that a DOT employee may not receive compensation from the board. The compensation amount is determined by the board, but may not exceed $125 per hour, up to $1,000 per day for each member authorized to receive compensation. This does not prevent the member elected by construction or maintenance companies from being an employee of an association affiliated with the industry, even if the sole responsibility of that member is service on the board. Travel expenses for the industry member may be paid by an industry association, if necessary. The board may allocate funds annually for clerical and other administrative services.[85]

The party requesting arbitration must pay a fee to the board in accordance with a schedule established by it, to cover the cost of administration and compensation of the board, not to exceed:

- $500 per claim which is $25,000 or less;
- $1,000 per claim which is in excess of $25,000 but not exceeding $50,000;

[77] S. 337.185(1), F.S.
[78] The head of DOT is the Secretary of Transportation.
[79] S. 337.185(2), F.S.
[80] Current State Arbitration Board procedures are available at: https://cdn.ymaws.com/ftba.site-ym.com/resource/resmgr/website_files/arbitration_board/11-19-20_State_Arbitration_B.pdf (last visited May 11, 2021).
[81] S. 337.185(3), F.S.
[82] S. 337.185(4), F.S.
[83] S. 337.185(5), F.S.
[84] S. 337.185(6), F.S.
[85] S. 337.185(7), F.S.

- $1,500 per claim which is in excess of $50,000 but not exceeding $100,000;
- $2,000 per claim which is in excess of $100,000 but not exceeding $200,000;
- $3,000 per claim which is in excess of $200,000 but not exceeding $300,000;
- $4,000 per claim which is in excess of $300,000 but not exceeding $400,000; and
- $5,000 per claim which is in excess of $400,000.[86]

The board in its order may apportion the above fees, and the cost of recording and preparing a transcript of the hearing, among the parties in accordance with the board's finding of liability.[87]

Effect of the Bill

The bill revises statutory provisions relating to the board. The bill defines the following terms for purposes of the board:

> "Claim" -- the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed with DOT and could not be resolved by negotiations between DOT and the contractor.
>
> "Contractor" -- a person or firm having a contract for rendering services to DOT relating to the construction or maintenance of a transportation facility.
>
> "Final acceptance" -- the contractor has completely performed the work provided for under the contract, DOT or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and DOT or its agent has submitted written notice of final acceptance to the contractor.

The bill requires that every claim of up to $250,000 per contract that could not be resolved by negotiations between DOT and the contractor be arbitrated by the board and may not go to private arbitration. An award issued by the board pursuant to this provision is final and enforceable by a court of law.

A contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the board. An award issued by the board pursuant to this provision is final if a request for a trial de novo[88] is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure.[89] At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence Code.[90] If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of law.

An arbitration request may not be made to the board before final acceptance, but must be made within 820 days after final acceptance.

The board must still schedule a hearing within 45 days after an arbitration request and, if possible, must now conduct the hearing within 90 days after the request instead of the previous 45 day deadline.

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[86] S. 337.185(8), F.S.
[87] S. 337.185(9), F.S.
[88] A trial de novo refers to a new trial on the entire case and is conducted as if there had been no trial in the first instance https://definitions.uslegal.com/t/trial-de-novo/ (last visited May 11, 2021).
[89] Rule 1.830, Florida Rules of Civil Procedure relates to voluntary binding arbitration. The rule provides that a voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in s. 44.104(10), F.S.
[90] Ch. 90, F.S.

The bill authorizes the board to administer oaths and conduct the proceedings as provided by the rules of the court. The bill requires the hearing must be conducted informally, with the presentation of testimony and evidence being kept to a minimum. The bill requires matters to be presented to the arbitrators primarily through the statements and arguments of counsel. The board must address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the board, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the board for orders compelling such attendance and production at the arbitration. Subpoenas must be served and are enforceable in the manner provided by law.

The board must issue its award within 45 days after the conclusion of the arbitration hearing. If all three members of the board do not agree, the award agreed to by the majority of the board constitutes the award of the board.

The board is still composed of three members who are selected in the same manner as in current law. If a member has a conflict of interest, an alternative member is appointed in the same manner as the original appointment. Each member serves a 4-year term instead of the current 2-year term. The board still elects a chair for each term, who is the administrator of the board and custodian of its records.

The presence of all board members is required to conduct a meeting. A meeting may be conducted either in person or via virtual videoconferencing.

The bill requires all board members, excluding current DOT employees appointed to serve, to receive compensation for the performance of their duties from deposits made by the parties based on an estimate of compensation. All deposits will be held in escrow by the chair in advance of the hearing. Each member eligible for compensation is compensated at $200 per hour (currently $125 per hour), up to $1,500 per day (currently up to $1,000 per day). A member must be reimbursed for the actual cost of his or her travel expenses. The board may annually allocate funds for clerical and other administrative services.

The bill maintains the filing fees provided in current law keeps the authorization for the board to apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

High-Occupancy Toll Lanes/Express Lanes

Current Situation

For design purposes, DOT defines the term “express lane” as a type of managed travel lane physically separated from general use lanes, or general toll lanes, within a roadway corridor. Express lanes use dynamic pricing through electronic tolling in which toll amounts are set based on traffic conditions.[91]

High-occupancy toll (HOT) lanes are lanes that allow vehicles that don’t meet occupancy requirements to pay a toll to use the lane. Variable pricing is used to manage the lane so that reliable performance is maintained at all times.[92]

Under article VIII, section 11 of the Florida Constitution, DOT may request the Division of Bond Finance to issue bonds secured by toll revenues collected on high-occupancy toll lanes or express lanes established on DOT-owned facilities.[93] DOT may continue to collect the toll on the high-occupancy toll

[91] Florida Department of Transportation, *2021 Design Manual, Glossary of Terms*, p. 4 https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/roadway/fdm/2021/2021fdm102glossary.pdf? (last visited Apr. 5, 2021).
[92] United States Department of Transportation, Federal Highway Administration, Office of Operations, HOT Lanes, Cool Facts https://ops.fhwa.dot.gov/publications/fhwahop12031/fhwahop12027/index.htm (last visited Apr. 5, 2021).
[93] S. 338.166(1), F.S.

lanes or express lanes after the discharge of any bond indebtedness related to such project. All tolls so collected must first be used to pay the annual cost of the operation, maintenance, and improvement of the high-occupancy toll lanes or express lanes project or associated transportation system.[94]

Any remaining toll revenue from the high-occupancy toll lanes or express lanes must be used by DOT 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.[95]

The above does not apply to the turnpike system as defined under the Florida Turnpike Enterprise Law.[96]

Effect of the Bill
The bill provides that any remaining toll revenue from HOT lanes or express lanes may be used for public transportation projects that benefit the operation of HOT lanes or express lanes on the State Highway System within the county or counties in which the toll revenues were collected.

