

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1305 Department of Transportation

**SPONSOR(S):** Infrastructure Strategies Committee, Infrastructure & Tourism Appropriations Subcommittee, Transportation & Modals Subcommittee, Abbott

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	13 Y, 0 N, As CS	Johnson	Hinshelwood
2) Infrastructure & Tourism Appropriations Subcommittee	15 Y, 0 N, As CS	Hicks	Davis
3) Infrastructure Strategies Committee	19 Y, 0 N, As CS	Johnson	Harrington

### SUMMARY ANALYSIS

The bill relates to the Department of Transportation (DOT). The bill:

- Increases the maximum debt service coverage level for the State Transportation Trust Fund from \$350 million to \$425 million.
- Increases the term from 12 years to 18 years for state bonds for federal aid highway construction.
- Authorizes the Florida Development Finance Corporation to finance certain DOT-related public-private partnership projects.
- Authorizes installation of automated license plate recognition systems within the rights-of-way of the State Highway System, at DOT's discretion, when installed at the request of a law enforcement agency for the purpose of collecting active criminal intelligence or investigative information.
- Provides that DOT may not, when granting airport site approval, require a written memorandum of understanding or letter of agreement with other airport sites regarding air traffic pattern separation procedures unless it is required by the Federal Aviation Administration or is deemed necessary by DOT.
- Authorizes DOT to acquire promotional items and materials to promote electric vehicle use and charging stations and autonomous vehicles.
- Authorizes DOT, at its discretion, to expend funds for training, testing, and licensing for full-time DOT employees who are required to have a valid Class A or Class B commercial driver license as a condition of employment with DOT.
- Increases from \$120 million to \$200 million the cap on innovative contracts that DOT may annually award.
- Increases DOT's contracting cap where it is not required to receive competitive bids in certain circumstances from \$250,000 to \$500,000.
- Expands the potential use of phased design-build by DOT.
- Requires a public transit provider's transportation development plan to be consistent, to the maximum extent feasible, with the long-range transportation plan of the local metropolitan planning organization.
- Removes the requirement that each public transit provider's productivity and performance report specifically address potential enhancements to productivity and performance that would have the effect of increasing the farebox recovery ratio.
- Requires public transit providers to publish productivity and performance information on its website, instead of in the local newspaper.
- Transfers the Santa Rosa Bay Bridge Authority's bridge system to DOT and authorizes DOT to transfer it to the Florida Turnpike Enterprise.
- Repeals the Santa Rosa Bay Bridge Authority in statute.

The bill has an indeterminate fiscal impact on the state and local governments and the private sector.

The bill has an effective date of July 1, 2023, except as otherwise provided in the bill.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

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

##### Current Situation

The Department of Transportation (DOT) is authorized to issue Right-of-Way Acquisition and Bridge Construction bonds to finance or refinance the cost of acquiring real property for state roads or the cost of state bridge construction. Except for bonds issued to refinance previously issued bonds, bonds must be authorized by the Legislature and must be issued pursuant to the State Bond Act.<sup>1,2</sup>

Section 206.46, F.S., authorizes DOT to transfer up to seven percent of the revenues deposited into the State Transportation Trust Fund (STTF) in each fiscal year to the Right-of-Way Acquisition and Bridge Construction Trust Fund, to meet the requirements of outstanding or proposed bond obligations. Notwithstanding this authorized annual transfer, the annual amount transferred may not exceed an amount necessary to provide the required debt service coverage levels for a maximum debt service of \$350 million,<sup>3</sup> which was most recently increased from \$275 million to \$350 million in 2021.<sup>4</sup>

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

##### Effect of the Bill

The bill increases the maximum debt service from the STTF from \$350 million to \$425 million. Therefore, in effect, debt service may not exceed seven percent of the revenues deposited into the STTF or \$425 million, whichever is less. The increase of the debt service cap will provide DOT with additional bonding capacity, offering it more flexibility in financing certain projects.

#### **Grant Anticipation Revenue Vehicles (GARVEE)**

##### Current Situation

Generally, a Grant Anticipation Revenue Vehicle (GARVEE) is a type of anticipation vehicle, which are securities issued when moneys are anticipated from a specific source to advance the upfront funding of a particular need. For transportation finance, the anticipation vehicles' revenue source is expected federal-aid grants.<sup>5</sup>

Specific to highways, a GARVEE is a debt instrument that has a pledge of future federal-aid funding. Significantly, it is authorized for federal reimbursement of debt service and related financing costs. Therefore, states can receive federal-aid reimbursements for a wide array of debt-related costs incurred in connection with an eligible debt financing instrument, such as a bond, note, certificate, mortgage, or lease; the proceeds of which are used to fund a project eligible for assistance. Each of these instruments is considered a GARVEE when backed by future federal-aid highway funding, but most frequently, a bond is the debt instrument used. Specifically, debt financing instrument-related costs eligible for federal-aid reimbursement include interest payments, retirement of principal, and any

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<sup>1</sup> The State Bond Act is codified in ss. 215.57-215.83, F.S.

<sup>2</sup> S. 215.605, F.S.

<sup>3</sup> S. 206.46(2), F.S.

<sup>4</sup> Ch. 2021-186, Laws of Fla.

<sup>5</sup> Federal Highway Administration, *Grant Anticipation Revenue Vehicles (GARVEEs)*,

[https://www.fhwa.dot.gov/ipd/finance/tools\\_programs/federal\\_debt\\_financing/garvees/](https://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_debt_financing/garvees/) (last visited Apr. 15, 2023).

other cost incidental to the sale of an eligible debt issue. The issuer may be a state, political subdivision, or a public authority.<sup>6</sup>

GARVEEs enable a state to accelerate construction timelines and spread the cost of a transportation facility over its useful life rather than just the construction period. The use of GARVEEs expands access to capital markets as an alternative or in addition to potential general obligation or revenue bonding capabilities. The upfront monetization benefit of these techniques needs to be weighed against consuming a portion of future years' receivables to pay debt service. This approach is appropriate for large, long-lived, non-revenue generating assets.<sup>7</sup>

### *Florida Law*

Under s. 212.616, F.S., upon DOT's request, the Division of Bond Finance<sup>8</sup> is authorized pursuant to s. 11, Art. VII of the State Constitution<sup>9</sup> and the State Bond Act<sup>10</sup> to issue revenue bonds, for and on behalf of DOT, for the purpose of financing or refinancing the construction, reconstruction, and improvement of projects that are eligible to receive federal-aid highway funds. The Division of Bond Finance is authorized to consider innovative financing technologies which may include, but are not limited to, innovative bidding and structures of potential financings that may result in negotiated transactions.<sup>11</sup>

Any bonds issued are payable primarily from a prior and superior claim on all federal highway aid reimbursements received each year with respect to federal-aid projects undertaken in accordance with federal law.<sup>12</sup>

The term of the bonds may not exceed a term of 12 years. Prior to the issuance of bonds, DOT must determine that annual debt service on all bonds issued pursuant to s. 212.616, F.S., does not exceed 10 percent of annual apportionments to DOT for federal highway aid in accordance with federal law.<sup>13</sup>

### Effect of the Bill

The bill increases from 12 years to 18 years the maximum term for GARVEE Bonds. This will give DOT additional flexibility in financing transportation projects. However, DOT will still be required to go through the Division of Bond Finance in order to issue these bonds.

