

By the Committee on Transportation; and Senator Hooper

596-02183-24

2024266c1

1 A bill to be entitled
2 An act relating to transportation; amending s. 206.46,
3 F.S.; prohibiting the Department of Transportation
4 from annually committing more than a certain
5 percentage of revenues derived from state fuel taxes
6 and motor vehicle license-related fees to public
7 transit projects; providing exceptions; amending s.
8 288.9606, F.S.; conforming provisions to changes made
9 by the act; making technical changes; amending s.
10 334.30, F.S.; authorizing the department to enter into
11 comprehensive agreements with private entities or the
12 consortia thereof for the building, operation,
13 ownership, or financing of transportation facilities;
14 conforming provisions to changes made by the act;
15 replacing the term "public-private partnership
16 agreement" with the term "comprehensive agreement";
17 requiring a private entity to provide an independent
18 traffic and revenue study prepared by a certain
19 expert; providing a requirement for such study;
20 revising the timeframe within which the department
21 must publish a certain notice; authorizing the
22 department to enter into an interim agreement with a
23 private entity regarding a qualifying project;
24 providing that an interim agreement does not obligate
25 the department to enter into a comprehensive agreement
26 and is not required under certain circumstances;
27 providing requirements for an interim agreement;
28 authorizing the secretary of the department to
29 authorize comprehensive agreements for a term of up to

596-02183-24

2024266c1

30 75 years for certain projects; making technical
31 changes; amending s. 337.11, F.S.; requiring the
32 department to receive three letters of interest before
33 proceeding with requests for proposals for certain
34 contracts; requiring the department to pay interest at
35 a certain rate to contractors under certain
36 circumstances; making technical changes; amending s.
37 337.18, F.S.; revising the timeframe for certain
38 actions against the contractor or the surety;
39 specifying a timeframe for when an action for recovery
40 of retainage must be instituted; amending s. 337.195,
41 F.S.; revising a presumption regarding the proximate
42 cause of death, injury, or damage in a civil suit
43 against the department; defining terms; providing for
44 immunity for contractors under certain circumstances;
45 conforming provisions related to certain limitations
46 on liability relating to traffic control plans; making
47 technical changes; revising a presumption regarding a
48 design engineer's degree of care and skill; deleting
49 immunity for certain persons and entities; amending s.
50 337.401, F.S.; requiring that certain permits and
51 relocation agreements require the utility owner to be
52 responsible for certain damage; requiring that the
53 relocation agreement contain a utility relocation
54 schedule and specify a liquidated damage amount for
55 each day work remains incomplete beyond a certain
56 date; amending s. 337.403, F.S.; requiring a utility
57 owner to provide to the authority a reasonable utility
58 relocation schedule to expedite completion of the

596-02183-24

2024266c1

59 authority's construction or maintenance project
60 identified in a specified notice and initiate
61 necessary work within a specified timeframe; requiring
62 that the notice the authority gives the utility for
63 unreasonable interference on a public road or publicly
64 owned rail corridor specify a certain liquidated
65 damage amount for each day that work remains
66 incomplete; requiring the utility to pay certain costs
67 to the authority for untimely performance of the work;
68 amending s. 339.2820, F.S.; creating within the
69 department a local agency program for a specified
70 purpose; requiring the department to update certain
71 project cost estimates at a specified time and include
72 a contingency amount as part of the project cost
73 estimate; authorizing the department to oversee
74 certain projects; requiring local agencies to
75 prioritize budgeting certain local projects through
76 their respective M.P.O.'s or governing boards for a
77 specified purpose; specifying that certain funds are
78 available only to local agencies that are certified by
79 the department; requiring local agencies to include in
80 certain contracts a specified document and a
81 contingency amount for costs incurred due to
82 unforeseen conditions; amending s. 339.2825, F.S.;

83 conforming provisions to changes made by the act;
84 providing an effective date.

85

86 Be It Enacted by the Legislature of the State of Florida:

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596-02183-24

2024266c1

88 Section 1. Subsection (6) is added to section 206.46,
89 Florida Statutes, to read:

90 206.46 State Transportation Trust Fund.—

91 (6) The department may not annually commit more than 20
92 percent of the revenues derived from state fuel taxes and motor
93 vehicle license-related fees deposited into the State
94 Transportation Trust Fund to public transit projects, in
95 accordance with chapter 341. However, this subsection does not
96 apply to either of the following:

97 (a) A public transit project that uses revenues derived
98 from state fuel taxes and motor vehicle license-related fees to
99 match funds made available by the Federal Government.