Metropolitan Planning Organization Fees

Current Situation
Section 125.011(1), F.S., defines a "county" as:

> [A]ny county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

Local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the City of Key West and Monroe,[97] Dade,[98] and Hillsborough counties.[99] Of these, only Miami-Dade County operates under a home-rule charter adopted on May 21, 1957, under this constitutional provision.[100] Therefore, Miami-Dade County is the only county that meets the definition of "county" in s. 125.011(1), F.S.

Federal Law
Metropolitan Planning Organizations (MPOs), also referred to as transportation planning organizations, are federally mandated transportation planning organizations comprised of representatives from local governments and transportation authorities. The MPO's role is to develop and maintain the required transportation plans for a metropolitan area to ensure that federal funds support local priorities. Federal law requires MPOs in urbanized areas with populations of 50,000 or more individuals.[101]

State Law
Section 339.175, F.S., governs MPOs and generally mirrors applicable federal law. MPOs carry out four primary activities:

- Developing and maintaining a Long-range Transportation Plan, addressing no less than a 20-year planning horizon.

[94] S. 338.166(2), F.S.
[95] S. 338.166(3), F.S
[96] S. 338.166(7), F.S.
[97] Art. VIII, s. 6, n. 2, Fla. Const.
[98] Art. VIII, s. 6, n. 3, Fla. Const.
[99] Art. VIII, s. 6, n. 4, Fla. Const.
[100] Florida Association of Counties, *Charter County Information,* available at http://www.fl-counties.com/charter-county-information (last visited Apr. 20, 2021).
[101] 23 U.S.C. s. 134

- Updating and approving a Transportation Improvement Program, a four-year program for highway and transit improvements.
- Developing and adopting a Unified Planning Work Program, identifying the budget and planning activities to be undertaken in the metropolitan planning area.
- Preparing a Public Participation Plan, describing the involvement of the public and stakeholder communities in transportation planning.

Section 339.175(6)(f)2., F.S., prohibits the MPO in a county as defined in s. 125.011(1), F.S., from assessing any fees for municipalities, counties, or other governmental entities that are members of the Miami-Dade County MPO.

Effect of the Bill
The bill repeals s. 339.175(6)(f)2., F.S., thus allowing the Miami-Dade County MPO to assess fees for municipalities, counties, or other governmental entities that are members of the MPO.

Tampa Bay Area Regional Transit Authority

Current Situation

Tampa Bay Area Regional Transit Authority
Chapter 343, Part IV, F.S., creates the Tampa Bay Area Regional Transit Authority (TBARTA)[102] as an agency of the state, covering Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties and any other contiguous county that is party to an agreement of participation.[103]

TBARTA's purpose is to plan, develop, fund, implement, and operate a regional transit system in the Tampa Bay area.[104] TBARTA must produce a regional transit development plan, integrating the transit development plans of participant counties, with priority assigned to regionally significant transit projects and facilities.[105]

TBARTA's governing board consists of 13 voting members and two non-voting advisors. The secretary of DOT appoints two non-voting advisors to the board who are the district secretaries for the two DOT districts within TBARTA's designated area. The 13 voting members of the board are appointed as follows:
- The county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties each appoint one county commissioner to the board;
- Two members of the board are the mayors of the municipalities with the largest populations within the service area of each of the following independent transit agencies: Pinellas Suncoast Transit Authority (St. Petersburg) and Hillsborough Area Regional Transit Authority (Tampa);
- The following independent transit agencies each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority; and
- The Governor appoints four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an elected official.[106]

Seven members of the board constitutes a quorum, and the vote of seven members is necessary for TBARTA to take any action.[107] A vacancy does not impair the right of a quorum of the board to exercise all rights and perform all duties of TBARTA.[108]

[102] Prior to 2017, TBARTA was named the Tampa Bay Area Regional Transportation Authority.
[103] Ss. 343.90 and 343.91(1)(a), F.S.
[104] S. 343.922(1), F.S.
[105] S. 343.922(3), F.S.
[106] S. 343.92(2), F.S.
[107] S. 343.92(8), F.S.
[108] *Id.*

Beginning July 1, 2017, TBARTA's board was required to evaluate the abolishment, continuance, modification, or establishment of the following committees:

- Planning committee;
- Policy committee;
- Finance committee;
- Citizens advisory committee;
- TBARTA Metropolitan Planning Organization Chairs Coordinating Committee;
- Transit management committee; and
- Technical advisory committee.

After the board completed its evaluation, it was required to submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Legislative Session.[109] The report was submitted in January 2018.

TBARTA Metropolitan Planning Organization Chairs Coordinating Committee

The TBARTA Metropolitan Planning Organization Chairs Coordinating Committee (committee) is created within TBARTA, and is composed of the MPO's serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota counties. TBARTA is required to provide administrative support and direction to the committee. The committee must, at a minimum:

- Coordinate transportation projects deemed to be regionally significant by the committee;
- Review the impact of regionally significant land use decisions on the region;
- Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the MPO's represented on the committee; and
- Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.[110]

The committee conducts two meetings a year, one in the summer and one in the fall. Every year, the committee receives public comment and adopts the West Central Florida Regional Roadway Network, Transportation Regional Incentive Program Priority Projects, and Regional Multi-Use Trail Priority Projects. The committee transmits these priorities to DOT. The committee also makes a yearly recommendation to TBARTA's board for the TBARTA regional priority projects.[111]

Effect of the Bill

The bill authorizes the mayors of the largest municipalities within the service areas of the Pinellas Suncoast Transit Authority (St. Petersburg) and the Hillsborough Regional Transit Authority (Tampa) to designate alternates to attend TBARTA board meetings. The mayor's designated alternate must be an elected member of the municipality's city council and approved as the mayor's designated alternate by the municipality's city council. In the event that the mayor is unable to attend a TBARTA board meeting, the mayor's designated alternate must attend the meeting on the mayor's behalf and has the full right to vote.