## **Florida Development Finance Corporation - Issuance of Revenue Bonds**

### Current Situation

Generally, a private activity bond (PAB) is a tax-exempt security issued by or on behalf of a local or state government for the purpose of extending special financing benefits for qualified projects. PABs finance projects for a private user, and the governmental issuer's credit usually isn't pledged, but PABs provide a public benefit as well. They are used to attract private investments for projects "that have public or common utility," and result in increased spending on infrastructure."<sup>14</sup>

The federal government controls the amount of PABs that are permitted to be issued in each state. Chapter 159, part VI, F. S., establishes statewide procedures for allocating Florida's share of PABs.

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

<sup>7</sup> *Id.*

<sup>8</sup> The Division of Bond Finance is part of the State Board of Administration.

<sup>9</sup> Section 11, Art. VII of the State Constitution relates to state bonds and revenue bonds. Subsection (f) requires each project, building, or facility to be financed or refinanced with revenue bonds to be first approved by the Legislature by and act relating to appropriations or by general law.

<sup>10</sup> Ss. 215.57-215.83, F.S.

<sup>11</sup> S. 215.616(1), F.S.

<sup>12</sup> S. 212.616(2), F.S. *See also* Title 23 of the United States Code.

<sup>13</sup> S. 215.616(3), F.S.

<sup>14</sup> *See* MunicipalBonds.com, *Understanding Private Activity Bonds*, <https://www.municipalbonds.com/education/understanding-private-activity-bonds/> (last visited Mar. 22, 2023).

Such allocation is statutorily referred to as the allocation of state volume limitation (section 159.804, F.S.). The Division of Bond Finance is responsible for annually determining the amount of the PABs permitted for statewide allocation under the 1986 Internal Revenue Code, as amended. Generally, “traditional” road and bridge projects are not qualified under state private activity volume caps, but there is a private activity volume cap available at the federal level for such transportation projects, which was recently increased from \$15 to \$30 billion.

According to the United State Department of Transportation:

Section 11143 of Title XI of SAFETEA-LU amended Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which PABs may be issued. This change allowed private activity on these types of projects, while maintaining the tax-exempt status of the bonds. The law limited the total amount of the bonds to \$15 billion and directed the Secretary of Transportation to allocate this amount among qualified facilities. The Infrastructure Investment and Jobs Act signed into law on November 15, 2021, increased the available PAB authority from \$15 billion to \$30 billion. Passage of the PAB legislation reflects the federal government's desire to increase private sector investment in U.S. transportation infrastructure. Providing private developers and operators with access to tax-exempt interest rates lowers the cost of capital significantly, enhancing investment prospects. Increasing the involvement of private investors in highway and freight projects generates new sources of money, ideas, and efficiency. The \$30 billion in exempt facility bonds is not subject to the state volume caps.<sup>15</sup>

### *Florida Development Finance Corporation*

In Florida, access to PABs is provided by the Florida Development Finance Corporation (FDFC),<sup>16</sup> the “conduit issuer” of PABs, with the power to function within the corporate limits of any public agency with which it has entered into an interlocal agreement. The FDFC issues the bonds, which are purchased by a bank or investor(s). The proceeds from the sale are then loaned to finance capital projects. The interest received by the investor, if specific criteria are met, is exempt from federal income tax.<sup>17</sup>

The proceeds of any FDFC bonds may not be used to acquire any building or facility that will be, during the pendency of the financing, used by, occupied by, leased to, or paid for by any state, county, or municipal agency or entity.<sup>18</sup>

However, s. 288.9606(6), F.S., authorizes the FDFC in its corporate capacity may, without authorization from a public agency, issue revenue bonds or other evidence of indebtedness to:

- Finance the undertaking of any project within the state that promotes renewable energy;
- Finance the undertaking of any project within the state that is a project contemplated or allowed under section 406 of the American Recovery and Reinvestment Act of 2009;<sup>19</sup> or
- If permitted by federal law, finance qualifying improvement projects under s. 163.08, F.S.<sup>20</sup>

### *DOT Public-Private Partnerships*

Section 334.30, F.S., authorizes DOT to enter into public-private partnership agreements for the building, operation, ownership, or financing of transportation facilities. Legislative approval of such projects is evidenced by approval of the project in DOT's work program.<sup>21</sup> According to DOT:

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<sup>15</sup> See [transportation.gov, Private Activity Bonds](https://www.transportation.gov/buildamerica/financing/private-activity-bonds), <https://www.transportation.gov/buildamerica/financing/private-activity-bonds> (last visited Mar. 22, 2023).

<sup>16</sup> The Florida Development Finance Corporation is created in section 288.9604, F.S.

<sup>17</sup> See [Municipalbonds.com Understanding Private Activity Bonds](https://www.municipalbonds.com/education/understanding-private-activity-bonds/), <https://www.municipalbonds.com/education/understanding-private-activity-bonds/> (last visited Mar., 22, 2023).

<sup>18</sup> S. 288.9606(6), F.S.

<sup>19</sup> Pub. L. 111-5

<sup>20</sup> See section 163.08(2)(b), F.S., for a listing of such improvements.

<sup>21</sup> Section 334.30(1), F.S.

A Public-Private Partnership (P3) is a contractual agreement between a public agency (federal, state, or local) and a private sector entity. Through this agreement, the skills and assets of the public agency and the private sector entity are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risk and reward potential in the delivery of the service or facility.<sup>22</sup>

Examples of DOT's P3 projects include the I-4 Ultimate and the Port Miami Tunnel.<sup>23</sup>

### Effect of the Bill

The bill amends s. 288.9606, F.S., relating to the issuance of revenue bonds by FDFC, providing that s. 288.9606(6), F.S., does not prohibit the use of proceeds of FDFC revenue bonds for purposes of financing the acquisition or construction of a transportation facility under a P3 agreement authorized for DOT.

The bill also authorizes FDFC to finance the costs of acquisition or construction of a transportation facility by a private entity or consortium of private entities under a P3 agreement authorized for DOT.