100 (b) A public transit project included in the transportation
101 improvement program adopted pursuant to s. 339.175(8) and
102 approved by a supermajority vote of the board of county
103 commissioners where the project is located.

104 Section 2. Subsections (6) and (7) of section 288.9606,
105 Florida Statutes, is amended to read:

106 288.9606 Issue of revenue bonds.—

107 (6) The proceeds of any bonds of the corporation may not be
108 used, in any manner, to acquire any building or facility that
109 will be, during the pendency of the financing, used by, occupied
110 by, leased to, or paid for by any state, county, or municipal
111 agency or entity. This subsection does not prohibit the use of
112 proceeds of bonds of the corporation for the purpose of
113 financing the acquisition or construction of a transportation
114 facility under a comprehensive ~~public-private partnership~~
115 agreement authorized by s. 334.30.

116 (7) Notwithstanding any provision of this section, the

596-02183-24

2024266c1

117 corporation in its corporate capacity may, without authorization
118 from a public agency under s. 163.01(7), issue revenue bonds or
119 other evidence of indebtedness under this section to:

120 (a) Finance the undertaking of any project within the state
121 that promotes renewable energy as defined in s. 366.91 or s.
122 377.803;

123 (b) Finance the undertaking of any project within the state
124 that is a project contemplated or allowed under s. 406 of the
125 American Recovery and Reinvestment Act of 2009; ~~or~~

126 (c) If permitted by federal law, finance qualifying
127 improvement projects within the state under s. 163.08; or-

128 (d) Finance the costs of acquisition or construction of a
129 transportation facility by a private entity or consortium of
130 private entities under a comprehensive ~~public-private~~
131 ~~partnership~~ agreement authorized by s. 334.30.

132 Section 3. Present subsections (8) through (13) of section
133 334.30, Florida Statutes, are redesignated as subsections (9)
134 through (14), respectively, a new subsection (8) is added to
135 that section, and subsections (1), (2), and (6) and present
136 subsections (8), (10), and (11) of that section are amended, to
137 read:

138 334.30 Public-private transportation facilities.—The
139 Legislature finds and declares that there is a public need for
140 the rapid construction of safe and efficient transportation
141 facilities for the purpose of traveling within the state, and
142 that it is in the public's interest to provide for the
143 construction of additional safe, convenient, and economical
144 transportation facilities.

145 (1) The department may receive or solicit proposals and,

596-02183-24

2024266c1

146 with legislative approval as evidenced by approval of the
147 project in the department's work program, enter into
148 comprehensive agreements with private entities, or consortia
149 thereof, for the building, operation, ownership, or financing of
150 transportation facilities. The department may advance projects
151 programmed in the adopted 5-year work program or projects
152 increasing transportation capacity and greater than \$500 million
153 in the 10-year Strategic Intermodal Plan using funds provided by
154 public-private partnerships or private entities to be reimbursed
155 from department funds for the project as programmed in the
156 adopted work program. The department shall by rule establish an
157 application fee for the submission of unsolicited proposals
158 under this section. The fee must be sufficient to pay the costs
159 of evaluating the proposals. The department may engage the
160 services of private consultants to assist in the evaluation.
161 Before approval, the department must determine that the proposed
162 project:

163 (a) Is in the public's best interest;

164 (b) Would not require state funds to be used unless the
165 project is on the State Highway System;

166 (c) Would have adequate safeguards in place to ensure that
167 no additional costs or service disruptions would be realized by
168 the traveling public and residents of the state in the event of
169 default or cancellation of the comprehensive agreement by the
170 department;

171 (d) Would have adequate safeguards in place to ensure that
172 the department or the private entity has the opportunity to add
173 capacity to the proposed project and other transportation
174 facilities serving similar origins and destinations; and

596-02183-24

2024266c1

175 (e) Would be owned by the department upon completion or
176 termination of the comprehensive agreement.
177

178 The department shall ensure that all reasonable costs to the
179 state, related to transportation facilities that are not part of
180 the State Highway System, are borne by the private entity. The
181 department shall also ensure that all reasonable costs to the
182 state and substantially affected local governments and
183 utilities, related to the private transportation facility, are
184 borne by the private entity for transportation facilities that
185 are owned by private entities. For projects on the State Highway
186 System, the department may use state resources to participate in
187 funding and financing the project as provided for under the
188 department's enabling legislation. Because the Legislature
189 recognizes that private entities or consortia thereof would
190 perform a governmental or public purpose or function when they
191 enter into comprehensive agreements with the department to
192 design, build, operate, own, or finance transportation
193 facilities, the transportation facilities, including leasehold
194 interests thereof, are exempt from ad valorem taxes as provided
195 in chapter 196 to the extent property is owned by the state or
196 other government entity, and from intangible taxes as provided
197 in chapter 199 and special assessments of the state, any city,
198 town, county, special district, political subdivision of the
199 state, or any other governmental entity. The private entities or
200 consortia thereof are exempt from tax imposed by chapter 201 on
201 all documents or obligations to pay money which arise out of the
202 comprehensive agreements to design, build, operate, own, lease,
203 or finance transportation facilities. Any private entities or