The bill revises the quorum requirements for TBARTA's board meeting, allowing for a simple majority of the TBARTA board to constitute a quorum. It also provides that a simple majority of the voting members present, rather than seven members, are necessary for any action to be taken by the board.

[109] S. 343.92(9), F.S.
[110] S. 339.175(6)(i), F.S.
[111] TBARTA, *MPOs Chairs Coordinating Committee*, https://tbarta.com/en/boards-meetings/mpos-chairs-coordinating-committee/ (last visited Jan. 28, 2021).

The bill removes obsolete language that required TBARTA to submit recommendations for abolishment, continuance, modification, or establishment of TBARTA committees to the Legislature before the 2018 Regular Session.

The bill renames the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as the Chairs Coordinating Committee, modifies its organization so it is no longer created within TBARTA, and deletes the requirement that TBARTA provide administrative support and direction to the committee. The bill does not change the committee's membership.

The bill also removes requirements that TBARTA present regional transit development plans to the committee and coordinate plans and projects with the committee.

Northwest Florida Transportation Corridor Authority

Current Situation

Created in 2005, and codified in ch. 343, part III, F.S.,[112] the Northwest Florida Transportation Corridor Authority (NFTCA), is an agency of the state. NFTCA's primary purpose is to improve mobility on the U.S. 98 corridor in Northwest Florida, enhance traveler safety, identify and develop hurricane evacuation routes, promote economic development, and implement transportation projects to alleviate current or anticipated traffic congestion.[113]

On September 20, 2018, the NFTCA Board voted unanimously to become inactive as an authority.[114] On August 23, 2019, the Department of Economic Opportunity issued a letter indicating that NFTCA met all of the statutory requirements to become an inactive special district and that pursuant to s. 189.062(4), F.S., must be dissolved by the Legislature.

Effect of the Bill

The bill repeals and dissolves the inactive NFTCA. The NFTCA must: discharge or make provisions for its debts, obligations, and other liabilities; settle and close its activities and affairs; and provide for distribution of its assets, or the proceeds of such assets, such that each local general-purpose government represented on the NFTCA's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

Seaport Regulation

Current Situation

Federal Regulation of Vessels and Maritime Commerce

Federal law controls[115] the regulation of maritime commerce,[116] navigation,[117] seaport security,[118] the regulation of commercial vessels, shipping[119] and common carriers, vessel-related environmental and

[112] Ch. 2005-281, Laws of Fla.
[113] S. 343.81(1), F.S.
[114] Northwest Florida Transportation Corridor Authority, Resolution 18-02, Sept. 20, 2018.
[115] *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (Where Congress has explicitly preempted state law in an area, federal law supplants all state regulation in that area. Even in the absence of express congressional intent to preempt state law, federal preemption is implied where (1) state law "actually conflicts with federal law" or (2) federal law so thoroughly occupies a legislative field "as to make reasonable the inference that Congress left no room for the States to supplement it.")
[116] *United States v. Locke*, 529 U.S. 89, 103 (2000). ("The existence of the treaties and agreements on standards of shipping is of relevance, of course, for these agreements give force to the longstanding rule that the enactment of a uniform federal scheme displaces state law, and the treaties indicate Congress will have demanded national uniformity regarding maritime commerce.").
[117] *See, generally,* 46 U.S.C. §§ 101 et seq.
[118] For example, the Maritime Transportation Security Act of 2002 created a broad range of programs to improve the security conditions at the ports and along American waterways, such as identifying and tracking vessels, assessing security preparedness, and limiting access to sensitive areas.
[119] *See* Shipping Act of 1984. 46 U.S.C. §§ 40101(1), 40101(2). One purpose of the Act is to 'establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs.' A second purpose is to ensure that U.S.-flag ships are on a level playing field with foreign vessels.

pollution standards,[120] disease and quarantine efforts,[121] and other aspects of admiralty law in and upon the navigable waters of the United States. The U.S. Supreme Court has consistently determined that federal supremacy principles mandate preemption of efforts of state and local governments to impose conditions on port entry controlled by federal law.[122]

Federal law requires the formulation of federal policies applicable to navigation, vessel safety, and security of ports and waterways to consider local practices, customs, and the input of local authorities.[123] The U.S. Supreme Court has held that fees to defray the cost of purely local regulation of harbor traffic is not an objectionable burden on commerce.[124]

The United States Coast Guard (USCG) regulates all commercial vessels, including cruise vessels, calling on U.S. ports, regardless of the vessel's country of origin. The USCG inspects each foreign-flagged cruise vessel calling on a U.S. port at least twice a year to ensure compliance with certain treaties and U.S. regulations governing safety, security, and environmental protections.[125]

Florida Ports

There are 15 deepwater seaports in Florida:[126]

- Port Canaveral,
- Port Citrus,
- Port Everglades,
- Port of Fernandina,
- Port of Fort Pierce,
- Port of Jacksonville
- Port of Key West,
- Port Manatee,
- Port of Miami,
- Port of Palm Beach
- Port of Panama City,
- Port of Pensacola,

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[120] In 1973, the International Maritime Organization (IMO) adopted the International Convention for the Prevention of Pollution by Ships and subsequently modified it by Protocol in 1978. The Convention is widely known as MARPOL 73/78. Its objective is to limits hip-borne pollution by restricting operational pollution and reducing the possibility of accidental pollution. MARPOL specifies standards for stowing, handling, shipping, and transferring pollutant cargoes, as well as standards for discharge of ship-generated operational wastes. Acceptance of the convention by national government obliges them to make the requirements part of domestic law. USCG, *Office of Commercial Vessel Compliance,* https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Domestic-Compliance-Division/MARPOL/ (last visited Mar. 1, 2021).