## **Automated License Plate Recognition Systems/State Highway System**

### Present Situation

An automated license plate recognition system (ALPRS) is a system of mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.<sup>24</sup> Data obtained from an ALPRS is generally used to check license plates against law enforcement hot lists. Hot lists contain a list of stolen plates and vehicles entered into the National Crime Information Center database, the Florida Crime Information Center database, Driver and Vehicle Information Database, and any information entered manually by the operating member. Examples of manual entries include, but are not limited to: attempt to locate; AMBER/SILVER alerts, child abductions, missing or wanted persons, and registered sexual predators.<sup>25</sup>

Florida law requires the Department of State in consultation with the Department of Law Enforcement to establish a retention schedule, including a maximum period that records may be retained, for records containing images and data generated through the use of an ALPRS.<sup>26</sup>

The Department of State specifies the retention of license plate recognition records: "Retain until obsolete, superseded, or administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series."<sup>27</sup>

Images and data containing or providing personal identifying information held by an agency and obtained by an ALPRS, as well as personal identifying information derived from ALPRS data or images is confidential and exempt from public record requirements.<sup>28</sup> Such information may be disclosed under the following conditions:

- By or to a criminal justice agency<sup>29</sup> in performance of the agency's official duties.

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<sup>22</sup> DOT, *Public-Private Partnerships*, <https://www.fdot.gov/comptroller/pfo/p3.shtm> (last visited Mar. 19, 2023).

<sup>23</sup> DOT, *Florida Department of Transportation, Public-Private Partnership Projects*, [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/comptroller/pfo/p3-summary.pdf?sfvrsn=6db86d82\\_4](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/comptroller/pfo/p3-summary.pdf?sfvrsn=6db86d82_4) (last visited Mar. 19, 2023).

<sup>24</sup> S. 316.0778(1), F.S.

<sup>25</sup> Department of Highway Safety and Motor Vehicles' "Florida Highway Patrol Policy Manual" on ALPRS available at: <https://www.flhsmv.gov/pdf/fhp/policies/1725.pdf> (last visited Mar. 24, 2023).

<sup>26</sup> S. 316.0778(2), F.S.

<sup>27</sup> Florida Department of State, General Records Schedule GS2 for Law Enforcement, Correctional Facilities and District Medical Examiners, Effective: February 2021, <https://fldoswebumbracoprod.blob.core.windows.net/media/703921/g2-2021-final.pdf> (last visited Mar. 24, 2023).

<sup>28</sup> S. 316.0777(2), F.S.

<sup>29</sup> Section 119.011(4), F.S., defines the term "criminal justice agency" to mean any law enforcement agency, court, or prosecutor; Any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal

- To a license plate registrant requesting his or her own information, unless such information constitutes active criminal intelligence information or active criminal investigative information.

### Effect of the Bill

The bill creates s. 316.0777(2), F.S., defining the term “law enforcement agency” for purposes of this subsection to mean an agency that has a primary mission of preventing and detecting crime and enforcing the state penal, criminal, traffic, and motor vehicle laws and in furtherance of that mission employs law enforcement officers.<sup>30</sup>

The bill authorizes, at DOT’s discretion, the installation of ALPRSs within the right-of-way of a road on the State Highway System when installed at the request of a law enforcement agency for the purpose of collecting active criminal intelligence information or active criminal investigative information. An ALPRS may not be used to issue a notice of violation for a traffic infraction or a uniform traffic citation. Such installation must be in accordance with DOT-developed placement and installation guidelines and be removed within 30 days after DOT notifies the requesting law enforcement agency that such removal must occur at the sole expense of the requesting agency.

The bill provides that DOT is not liable for any damages caused to any person by the requesting law enforcement agency’s operation of an ALPRS, and prohibits retention of records containing images and data generated through use of an ALPR for longer than the maximum period provided in the applicable retention schedule.

### **DOT Airport Site Approval**

#### Current Situation

DOT is responsible for administering and enforcing ch. 330, F.S., relating to the regulation of aircraft, pilots, and airports, including, but not limited to, establishing requirements for airport site approval, licensure, and registration.<sup>31</sup> With some exception,<sup>32</sup> the owner or lessee of any proposed airport must obtain DOT’s approval of the airport site before site acquisition or construction or establishment of the proposed airport. DOT is required to grant site approval upon satisfaction that:

- The site has adequate area allocated for the airport as proposed.
- The proposed airport will conform to licensing or registration requirements and will comply with applicable local government land development regulations or zoning requirements.
- All affected airports, local governments, and property owners have been notified and any comments submitted by them have been given adequate consideration.
- Safe air-traffic patterns can be established for the proposed airport with all existing airports and approved airport sites in its vicinity.<sup>33</sup>

DOT has adopted rules regarding airport site approval.<sup>34</sup> Rule 14-60.005, F.A.C., lists supporting documentation that must accompany an application for public airport site approval. With respect to air traffic patterns, an applicant must provide written confirmation, including a graphical depiction, demonstrating that safe air traffic patterns can be established for the proposed airport with all existing and approved airport sites within three miles of the proposed airport site. The applicant must provide a

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investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.

<sup>30</sup> Section 943.10(1), F.S., defines the term “law enforcement officer” to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>31</sup> S. 330.30, F.S.

<sup>32</sup> S. 330.30(3), F.S.

<sup>33</sup> S. 330.30(1)(a), F.S.

<sup>34</sup> Ch. 14-60, F.A.C.

copy of a written memorandum of understanding or letter of agreement, signed by each respective party, regarding air traffic pattern separation procedures between the parties representing the proposed airport and any existing airport(s) or approved airport site(s) located within three miles of the proposed site.<sup>35</sup>

### Effect of the Bill

Effective upon the bill becoming a law, the bill creates s. 330.30(1)(d), F.S., providing that for the purpose of granting airport site approval, DOT may not require an applicant to provide a written memorandum of understanding or letter of agreement with other airport sites regarding air traffic pattern separation procedures unless such memorandum or letter is required by the Federal Aviation Administration or is deemed necessary by DOT.

## **DOT Public Information and Educational Campaigns**

### Current Situation

Section 334.044(5), F.S., authorizes DOT to purchase, lease, or otherwise acquire property and materials, including the purchase of promotional items as part of public information and education campaigns for the promotion of scenic highways, traffic and train safety awareness, alternatives to single-occupant vehicle travel, and commercial motor vehicle safety; to purchase, lease, or otherwise acquire equipment and supplies; and to sell, exchange, or otherwise dispose of any property that is no longer needed by DOT.

DOT recently published Florida's Electric Vehicle Infrastructure Deployment Plan,<sup>36</sup> deemed as the "framework for implementing the National Electric Vehicle Infrastructure Program (NEVI) to invest funding for EV infrastructure improvements to address charging gaps identified in the market," which will serve "as a guide for how EV funds will be invested across the state over the five-year timeline of the NEVI program."

The Federal Highway Administration views public engagement activities as enabling "a more inclusive, accessible, and transparent process to gain input from communities," and NEVI funds can be used for public engagement.<sup>37</sup> DOT advises that public engagement activities include "briefings, meetings, venues, social media, interactive displays, kiosks, visual materials, etc."<sup>38</sup> However, DOT does not have state statutory authority to purchase promotional items relating to electric vehicles or electric vehicle charging stations, nor for autonomous vehicles (which may be electrically powered), or context design for each.<sup>39</sup>

According to DOT, context design relates to the various design elements surrounding roads/other infrastructure that will have to be updated to account for these emerging technologies and the respective community's environment and educating the public about these new features. This is applicable to both type of emerging technologies – electric vehicle and autonomous vehicles.

### Effect of the Bill

The bill amends DOT's powers and duties authorizing it to purchase, lease, or otherwise acquire property and materials, including promotional items as part of public information and education campaigns for the promotion of electric vehicle use and charging stations, autonomous vehicles, and context design for electric vehicles and autonomous vehicles.

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<sup>35</sup> R. 14-60.005(5)(j), F.A.C.

<sup>36</sup> See Department of Transportation (DOT), *Florida's Electric Vehicle Infrastructure Deployment Plan*, p. 3, [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/electric-vehicle/florida's-evidp\\_2022-07-29\\_final\\_v2.pdf?sfvrsn=21099b3e\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/policy/electric-vehicle/florida's-evidp_2022-07-29_final_v2.pdf?sfvrsn=21099b3e_2) (last visited Mar. 19, 2023).

<sup>37</sup> See FHWA, *National Electric Vehicle Infrastructure (NEVI) Formula Program Q&A*, pp. 12-13, [https://www.fhwa.dot.gov/environment/alternative\\_fuel\\_corridors/resources/nevi\\_program\\_faqs.pdf](https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/resources/nevi_program_faqs.pdf) (last visited Mar. 23, 2023).

<sup>38</sup> See DOT's responses to Senate committee staff questions, Question 3.(on file with the Transportation & Modals Subcommittee).

<sup>39</sup> According to the DOT, context design relates to the various design needs in different communities as electric vehicle and autonomous vehicle technology continues to evolve. *Id.*, Question 5.

## DOT Employee Commercial Driver Licenses

### Current Situation

DOT notes that truck drivers licensed to drive commercial motor vehicles “are the department’s heaviest need right now. This can also extend to heavy equipment drivers such as bridge snoopers<sup>40</sup> and dump trucks, all of which also require a [commercial driver license] as a condition of employment.”<sup>41</sup>

The 2022 General Appropriations Act contained the following proviso language:

From the funds in Specific Appropriations 1969 and 1995, \$500,000 may be expended for training, testing, and licensing for full-time employees of the Department of Transportation who are required to have a valid Class A<sup>42</sup> or Class B<sup>43</sup> commercial driver license as a condition of employment with the department.<sup>44</sup>

### Effect of the Bill

The bill creates s. 334.044(36), F.S., authorizing DOT, within its discretion, to expend funds for training, testing, and licensing for full-time DOT employees who are required to have a valid Class A or Class B commercial driver license as a condition of employment with the department.

## DOT Rapid Response Contracting Authority

### Current Situation

Under current law, DOT is authorized to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System or the State Park Road System or of any roads placed under its supervision. DOT also has the authority to enter into contracts for the construction and maintenance of rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities.<sup>45</sup>

When DOT determines that it is in the public’s best interest for reasons of public concern, economy, improved operations, or safety, and only when circumstances dictate rapid completion of the work, DOT may enter into contracts for construction and maintenance, up to the amount of \$250,000, without advertising and receiving competitive bids. DOT may enter into such contracts only upon a determination that the work is necessary for one of the following reasons:

- To ensure timely completion of projects or avoidance of undue delay for other projects;
- To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or
- To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.

DOT must make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract. DOT must consider disadvantaged business enterprise participation.

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<sup>40</sup> Bridge snoopers are designed for under-bridge access inspections and bridge maintenance work. See [paxton-mitchell.com](https://paxton-mitchell.com), *The Original Snooper Underbridge Inspection Truck*, for a picture of a snooper, <https://paxton-mitchell.com/category/bridge-inspection-equipment/> (last visited Mar. 19, 2023).

<sup>41</sup> Attachment to e-mail from Brett Tubbs, Legislative Affairs Director, Department of Transportation, RE HB 1305, Initial Questions. (Mar. 10, 2023)

<sup>42</sup> A Class A commercial driver license is for trucks or truck combinations weighing with a Gross Vehicle Weight Rating of 26,001 lbs. or more, provided towed vehicle is more than 10,000 lbs. Department of Highway Safety and Motor Vehicles, *License Classes, Endorsements, and Designations*, <https://www.flhsmv.gov/driver-licenses-id-cards/general-information/license-classes-endorsements-designations/> (last visited Mar. 23, 2023).

<sup>43</sup> A Class B commercial driver license is for straight trucks weighing 26,001 lbs. Gross Vehicle Weight Rating or more. *Id.*

<sup>44</sup> Ch. 2022-156, Laws of Fla. See proviso language to specific appropriation 1969.

<sup>45</sup> S. 337.11(1), F.S.



However, when the work exists within the limits of an existing contract, DOT should make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract.<sup>46</sup>

The maximum dollar threshold was most recently increased in 2017, when it was increased from \$120,000 to \$250,000.<sup>47</sup>

### Effect of the Bill

The bill increases the threshold amount from \$250,000 to \$500,000 when DOT may enter into construction and maintenance contracts without advertising and receiving competitive bids. DOT may only enter into such contracts as provided above.

## **Phased Design-Build and Innovative Contracting**

### Current Situation

Florida law authorizes DOT, if it determines that it is in the public interest, to combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, referred to as a “design-build” contract.<sup>48</sup> DOT must adopt, by rule, procedures for administering design-build contracts. Such procedures must include, but are not limited to:

- Prequalification requirements.
- Public announcement procedures.
- Scope of service requirements.
- Letters of interest requirements.
- Short-listing criteria and procedures.
- Bid proposal requirements.
- Technical review committee.
- Selection and award processes.
- Stipend requirements.<sup>49</sup>

Florida law authorizes DOT to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must be intended to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include 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.<sup>50</sup>

To the maximum extent practical, DOT must use existing processes to award and administer construction and maintenance contracts.<sup>51</sup>

DOT’s authority for utilizing innovative techniques is limited to \$120 million annually for the purposes of contracting for innovative transportation projects. The \$120 million annual cap does not apply to:

- Turnpike Enterprise projects, and
- Low-bid design-build milling and resurfacing contracts.<sup>52</sup>

According to the Design-Build Institute of America (DBIA), design-build projects enable the project owner to manage only one contract, with the designer and contractor working together from the

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<sup>46</sup> S. 337.11(6)(c), F.S.