[121] *See* John T. Oliver, *Legal and Policy Factors Governing the Imposition of Conditions on Access and Jurisdiction Over Foreign-Flag Vessels in U.S. Ports*, 5 S.C. J. Int'l. L. & Bus. 209, 2 (2009) footnotes 153 & 154. 42 U.S.C. § 267(a): "[The Surgeon General] shall from time to time select suitable sites for and establish such additional ... anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States." "It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations ...." U.S.C. § 268(b). Congress has provided statutory authority for controlling infectious diseases, including quarantining of suspect vessels and their crews and passengers. 42 U.S.C. §§ 264-272. The President regularly updates the list of communicable diseases subject to quarantine. Exec. Order No. 13,295, Apr. 4, 2003, 68 Fed. Reg. 17,255 (Apr. 9, 2003), reprinted in 42 U.S.C. § 264, as amended by Exec. Order No. 13,375, Apr. 1, 2005, 70 Fed. Reg. 17299 (Apr. 5, 2005). He has also delegated to the Secretary of Health and Human Services his authority to carry out duties under the statute.

[122] *See Locke*, 529 U.S. at 103.

[123] *See* 46 U.S.C. §§ 70001, 70004. *See also Locke*, 529 U.S. at 109.

[124] *See Clyde Mallory Lines v. State of Alabama ex rel. State Docks Comm'n,* 296 U.S. 261, 267 (1935). The Court observed that state regulations of harbor traffic, even if they incidentally affect commerce, interstate or foreign, are of local concern, so long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress are not forbidden.

[125] U.S. House of Representatives, Subcommittee on Coast Guard and Maritime Transportation. *Hearing on "Commercial and Passenger Vessel Safety: Challenges and Opportunities*, p. 4 (Nov. 9, 2019) https://www.congress.gov/116/meeting/house/110181/documents/HHRG-116-PW07-20191114-SD001.pdf (last visited Feb. 28, 2021).

[126] For a map of Florida's deepwater seaports which indicates the primary streams of commerce (i.e., cargo, cruise passenger, other, or a combination thereof) see DOT, *Seaport System,* https://www.fdot.gov/seaport/seamap.shtm (last visited Mar. 16, 2021).

- Port of Port St. Joe,
- Port of St. Petersburg, and
- Port of Tampa.

Approximately half of Florida's deepwater ports are organized as independent or dependent special districts.[127] The remainder are organized within their respective municipal or county governments.[128]

According to the Florida Ports Council, Florida seaports generate nearly 900,000 direct and indirect jobs and contribute $117.6 billion in economic value to the state through cargo and cruise activities. Florida maritime activities account for approximately 13 percent of Florida's gross domestic product while contributing $4.2 billion in state and local taxes.[129] In 2018, approximately 110,268,130 tons of cargo and 16,835,986 passengers moved through Florida's seaports.[130]

State Law Relating to Seaports

Florida Seaport and Economic Development Program

In 1990, the Legislature created ch. 311, F.S., authorizing the Florida Seaport Transportation and Economic Development (FSTED) Program.[131] The program established a collaborative relationship between the Florida Department of Transportation (DOT) and the seaports, and codified an annual minimum appropriation of $25 million for a seaport grant program.[132] Grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port;
- The dredging or deepening of channels, turning basins, or harbors;
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing;
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce;
- The acquisition of land to be used for port purposes;
- The acquisition, improvement, enlargement, or extension of existing port facilities;
- Environmental protection projects: those necessary to meet requirements imposed by a state agency as a condition of a permit or other form of state approval; those necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; those necessary for the acquisition of spoil disposal sites; or those resulting from the funding of eligible projects;
- Transportation facilities which are not otherwise part of DOT's adopted Work Program.[133]
- Intermodal access projects;
- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in statute,[134] with operating revenues of $5 million or less, provided that such project

[127] Ports operated by independent special districts are Port Canaveral, Port of Fernandina, Port of Palm Beach, Port of Port St. Joe, and Port of Tampa. Ports operated by dependent special districts are Port Citrus, Port of Jacksonville, Port Manatee, and Port of Panama City. http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited Mar. 16, 2021). A "dependent special district" is a special district subject to significant control by the governing body of a single county or municipality. s. 189.012(2), F.S. An "independent special district" is any district that is not a dependent special district. s. 189.012(3), F.S.

[128] The Ports of Key West, Pensacola, and St. Petersburg are departments of their respective municipalities. *See* https://flaports.org/seaports/ (last visited Mar. 31, 2021).

[129] Florida Ports Council, *The Florida System of Seaports*, https://flaports.org/about/the-florida-system-of-seaports/ (last visited Mar. 1, 2021).

[130] FDOT, *2018 Update of Tables and Figures, p.4*, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/seaport/pdfs/2018-update-of-tables-and-figures-florida-seaport-system-plan-717752830.pdf?sfvrsn=e1879b60_2 (last visited Mar. 1, 2021).

[131] Ch. 90-136, Laws of Fla.

[132] Ss. 311.07 and 311.09, F.S.

[133] DOT's Work Program is adopted pursuant to s. 339.135, F.S.

[134] S. 311.09(1), F.S. The ports listed are Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

creates economic development opportunities, capital improvements, and positive financial returns to such ports; and
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.[135]

The FSTED program is managed by the FSTED Council, which consists of each port director, or director's designee, of the 15 deepwater ports, the Secretary of DOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.[136]
To be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

Strategic Port Investment Initiative
In 2012, the Legislature created the strategic port investment initiative within DOT, specifying that a minimum of $35 million be made available from the State Transportation Trust Fund (STTF) for the initiative annually. DOT is required to work with the deepwater ports to develop and maintain a priority list of strategic projects. Project selection will be based on projects that meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities by:
- Providing important access and major on-port capacity improvements;
- Providing capital improvements to strategically position the state to maximize opportunities in international trade, logistics, or the cruise industry;
- Achieving state goals of an integrated intermodal transportation system; and
- Demonstrating the feasibility and availability of matching funds through local or private partners.

Community Planning Act
The Community Planning Act includes four primary references to deepwater ports:

1. A local government's comprehensive plan transportation element must include different levels of transportation analysis based on the size and location of the local government and whether it is in the metropolitan planning area of a Metropolitan Planning Organization. Traffic circulation issues related to ports must be addressed as well as plans for port facilities. Cities with populations greater than 50,000 and counties with populations greater than 75,000 must include "Plans for port . . . and related facilities coordinated with the general circulation and transportation element." Some or all of these requirements can be addressed in the port master plan.[137]

2. A comprehensive plan's coastal management element must "(d)irect the orderly development, maintenance, and use of ports to facilitate deepwater commercial navigation and other related activities." This requirement also can be addressed in the port master plan.[138]

3. Port master plans must be included in the local government's coastal management element and must identify existing port facilities and any proposed expansions.[139] To the extent the following are applicable, port master plans must:
   - Provide a land use and inventory map of existing coastal uses;
   - Analyze the environmental, socioeconomic, and fiscal impact of development;
   - Analyze effects of existing drainage systems on estuarine water quality;
   - Outline principles for hazard mitigation and protection of human life;
   - Outline principles for protecting existing beach and dune systems;
   - Outline principles to eliminate inappropriate and unsafe development;
   - Identify public access to shoreline areas and preservation of working waterfronts;

[135] Ch. 163, part II, F.S.
[136] S. 311.09(1), F.S.
[137] S. 163.3177(6)(b), F.S.
[138] S. 163.3177(6)(g)8., F.S.
[139] S. 163.3178(2), F.S.

- Designate coastal high-hazard areas and mitigation criteria;
- Outline principles to assure that public facilities will be in place; and,
- Mitigate the threat to human life and protect the coastal environment.

4. Certain eligible port expansions, projects, and facilities, both on the port and within three miles of the port, may not be designated as Developments of Regional Impact if they are consistent with a port master plan.[140]

Port Facility Financing

Any county, port district,[141] port authority,[142] municipality, or certain governmental units created pursuant to the Florida Interlocal Cooperation Act[143] that include at least one deepwater port are authorized[144] to:

- Exercise jurisdiction, control and supervision over any port facilities now or hereafter acquired, owned, or constructed by the local government(s).
- Operate and maintain, and to fix and collect rates, rentals, fees and other charges for any of the services and facilities provided by the port facilities now or hereafter acquired, owned or constructed by the unit excluding state bar pilots.
- Lease or rent, or contract with others for the operation of all or any part of any port facilities now or hereafter acquired, owned or constructed by the unit, on such terms and for such period or periods and subject to such conditions as the governing body shall determine to be in the best interests of the local government(s).

Vessel Movement and Related Fees

A port has authority to regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.[145]

Ports are authorized to establish fees and compensation for these services when provided by the port.

Harbor Safety

Ports, in agreement with the USCG, state harbor pilots, and other ports in its operating port area, must adopt guidelines for:

- Minimum bottom clearance for each berth and channel,
- The movement of vessels, and
- Radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.[146]

County Seaport Projects and Facilities

Counties have broad authority to provide for port improvements within their jurisdiction,[147] including the ability to:

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[140] S. 163.3178(3), F.S.
[141] A "port district" is any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities. S. 315.02(1), F.S.
[142] A "port authority" is created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. S. 315.02(2), F.S.
[143] S. 163.01(7)(d), F.S.
[144] S. 315.03, F.S.
[145] S. 313.22, F.S.
[146] S. 313.23, F.S.
[147] S. 125.012, F.S.

- Construct, acquire, establish, improve, extend, enlarge, reconstruct, equip, maintain, repair, and operate any project,[148] either within or without the territorial boundaries of the county.
- Subject to the jurisdiction of the United States and the State of Florida and the general laws of Florida relating to dredging and filling, to construct, establish, and improve harbors in the county and all navigable and nonnavigable waters connected therewith; to regulate and control all such waters; to construct and maintain such canals, slips, turning basins, and channels and upon such terms and conditions as may be required by the United States; and to enact, adopt, and establish by resolution rules and regulations for the complete exercise of jurisdiction and control over all such waters.
- Appoint shipping masters for ports or harbors under its control, to determine their qualifications, and to adopt rules and regulations prescribing their duties.
- License stevedores as independent contractors for hire to handle stevedoring at and in the harbors of the county, to fix the terms and conditions of such licenses, and to determine the fees to be charged for same.
- Make and enter into all contracts and agreements and to do and perform all acts and deeds necessary and incidental to the performance of its duties and the exercise of its powers.
- Fix, regulate, and collect rates and charges for the services and facilities furnished by any project under its control; to establish, limit, and control the use of any project as may be deemed necessary to ensure the proper operation of the project; to impose sanctions to promote and enforce compliances; to prescribe rules and regulations and impose penalties and sanctions to ensure the proper performance of the duties of any stevedore or of any shipping master and the enforcement of any rule or regulation which the county may adopt in the regulation of the ports, harbors, wharves, docks, airports, and other projects under its control.
- Fix the rates of wharfage, dockage, warehousing, storage, and port and terminal charges for the use of the port and harbor facilities located within or without the county and owned or operated by the county; and to fix and determine the rates, tolls, and other charges for the use of harbor and airport improvements and harbor and airport facilities located within or without the county insofar as it may do so under the State Constitution and the Constitution and laws of the United States.
- Regulate the operation, docking, storing, and conduct of all watercraft of any kind plying or using the waterways within the county and of all aircraft of any kind operating over and within the county or utilizing any other area, field, location, or place within the county for air navigation purposes or for the repair, storage, or handling of aircraft within the county.
- Receive and accept, from any federal agency, grants for or in aid of the construction, improvement, or operation of any project and to receive and accept contributions from any source of either money, property, labor, or other things of value.
- Make any and all applications required by the Treasury Department and other departments or agencies of the United States Government as a condition precedent to the establishment within the county of a free port, foreign trade zone, or area for the reception from foreign countries of articles of commerce; to expedite and encourage foreign commerce and the handling, processing, and delivery thereof into foreign commerce free from the payment of custom duties and to enter into any agreements required by such departments or agencies in connection therewith; and to make like applications and agreements with respect to the establishment within the county of one or more bonded warehouses.
- Enter into any contract with the government of the United States or any agency thereof which may be necessary in order to procure assistance, appropriations, and aid for the deepening, widening, and extending of channels and turning basins, the building and construction of public