<sup>47</sup> Ch. 2017-196, Laws of Fla.

<sup>48</sup> S. 337.11(7)(a), F.S.

<sup>49</sup> S. 337.11(7)(b), F.S.

<sup>50</sup> S. 337.025(1), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> S. 337.025(2), F.S.

beginning and providing consensus project recommendations to fit the owner's schedule and budget. The entire team addresses any necessary changes, which leads "to collaborative problem-solving and innovation...." This method of project delivery, the DBIA asserts, creates an inherent "culture of collaboration."<sup>53</sup> As described by the DBIA, the "progressive" or "phased" type of design-build contract "uses a qualifications-based or best value selection, followed by a process whereby the owner then 'progresses' towards a design and contract price with the team."<sup>54</sup>

## Effect of the Bill

The bill increases the limit on DOT's authority for utilizing innovative techniques from \$120 million to \$200 million annually. The bill also adds design-build contracts, but not phased design-build contracts, to the exceptions to the \$200 million in annual innovative contracting.

The bill provides that if DOT determines that it is in the best interests of the public, it may combine the design and construction phases of a project fully funded in its work program into a single contract and select the design-build firm in the early stages of a project to ensure that the design-build firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. Such a contract is referred to as a phased design-build contract.

For phased design-build contracts, selection and award includes a two-phase process. For phase one, DOT competitively awards the contract to a design-build firm based upon qualifications. For phase two, the design-build firm competitively bids construction trade subcontractor packages and, based upon these bids, negotiates with DOT a fixed firm price or guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

The bill adds phased design-build contracts to an existing provision relating to design build contracts providing that both types of contracts may be advertised and awarded notwithstanding the requirements of s. 337.11(3)(c), F.S. However, construction activities may not begin on any portion of such projects for which DOT has not yet obtained title to the necessary rights-of-way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed. Title to rights-of-way is deemed to have vested in the state when the title has been dedicated to the public or acquired by prescription.

The bill adds phased design-build contracts to DOT's rulemaking requirements for design-build contracts and requires DOT to receive at least three letters of interest to proceed with a phased design-build proposal, which is the same for the existing design-build proposal.

## **Public Transit Development**

### Current Situation

#### *Public Transit Block Grants*

The federal Surface Transportation Block Grant Program apportions funding for each state<sup>55</sup> that may be used by states and localities for projects to preserve and improve the conditions and performance on any Federal-aid highway, bridge, and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects,<sup>56</sup> including intercity bus terminals.<sup>57</sup> DOT and local

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<sup>53</sup> See DBIA, *What is Design-Build*, available at <https://dbia.org/what-is-design-build/> (last visited Apr. 16, 2023).

<sup>54</sup> See DBIA, *Progressive Design-Build, Design-Build Procured with a Progressive Design and Price*, at p. 3, available at <https://dbia.org/wp-content/uploads/2018/05/Primer-Progressive-Design-Build.pdf> (last visited Apr. 16, 2023).

<sup>55</sup> See the Surface Transportation Block Grant Fact Sheet <https://www.fhwa.dot.gov/bipartisan-infrastructure-law/stbg.cfm> (last visited Mar. 19, 2023).

<sup>56</sup> Section 341.031(7), F.S., defines the term "public transit capital project" to mean a project undertaken by a public agency to provide public transit to its constituency, and is limited to acquisition, design, construction, reconstruction, or improvement of a governmentally owned or operated transit system.

<sup>57</sup> See FHWA, *Surface Transportation Block Grant Program (STBG)*,

<https://www.fhwa.dot.gov/specialfunding/stp/#:~:text=The%20Surface%20Transportation%20Block%20Grant%20program%20%28STB>

governmental entities are authorized to receive federal grants or apportionments for public transit<sup>58</sup> and intercity bus service projects<sup>59</sup> in this state.<sup>60</sup>

Section 341.052, F.S., creates a public transit block grant program which is administered by DOT. Block grant funds may only be provided to “Section 9” providers<sup>61</sup> and “Section 18” providers<sup>62</sup> designated by the United States Department of Transportation and community transportation coordinators.<sup>63</sup> Eligible providers must establish public transportation development plans consistent, to the maximum extent feasible, with approved local government comprehensive plans of the units of local government in which the provider is located. In developing public transportation development plans, eligible providers must solicit comments from local workforce development boards.<sup>64</sup> The development plans must address how the public transit provider will work with the appropriate local workforce development board to provide services to participants in the welfare transition program. Eligible providers must provide information to the local workforce development board serving the county in which the provider is located regarding the availability of transportation services to assist program participants.<sup>65</sup>

Costs for which public transit block grant program funds may be expended include:

- Costs of public bus transit and local public fixed guideway capital projects.
- Costs of public bus transit service development and transit corridor projects.
- Costs of public bus transit operations.

All projects must be consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government in which the project is located.<sup>66</sup>

### *Transit Productivity and Performance Measures*

Where there is an approved local government comprehensive plan in the political subdivision or political subdivisions in which the public transportation system is located, each public transit provider

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G%29%20provides ,and%20transit%20capital%20projects%2C%20including%20intercity%20bus%20terminals (last visited Mar. 23, 2023).

<sup>58</sup> Section 341.013(6), F.S., defines the term “public transit” to mean the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned.

<sup>59</sup> Section 341.031(11), F.S., defines the term “intercity bus service” to mean regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity; has the capacity for transporting baggage carried by passengers; makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available; maintains scheduled information in the National Official Bus Guide; and provides package express service incidental to passenger transportation.

<sup>60</sup> S. 341.051(1), F.S.

<sup>61</sup> A “Section 9” provider is now referred to as a Section 5307 provider, one eligible to receive funds from the Urbanized Area Formula Grants program under 49 U.S.C. 5307. The program makes federal resources available to urbanized areas (50,000 population or more) and to governors for transit capital and operating assistance in urbanized areas and for transportation-related planning. Designated recipients that are public bodies with the legal authority to receive and dispense federal funds are eligible. For a long list of eligible activities, see Federal Transit Administration, Urbanized Area Formula Grants – 5307 <https://www.transit.dot.gov/funding/grants/urbanized-area-formula-grants-5307> (last visited Mar. 23, 2023)

<sup>62</sup> A “Section 18” provider is now referred to as a Section 5311 provider, one eligible to receive funds from the Formula Grants for Rural Areas under 49 U.S.C. 5311. The grants provide capital, planning, and operating assistance to states to support public transportation in rural areas with populations of less than 50,000, where many residents often rely on public transit to reach their destinations. The program also provides funding for state and national training and technical assistance through the Rural Transportation Assistance Program. Eligible recipients include states and federally recognized Indian Tribes. Subrecipients may include state or local government authorities, nonprofit organizations, and operators of public transportation or intercity bus service. Eligible activities include planning, capital, operating, job access and reverse commute projects, and the acquisition of public transportation services. See Federal Transit Administration, Formula Grants for Rural Areas – 5311, <https://www.transit.dot.gov/rural-formula-grants-5311> (last visited Mar. 23, 2023).

<sup>63</sup> Section 427.011(5), F.S., defines the term “community transportation coordinator” to mean a transportation entity recommended by a metropolitan planning organization, or by the appropriate designated official planning agency as provided for in ss. 427.011-427.017, F.S., in an area outside the purview of a metropolitan planning organization, to ensure that coordinated transportation services are provided to the transportation disadvantaged population in a designated service area.

<sup>64</sup> Workforce development boards are established under ch. 445, F.S.

<sup>65</sup> S. 341.052(1), F.S.

<sup>66</sup> S. 341.052(2), F.S.

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must establish public transportation development plans consistent with approved local government comprehensive plans.<sup>67</sup>

Each public transit provider must establish productivity and performance measures, which must be approved by the department and which must be selected from measures developed pursuant to section 341.041(3), F.S. Each provider must, by January 31 of each year, report to DOT relative to these measures. In approving these measures, DOT must consider the goals and objectives of each system, the needs of the local area, and the role for public transit in the local area. The report shall also specifically address potential enhancements to productivity and performance which would have the effect of increasing farebox recovery ratio.<sup>68</sup>

Each public transit provider must publish in the local newspaper of its area the productivity and performance measures established for the year and a report which provides quantitative data relative to the attainment of established productivity and performance measures.<sup>69</sup>

### *Metropolitan Planning Organization Long-Range Transportation Plans*

Metropolitan Planning Organizations (MPOs) are federally-required transportation planning organizations in urbanized areas with populations of greater than 50,000 persons.<sup>70</sup>

Each MPO is required to develop a long-range transportation plan with a 20-year planning horizon. The plan must include both long-range and short-range strategies and must comply with all other state and federal requirements. The prevailing principles to be considered in the long-range transportation plan are: preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility.<sup>71</sup>

### Effect of the Bill

The bill requires eligible public transit providers public transportation development plan be consistent, to the maximum extent feasible, with the long-range transportation plans of the MPO in which the provider is located. Currently, DOT's Transit Development Plan Handbook provides that at a minimum a transportation development plan must be consistent with the Florida Transportation Plan, local government comprehensive plans and local MPO long-range transportation plans.<sup>72</sup> Therefore, it appears that the bill is codifying current practice.

The bill provides that each public transit provider's productivity and performance report must include the farebox recovery ratio, but removes the requirement that the report specifically address potential enhancements to productivity and performance that would have the effect of increasing the farebox recovery ratio.<sup>73</sup>

The bill also requires each public transit provider to publish on its website, instead of in the local newspaper, its productivity and performance measure and data relative to the attainment of those measures.

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<sup>67</sup> S. 341.071(1), F.S.

<sup>68</sup> S. 341.071(2), F.S.

<sup>69</sup> S. 341.071(3), F.S.

<sup>70</sup> Federal Transit Administration, *Metropolitan Planning Organization (MPO)*, <https://www.transit.dot.gov/regulations-and-guidance/transportation-planning/metropolitan-planning-organization-mpo> (last visited Mar. 23, 2023).

<sup>71</sup> S. 339.175(7), F.S.

<sup>72</sup> DOT, TPD Handbook, Version III, 2022 Update, p. 101. [https://dotwww.blob.core.windows.net/sitefinity/docs/default-source/transit/documents/2022-transit-development-plan-handbook.pdf?sfvrsn=be593482\\_2](https://dotwww.blob.core.windows.net/sitefinity/docs/default-source/transit/documents/2022-transit-development-plan-handbook.pdf?sfvrsn=be593482_2) (last visited Mar. 19, 2023).

<sup>73</sup> The farebox recovery ratio is the percentage of direct operating costs for a route that are recovered through the fare paid by the ridership. It is equal to fare revenue divided by total expenses. Attachment to E-mail from Brett Tubbs., Legislative Affairs Director, Department of Transportation, RE: HB 1305 Initial Questions, Mar. 10, 2023.

## Santa Rosa Bay Bridge Authority

### Current Situation

Originally created in 1984,<sup>74</sup> ch. 348, part IV, F.S., creates the Santa Rosa Bay Bridge Authority (SRBBA) in Santa Rosa County. The SRBBA was created for the purpose of acquiring, holding, constructing, maintaining, operating, owning, and leasing the Santa Rosa Bay Bridge System (system),<sup>75</sup> commonly known as the Garcon Point Bridge. Bridge construction began in December 1996, and the bridge opened to traffic in May 1999.<sup>76</sup>

### *Toll Facility Revolving Trust Fund Loans*

The Toll Facilities Revolving Trust Fund was a loan program used to develop and enhance the financial feasibility of revenue-producing road projects. The trust fund provided interest free loans to pay the toll facility's initial project development costs. Loans of greater than \$1.5 million required specific legislative appropriation. In 2012, the Legislature repealed the Toll Facilities Revolving Trust Fund.<sup>77</sup>

Between 1989 and 1994, SRBBA received \$8.5 million in Toll Facilities Revolving Trust Fund loans. SRBBA used the loan proceeds to pay preliminary expenditures related to the bridge. Toll Facilities Revolving Trust Fund loan repayment is subordinate to the SRBBA's debt service and administrative costs. As of June 30, 2016, SRBBA owed DOT \$7.9 million in Toll Facilities Revolving Trust Fund loans and has not made any loan payments since August 1999.<sup>78</sup>

In January 2001, SRBBA requested an additional loan of over \$2.9 million, anticipated to be sufficient to cover revenue shortfalls in Fiscal Years 2001 and 2002. SRBBA's request was reduced to \$1.4 million after updated revenue estimates decreased its anticipated revenue shortfall. In May 2001, the Legislature approved SRBBA's loan request,<sup>79</sup> however, Governor Bush vetoed the loan.<sup>80</sup>