[148] S. 125.011(2)(a), F.S., defines "project" as one or more of the following: "harbor, port, shipping, and airport facilities of all kinds and includes, but is not limited to, harbors, channels, turning basins, anchorage areas, jetties, breakwaters, waterways, canals, locks, tidal basins, wharves, docks, piers, slips, bulkheads, public landings, warehouses, terminals, refrigerating and cold storage plants, railroads and motor terminals for passengers and freight, rolling stock, car ferries, boats, conveyors and appliances of all kinds for the handling, storage, inspection and transportation of freight and the handling of passenger traffic, … and the loading and unloading and handling of passengers, mail, express and freight;"

mass transit facilities, airport and airport facilities, slips, wharves, breakwaters, jetties, bulkheads, and any and all other harbor and air navigation improvements and facilities.

- Make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and estimates of cost and revenues as it may deem necessary and to prepare and adopt a comprehensive plan or plans for the location, construction, improvement, and development of any project.
- Grant exclusive or nonexclusive franchises to persons, firms, or corporations for the operating of restaurants, cafeterias, bars, taxicabs, vending machines, and other concessions of a nonaeronautical nature in, on, and in connection with any project owned and operated by the county.
- Adopt and promulgate suitable rules, regulations, and directions for the operation and conduct of any project owned or operated by the county and for the use of any such project and any facility connected therewith by others.
- Enter into contracts with utility companies or others for the supplying by such utility companies or others of water, electricity, or telephone service to or in connection with any project.
- Own, maintain, operate, and control export trading companies, foreign sales corporations, and consulting services corporations as provided by the laws of the United States or this state; to enter into management contracts with such corporations or companies established for the purpose of providing or operating such facilities; to own, maintain, operate, and control cargo clearance centers and customs clearance facilities, and to enter into management contracts with corporations established for the purpose of providing or operating such facilities; to maintain the confidentiality of trade information and data pursuant to the patent or copyright laws of the United States, pursuant to the patent or copyright laws of foreign nations to the extent that same are enforced by the courts of the United States, and pursuant to the trade secrets doctrine; and to authorize airport and port employees to serve as officers and directors of export trading companies, foreign sales corporations, customs and cargo clearance corporations, and consulting services corporations for the sale of services to others. Counties are hereby authorized to expend any unobligated and available surplus funds from the activities authorized in this subsection for the construction of capital facilities.

State Freight Logistics Zones and the Intermodal Logistics Center Infrastructure Support Program

Counties may designate geographic areas as freight logistics zones.[149] A freight logistics zone is a grouping of activities and infrastructure associated with freight transportation and related services within a defined area around an intermodal logistics center. The Intermodal Logistics Center Infrastructure Support Program is designed to provide DOT funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport and allow the state to respond to private sector market demands and meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities.

Passenger Transportation Fees and For-Hire Vehicles

A seaport may charge reasonable fees to for-hire vehicles for their use of the airport's or seaport's facilities as well as designate locations for staging, pickup, or other similar operations at the seaport.[150]

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.[151]

[149] S. 311.103, F.S.

[150] Ss. 316.85(6) and 627.748(17)(b), F.S.

[151] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009). Historically, certain types of local action have been found to frustrate the purpose of state law, and, thus, conflict has resulted. Specifically, Florida jurisprudence makes clear that local action cannot 1) provide for more stringent regulation than the state legislation in violation of the express wording of the statute; 2) provide for a more stringent penalty than that allowed by state statute; 3) prohibit behavior otherwise allowed by state

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[152] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[153] In cases where the Legislature expressly or specifically preempts a field, there is no problem with ascertaining what the Legislature intended.[154] In cases determining the validity of ordinances enacted in a field preempted by the state, the effect has been to find such ordinances null and void.[155]

Key West Ordinance
On November 3, 2020, voters adopted three charter amendments to the City Charter for the City of Key West.[156] The amendments:

- Limit the number of persons disembarking from cruise ships to a total of not more than 1,500 persons per day at any and all public and privately owned or leased property located within the municipal boundary of the City of Key West.
- Prohibit cruise ships with a capacity of 1,300 or more persons (passengers and crew) from disembarking individuals at any and all public and privately owned or leased property located within the municipal boundary of the City of Key West.
- Give preference and priority to cruise ships and cruise lines that have the best record (the lowest number of environmental violations, penalties and fines) and best health record (the best scores and least number of violations in health inspections and reports issued by the Center for Disease Control Vessel Sanitation Program).

Effect of the Bill
The bill creates s. 311.25, F.S., to provide that a local ballot initiative or referendum may not restrict maritime commerce[157] in any port that has received or is eligible to receive state funding under ch. 311, F.S., including, but not limited to restricting such commerce based on any of the following:

- Vessel type, size, number or capacity;
- Source, type, loading, or unloading of cargo;
- Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into Florida or a local jurisdiction; or
- Environmental or health records of a particular vessel or vessel line.

Any local ballot initiative or referendum that conflicts with this provision, and that was adopted before, on, or after July 1, 2021, and any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in such an initiative or referendum, is prohibited, void, and expressly preempted to the state.

The bill specifies that if any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

Greater Miami Expressway Agency Board

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legislation; 4) allow behavior otherwise prohibited by state statute; or 5) provide for a different method for doing a particular act than the method proscribed by state legislation. Generally, a local government can pass more stringent regulations than those provided for by statute. However, if the state legislation expressly forbids a stricter regulation or if the imposition of a stricter regulation frustrates the purpose of the statute, the local government must abstain.

[152] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

[153] *Mulligan*, 934 So. 2d at 1243.

[154] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

[155] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).