Following the veto, SRBBA used its operating reserves to cover the revenue shortfall for its July 1, 2001, debt service payment. This temporarily allowed SRBBA to delay drawing on its \$9.2 million debt service reserve fund. This also left SRBBA without funds for its day-to-day operations. By mid-2001, SRBBA was using all available toll revenues for debt service, leaving it without operating funds. By the end of 2001, due to lack of funds, SRBBA closed its office and ceased all administration services. DOT agreed to take possession of all SRBBA's records and provide administrative support for SRBBA's future board meetings.<sup>81</sup>

### *Financing and Construction*

In 1996, SRBBA issued \$95 million in bonds to pay for the construction of the Garcon Point Bridge. Also in 1996, SRBBA entered into a lease-purchase agreement with DOT, where DOT operated, maintained, repaired, and insured the bridge, and SRBBA was to reimburse DOT for associated expenditures only when it was able to meet its bond obligations.<sup>82</sup>

Of SRBBA's \$95 million in bonds, \$75.5 million are fixed-rate current-interest bonds. Fixed-rate current-interest bonds pay interest at a set rate on a periodic basis. At maturity, the final interest payment and

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<sup>74</sup> Ch. 84-354, Laws of Fla.

<sup>75</sup> Department of Transportation/Division of Bond Finance; *Economic Feasibility Study: State Acquisition of the Garcon Point Bridge*. December 2017, p. 11.

<sup>76</sup> *Id.* at B-2.

<sup>77</sup> Ch. 2012-128, Laws of Fla.

<sup>78</sup> *Economic Feasibility Study*, *supra* note 76 at p. 11.

<sup>79</sup> Ch. 2001-253, Laws of Fla. (Veto of proviso language for specific appropriation 2032).

<sup>80</sup> *Economic Feasibility Study*, *supra* note 76 at p. B-3.

<sup>81</sup> *Id.* at B-3 - B-4.

<sup>82</sup> Department of Transportation settlement agreement with UMB National Association regarding the Garcon Point Bridge (June 13, 2022), Paragraph C, <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=550000&ContractId=S0424&Tab=4> (last visited Mar. 2, 2023).

the original principal amount is paid to the bondholder. This is the conventional debt structure in the municipal bond market and is utilized for the vast majority of the state's debt transactions.<sup>83</sup>

The remaining \$19.5 million in bonds are Capital Appreciation Bonds. Capital Appreciation Bonds do not make periodic interest payments and instead increase in value at a compounded rate. At maturity, bondholders receive a single payment equal to their original principal and all compounded interest. The total or amount due at maturity of SRBBA's in Capital Appreciation Bonds issued is \$73.8 million. Since Capital Appreciation Bonds only pay at maturity, they are used to avoid periodic interest payments.<sup>84</sup>

In 1999, the Garcon Point Bridge opened to traffic. However, it never received enough toll revenues to meet its bond obligations and its bonds went into default. In 2015 and 2018, the bond trustees requested that DOT increase the toll on the bridge. DOT expressed concerns over its legal authority to increase toll and did not increase the tolls.<sup>85</sup>

### *Lease-Purchase Agreement*

In October 1996, SRBBA and DOT entered into a lease-purchase agreement,<sup>86</sup> granting DOT exclusive possession and use of the bridge. Under the agreement, DOT pays the costs of operating, maintaining, repairing, and insuring the bridge. The agreement requires DOT to collect the tolls on the bridge and remit the revenues to the bond trustee as lease payments. The agreement's terms extend through the date upon which all of the bonds have been repaid and all amounts due to DOT, including the Toll Facilities Revolving Trust Fund loans and all operations and maintenance costs paid by DOT, have been repaid.<sup>87</sup>

The agreement was a mechanism for the state to provide credit support in connection with financing the bridge. With the state paying the operation and maintenance expenses, SRBBA was able to pledge its gross toll revenues as security for the bonds. The state's credit support reduced the financial risk to bondholders and was essential for the marketability of the bonds given.

### *Litigation and State Takeover*

In December 2018, the bond trustees filed a Complaint in the Circuit Court for Leon County seeking an order requiring DOT to increase the tolls on the bridge in order to cover the SRBBA's bond obligations and a separate claim in excess of \$75 million in damages for DOT's failure to raise tolls when requested by the trustee. The complaint was subsequently amended to request damages relating to DOT's extended suspension of tolls following Hurricane Sally in September 2020.<sup>88</sup>

In December 2019, the court entered its Final Judgement, directing DOT to increase tolls in the manner recommended by DOT's traffic engineering consultant. In February 2020, DOT established higher tolls on the Garcon Point Bridge. However, the tolls were still not sufficient to cover bond costs.<sup>89</sup>

On July 28, 2021, Governor DeSantis announced a toll reduction for the Garcon Point Bridge and directed DOT to lower the toll rates and reach a settlement with the bond trustee and bond holders to purchase the bridge and transfer it to the Florida Turnpike Enterprise.<sup>90</sup>

In June 2022, a settlement agreement was reached between the bond trustee and DOT, where DOT paid the bond trustees \$134 million and took over ownership of the bridge.<sup>91</sup> The tolls on the bridge

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<sup>83</sup> Economic Feasibility Study, *supra* note 76 at p. B-3.

<sup>84</sup> *Id.*

<sup>85</sup> Settlement Agreement, *supra* note 83 at paragraph L.

<sup>86</sup> DOT's authority to enter into lease-purchase agreements with SRBBA and similar authorities was repealed in 2014.

<sup>87</sup> Economic Feasibility Study, *supra* note 76 at p. 14

<sup>88</sup> Settlement Agreement, *supra* note 83 at paragraph M. Due to damage from Hurricane Sally to the Pensacola Bay Bridge that bridge was closed. Shortly after that bridge's closure, Governor DeSantis waived tolls on the Garcon Point Bridge through July 6, 2021.

<https://www.flgov.com/2021/07/28/governor-desantis-reduces-tolls-for-garcon-point-bridge/> (last visited Mar. 19, 2023)

<sup>89</sup> Settlement Agreement, *supra* note 83 at paragraph N.

<sup>90</sup> Governor Ron DeSantis, Press Release, *Governor DeSantis Reduces toll for Garcon Point Bridge*, July 28, 2021.

<https://www.flgov.com/2021/07/28/governor-desantis-reduces-tolls-for-garcon-point-bridge/> (last visited Mar. 19, 2023).

were then lowered from \$4.50 to \$2.30 for SunPass customers and from \$5 to \$2.75 for cash customers.<sup>92</sup>

### Effect of the Bill

Effective upon becoming a law, the bill provides that since SRBBA's bridge system was transferred to DOT under the terms of the lease-purchase agreement between DOT and the SRBBA, which was effective as of the close of business on June 30, 2022,<sup>93</sup> any remaining assets, facilities, tangible and intangible property, and any rights in such property, and other legal rights of the SRBBA are transferred to DOT. DOT succeeds to all powers of the SRBBA. DOT may review other contracts, financial obligations, and contractual obligations and liabilities of the SRBBA and may assume legal liability for such obligations that are determined by DOT to be necessary for the continued operation of the bridge system.