[156] City of Key West, *Code of Ordinances*, Charter Amendment of 11-16-2020, https://library.municode.com/fl/key_west/ordinances/code_of_ordinances?nodeId=1052747 (last visited Feb. 28, 2021).

[157] "Commerce" means "an interchange of goods or commodities, especially on a large scale between different countries (foreign commerce) or between different parts of the same country (domestic commerce); trade; business." https://www.dictionary.com/browse/commerce (last visited Mar. 1, 2021).

Current Situation

In 2019, the Legislature dissolved the Miami-Dade County Expressway Authority (MDX) and in its place, established the Greater Miami Expressway Agency (GMX) in Miami-Dade County.[158] GMX's board is comprised of the following nine members:

- Three members appointed by the Governor;
- Two members, who must be residents of unincorporated portions of the county and reside within 15 miles of an area with the highest amount of GMX toll roads, appointed by the Miami-Dade County Board of County Commissioners.
- Three members, who must be residents of incorporated municipalities within Miami-Dade County, appointed by the Metropolitan Planning Organization (MPO) for Miami-Dade County.
- The DOT district secretary serving the district containing Miami-Dade County serves as an ex officio voting member.[159]

For the initial board appointments, the Governor must appoint one member for a term of two years, one member for a term of three years, and one member for a term of four years. The Miami-Dade County Board of County Commissioners must appoint one member for a term of one year and one member for a term of three years. The MPO must appoint one member for a term of one year, one member for a term of two years, and one member for a term of four years.[160]

Following the passage of the 2019 legislation, and prior to the bill being signed by the Governor, MDX filed a complaint seeking a declaration that the Act and several existing related statutes violated the home rule authority of Miami-Dade County[161] and unconstitutionally impaired its contracts. DOT sought summary judgment asserting that MDX lacked standing to bring the particular causes of action stated in its complaint and that it lacked standing to sue. The trial court held that MDX had standing and granted partial summary judgment in favor of MDX as to count 1 of its complaint. On count 1, MDX sought a declaration that the Greater Miami Expressway Agency Act was an unconstitutional local law which violated Miami-Dade County's home rule authority.[162]

On March 31, 2021, the First District Court of Appeals opined that MDX lacks standing, and reversed the trial court's partial final judgment granting the Expressway Authority's motion for summary judgment on count 1 and directed the trial court to dismiss the complaint because all MDXs claims purport to challenge the constitutionality of related state statutes duly enacted by the Legislature, which is barred by the public official standing doctrine.[163] A motion for rehearing, rehearing en banc, and certification of a question of great public importance was denied by the First District Court of Appeals on May 17, 2021.[164]

In April 2021, GMX's board held its first meeting. As of April 6, 2021, only the DOT district secretary and the three Governor Appointees had been appointed,[165] resulting in a potential quorum problem.

Effect of the Bill

The bill amends GMX's board to provide for appointments as follows:

- Four members appointed by the Governor, one of whom must be a member of Miami-Dade County's MPO.

[158] Ch. 2019-169, Laws of Fla.
[159] S. 348.0304(2)(a), F.S.
[160] S. 348.0304(2)(b), F.S.
[161] Miami-Dade County's Home Rule Authoirty is codified in Art. VIII, s.6 of the Florida Constitution.
[162] *State of Florida Department of Transportation v. Miami-Dade County Expressway Authority and Florida House of Representatives*, Case No. 1D19-3653, at 2. (Fla. 1st DCA, March 31, 2021).
[163] *Id.* at 5.
[164] *State of Florida Department of Transportation v. Miami-Dade County Expressway Authority and Florida House of Representatives*, Case No. 1D19-3653. (Fla. 1st DCA, May 17, 20201.
[165] Jesse Scheckner, *Successors to Miami-Dade Expressway Authority move to organize,* Miami-Today, April 6, 2021,

- Two members, who must be residents of unincorporated portions of the county and reside within 15 miles of an area with the highest amount of GMX toll roads, appointed by the Miami-Dade County Board of County Commissioners.
- Two members, who must be residents of incorporated municipalities within Miami-Dade County, appointed by the MPO for Miami-Dade County.
- The DOT district secretary serving the district containing Miami-Dade County serves as an ex officio voting member.

For the initial board appointments, the bill provides that the Governor must appoint one member for a term of one year, one member for a term of two years, one member for a term of three years, and one member for a term of four years. The Miami-Dade County Board of County Commissioners must appoint one member for a term of one year and one member for a term of three years. The MPO must appoint one member for a term of two years, and one member for a term of four years.

Central Florida Expressway Authority

Current Situation

Central Florida Expressway Authority
Chapter 348, Part III, F.S., creates the Central Florida Expressway Authority (CFX).[166] CFX may acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the Central Florida Expressway System within the geographical boundaries of Orange, Seminole, Lake, Brevard, and Osceola Counties.[167] However, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by DOT, CFX may not, without the prior consent of the secretary of DOT, construct any extensions, additions, or improvements to the expressway system in Lake County.[168]

CFX operates a series of expressways in Central Florida including the East-West Expressway (SR 408), the Apopka Expressway (SR 414), the Central Florida Greenway (SR 417) and the Beachline Expressway (SR 528).[169]

Wekiva Parkway
The Wekiva Parkway (SR 429) is a cooperative effort between DOT, CFX, and the Florida Turnpike Enterprise.[170] The Wekiva Parkway will connect to the Central Florida Greenway (SR 417), completing the beltway around Central Florida, while helping to protect the natural resources surrounding the Wekiva River. This estimated $1.6 billion project includes $500 million of non-toll road improvements including:
- Widening seven miles of SR 46 in Lake and Seminole Counties;
- Rebuilding the US 441/SR 46 interchange in Mount Dora;
- Shifting the CR 46A connection to SR 46 so wildlife can more safely move between habitats;
- Providing non-tolled, one-lane service roads parallel to the parkway in part of east Lake and Seminole Counties; and
- Building a 10-mile, multi-use trail along portions of the parkway in Lake and Seminole Counties.