The bridge system, or any portion of the bridge system, may be transferred by DOT and become part of the turnpike system under the Florida Turnpike Enterprise Law.<sup>94</sup>

Upon becoming a law, the bill repeals ch. 348, part IV, F.S., repealing the Santa Rosa Bay Bridge Authority. The bill transfers the governance and control of SRBBA to DOT.

### **Effective Date**

Except as otherwise provided in the bill, the bill has an effective date of July 1, 2023.

### **B. SECTION DIRECTORY:**

- Section 1** Amends s. 206.46, F.S., relating to the State Transportation Trust Fund.
- Section 2** Amends s. 215.616, F.S., relating to state bonds for federal aid highway construction.
- Section 3** Amends s. 288.9606, F.S., relating to the issue of revenue bonds.
- Section 4** Amends s. 316.0777, F.S., relating to automated license plate recognitions systems, installation within rights-of-way of the State Highway System; public records exemption.
- Section 5** Amends s. 330.30, F.S., relating to approval of airport sites; registration and licensure of airports.
- Section 6** Amends s. 344.044, F.S., relating to the powers and duties of the department.
- Section 7** Amends s. 337.025, F.S., relating to innovative transportation projects; department to establish program.
- Section 8** Amends s. 337.11, F.S., relating to contracting authority of the department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements for vehicle registration.
- Section 9** Amends s. 341.052, F.S., relating to public transit block grant program; administration eligible projects; limitation.

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<sup>91</sup> Settlement Agreement, *supra* note 83 at paragraph 4.

<sup>92</sup> Alex Miller, *Florida takes ownership of Garcon Point Bridge; cash toll is \$2.75 effective Thursday. Pensacola News Journal*. June 16, 2022. <https://www.pnj.com/story/news/local/santa-rosa/2022/06/15/garcon-point-bridge-purchased-state-tolls-now-2-75/7623694001/> (last visited Mar. 19, 2023).

<sup>93</sup> Per DOT, this was the date the SRBBA's bonds were discharged.

<sup>94</sup> Ss. 338.22-338.241, F.S.

- Section 10** Amends s. 341.071, F.S., relating to transit productivity and performance measures; reports.
- Section 11** Transfers the Santa Rosa Bay Bridge Authority to DOT.
- Section 12** Repeals ch. 348, part IV, F.S., repealing the Santa Rosa Bay Bridge Authority.
- Section 13** Provides that, except as otherwise expressly provided, the bill has an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOT reports that there is no fiscal impact resulting from the authorization to finance the costs of acquisition or construction of a transportation facility under a P3 agreement. This instrument will serve as another financing alternative through the use of FDFC revenue bonds.

The bill appears to hold DOT harmless from any damages caused to any person by the requesting law enforcement agency's operation of an ALPRS. The bill further provides that DOT is not responsible for the costs associated with the installation or removal of an ALPRS; those costs are solely borne by the requesting law enforcement agency.

DOT will incur minimal expenditures associated with revising its rules relating to airport site approval and public transit development plans. Any costs incurred are expected to be absorbed within existing DOT resources.

The authorization to produce promotional items for the promotion of electric vehicles and autonomous vehicles, and context design for each, is likely to have an insignificant negative impact that would be absorbed within DOT's existing Work Program resources, but may be covered by NEVI funds.

The bill authorizes DOT to expend funds for training, testing, and licensing for full-time DOT employees who are required to have a valid Class A or Class B commercial driving license as a condition of employment with the department. According to DOT, up to \$500,000 of existing resources will be used to fund this effort.

The fiscal impact of the increased fast-response contracting cap is indeterminate, as it is unknown how many such contracts DOT will enter into or the cost of such contracts. However, DOT states that this contracting cap increase will reduce workload efforts resulting in costs savings to the state.

The bill transfers assets and liabilities for the SRBBA to DOT to ensure full operation and maintenance of the bridge as a result of the terms of the lease-purchase agreement between DOT and SRBBA. DOT asserts that there are no known outstanding liabilities.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.



2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Public transit providers may realize a reduction in costs associated with being able to publish productivity and performance measures and data relative to the attainment of those measures on their website instead of in the local newspaper.

D. FISCAL COMMENTS:

Increasing DOT's bonding capacity and increasing the length of time authorized for GARVEE bonds may provide DOT with additional flexibility in financing its work program.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOT will need to amend its rules relating to airport site approval to reflect changes made by the bill. In addition, the bill requires DOT to, by rule, to develop procedures for phased design-build contracts.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Transportation & Modals Subcommittee considered a proposed committee substitute with one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute differs from HB 1305 in the following ways:

- Removes a provision exempting rating agency services from competitive procurement requirements.
- Provides that DOT may not, when granting airport site approval, require a written memorandum of understanding or letter of agreement with other airport sites regarding air traffic pattern separation procedures unless it is required by the FAA or is deemed necessary by DOT.
- Revises DOT's authority to expend funds for training, testing, and licensing for its employees such that the expenditure only applies to Class A or Class B commercial driver licenses required as a condition of employment with DOT.
- Revises a provision relating to the Legislative Budget Commission process for the DOT work program by extending the expiration date for one year rather than making the provision permanent law.
- Adds a provision that would grant permission for DOT to allow law enforcement to install automated license plate readers on DOT property along state roads.
- Makes other clarifying changes.

On April 11, 2023, the Infrastructure & Tourism Appropriations Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment removes language that would extend for one year a provision allowing the chair and vice chair of the Legislative Budget Commission to approve DOT work program amendments, if specified conditions were met.

On April 17, 2023, the Infrastructure Strategies Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that automated license plate recognition systems may not be used to issue a notice of violation for a traffic infraction or a uniform traffic citation.
- Makes the provision currently in the bill regarding airport siting effective upon the bill becoming a law.
- Increases from \$120 million to \$200 million the limit on contracts that DOT may award annually for innovative transportation projects.
- Exempts design-build contracts from the \$200 million cap for innovative contracting.
- Authorizes design-build contracting for any DOT project, not just specific project types.
- Authorizes DOT to enter into phased design-build contracts.
- Increases from \$350 million to \$425 million the maximum debt service amount from the STTF.
- Increases from 12 years to 18 years, the maximum term of bonds issued for federal aid highway construction (GARVEE Bonds).

This analysis is drafted to the committee substitute as approved by the Infrastructure Strategies Committee.