In 2020, 13 miles of the parkway were open to traffic, and some of the non-tolled, roadway improvements had been made. The entire parkway is scheduled to be open to traffic in 2023.[171]

[166] S. 348.753(1), F.S. CFX was previously known as the Orland-Orange County Expressway Authority. https://www.miamitodaynews.com/2021/04/06/successors-to-miami-dade-expressway-authority-move-to-organize/ (Last visited May 24, 2021).
[167] S. 248.754(1)(a), F.S.
[168] S. 348.754(1)(c), F.S.
[169] CFX, https://www.cfxway.com/ (last visited Feb. 17, 2021).
[170] The Florida Turnpike Enterprise is part of DOT and operates Florida's turnpike system.
[171] Wekiva Parkway, http://www.wekivaparkway.com/ (last visited Feb. 17, 2021).

Effect of the Bill
The bill amends CFX's purposes and powers as it relates to obtaining consent from the secretary of DOT to construct any extensions, additions, or improvements to the expressway system in Lake County. The bill changes the requirement to obtain consent from the secretary of DOT to a requirement that CFX consult with the secretary of DOT prior to constructing any extensions, additions, or improvements to the expressway system in Lake County.

Jacksonville Transportation Authority Leases

Current Situation
The Jacksonville Transportation Authority (JTA) is a body politic and corporate and an agency of the state.[172] JTA designs and constructs bridges and highways and provides varied mass transit services, including express and regular bus service, a downtown Skyway monorail, the St. Johns River Ferry, the Gameday Xpress for various sporting events, paratransit for the disabled and elderly, and ride request on-demand services.[173]

Currently, JTA has the authority to enter into and make leases for terms not exceeding 40 years, as either lessee or lessor, in order to carry out the right to lease as set forth in Ch. 349, F.S.[174]

While JTA is authorized to enter into 40-year leases, the Central Florida Expressway Authority is authorized to enter into leases not exceeding 99 years.[175] Additionally, DOT is authorized to enter into 99-year leases for the use of DOT property, including rights-of-way, for certain purposes.[176] Statutes creating other transportation authorities are silent on the terms of these leases.

Effect of the Bill
The bill changes JTA's 40 year limit on leases to 99 years, which is consistent with that authorized for the Central Florida Expressway Authority and DOT.

Outdoor Advertising

Current Situation
Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-aid Primary, Interstate, and National Highway System roads. The HBA allows the location of billboards in commercial or industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.[177]

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations and a 1972 agreement between the state and FHWA. Chapter 479, F.S. expressly provides that its provisions do not supersede the rights and powers of counties and municipalities to enact outdoor advertising or sign ordinances.[178]

Florida law prohibits a person from engaging in the business of outdoor advertising without first obtaining a license from DOT. Except as otherwise provided, a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System

[172] S. 349.03(1), F.S.
[173] JTA Website, https://www.jtafla.com/about-jta/ (last visited Jan. 14, 2021).
[174] S. 349.04(2)(d), F.S.
[175] S. 348.754(1)(d), F.S.
[176] S. 337.251, F.S.
[177] Pub. L. 89-285.
[178] S. 479.155, F.S.

outside an urban area, or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from DOT and paying the required annual fee.[179]

Prior to erecting a sign, one must have obtained an outdoor advertising license and have been issued a permit for the specific sign. Once the permit has been issued, DOT must furnish to a permittee a serially numbered, permanent metal permit tag which the permittee is responsible for maintaining on each permitted sign facing at all times. The tag must be securely attached to the upper 50 percent of the sign structure in such a manner as to be plainly visible from the main traveled way. The tag must be properly and permanently displayed at the permitted site within 30 days after the date of permit issuance and, if the permittee fails to erect a completed sign on the permitted site within 270 days after the date of permit issuance, the permit becomes void. DOT may not issue a new permit to that permittee for the same locations for 270 days after the date on which the permit becomes void. Current law also provides for DOT issuance of a replacement tag in the event a permit tag is lost, stolen, or destroyed. Permits tags that are not renewed must be returned to DOT for cancellation by the expiration date. Permits that are not renewed or are canceled must be certified in writing as canceled or not renewed by the permittee, and permit tags for such permits must be returned to DOT or accounted for in writing by the permittee.[180]

Effect of the Bill

The bill requires DOT, as soon as practicable, to create and implement a publicly accessible electronic database which includes permit details for each permit issued by DOT. The details in the database must include at a minimum the:

- Name and contact information of the permit operator,
- Structure identification number or numbers,
- Panel or face identification number or numbers,
- Latitude and longitude of the permitted sign,
- Compass bearing, and
- Most recent date DOT visually inspected the permitted sign.

Additionally, the database must also include images of the permitted sign once constructed.

Upon implementation of the database, DOT may not:

- Furnish permanent metal permit tags or replacement tags to permittees, or
- Enforce specified provisions of current law relating to permanent metal permit tags or replacement tags.

In addition, permittees are not then required to return permit tags to DOT, as currently required by law.

Effective Date

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[179] S 479.04, F.S; However, a person is not required to obtain the license to erect outdoor advertising signs or structures as an incidental part of a building construction contract.
[180] S. 479.07, F.S.

The bill requires and increases hourly compensation for members of the State Arbitration Board from $150 to $200, and increases the daily maximum compensation from $1,000 to $1,500 per member. However, both current law and the bill require parties bringing arbitrations to the board to pay filing fees, based on the amount of the dispute, to defray the costs of operating the board. However, the filing fees do not increase, and it is unknown if they will cover the increased cost of the board.

DOT may incur expenditures associated with creating a digital database of outdoor advertising permits. However, this impact is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments operating airports may see a reduction in expenditures due to the exemption from the construction, engineering, and inspection requirements in the bill. However, the cost savings are associated with specific projects; therefore, this reduction in expenditures is indeterminate.

Local governments that are members of the MPO in Miami-Dade County may again be assessed fees for membership in the MPO.

The bill will reduce TBARTA's expenditures, as TBARTA will no longer be required to staff the Chair's Coordinating Committee.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The ability for JTA to enter into leases with a term of up to 99 years may make it more attractive for private entities to enter into leases with JTA.

D. FISCAL COMMENTS:

None.