596-02183-24

2024266c1

204 consortia thereof must pay any applicable corporate taxes as
205 provided in chapter 220, and reemployment assistance taxes as
206 provided in chapter 443, and sales and use tax as provided in
207 chapter 212 shall be applicable. The private entities or
208 consortia thereof must also register and collect the tax imposed
209 by chapter 212 on all their direct sales and leases that are
210 subject to tax under chapter 212. The comprehensive agreement
211 between the private entity or consortia thereof and the
212 department establishing a transportation facility under this
213 chapter constitutes documentation sufficient to claim any
214 exemption under this section.

215 (2) Comprehensive agreements entered into pursuant to this
216 section may authorize the private entity to impose tolls or
217 fares for the use of the facility. The following provisions
218 ~~shall~~ apply to such agreements:

219 (a) With the exception of the Florida Turnpike System, the
220 department may lease existing toll facilities through public-
221 private partnerships. The comprehensive ~~public-private~~
222 ~~partnership~~ agreement must ensure that the transportation
223 facility is properly operated, maintained, and renewed in
224 accordance with department standards.

225 (b) The department may develop new toll facilities or
226 increase capacity on existing toll facilities through public-
227 private partnerships. The comprehensive ~~public-private~~
228 ~~partnership~~ agreement must ensure that the toll facility is
229 properly operated, maintained, and renewed in accordance with
230 department standards.

231 (c) Any toll revenues shall be regulated by the department
232 pursuant to s. 338.165(3). The regulations governing the future

596-02183-24

2024266c1

233 increase of toll or fare revenues shall be included in the
234 comprehensive ~~public-private partnership~~ agreement.

235 (d) The department shall provide the analysis required in
236 subparagraph (6)(e)2. to the Legislative Budget Commission
237 created pursuant to s. 11.90 for review and approval prior to
238 awarding a contract on a lease of an existing toll facility.

239 (e) The department shall include provisions in the
240 comprehensive ~~public-private partnership~~ agreement which that
241 ensure a negotiated portion of revenues from tolled or fare
242 generating projects are returned to the department over the life
243 of the comprehensive ~~public-private partnership~~ agreement. In
244 the case of a lease of an existing toll facility, the department
245 shall receive a portion of funds upon closing on the
246 comprehensive agreement ~~agreements~~ and shall also include
247 provisions in the comprehensive agreement to receive payment of
248 a portion of excess revenues over the life of the public-private
249 partnership.

250 (f) The private entity shall provide an independent
251 ~~investment grade~~ traffic and revenue study prepared by a an
252 ~~internationally recognized~~ traffic and revenue expert as part of
253 the private entity proposal. The study must be that is accepted
254 by the national bond rating agencies before closing on the
255 financing that supports the comprehensive agreement for the
256 public-private partnership project. The private entity shall
257 also provide a finance plan that identifies the project cost,
258 revenues by source, financing, major assumptions, internal rate
259 of return on private investments, and whether any government
260 funds are assumed to deliver a cost-feasible project, and a
261 total cash flow analysis beginning with implementation of the

596-02183-24

2024266c1

262 project and extending for the term of the comprehensive
263 agreement.

264 (6) The procurement of public-private partnerships by the
265 department shall follow the provisions of this section. Sections
266 337.025, 337.11, 337.14, 337.141, 337.145, 337.175, 337.18,
267 337.185, 337.19, 337.221, and 337.251 may ~~shall~~ not apply to
268 procurements under this section unless a provision is included
269 in the procurement documents. The department shall ensure that
270 generally accepted business practices for exemptions provided by
271 this subsection are part of the procurement process or are
272 included in the comprehensive ~~public-private partnership~~
273 agreement.

274 (a) The department may request proposals from private
275 entities for public-private transportation projects or, if the
276 department receives an unsolicited proposal, the department
277 shall publish a notice in the Florida Administrative Register
278 and a newspaper of general circulation at least once a week for
279 2 weeks stating that the department has received the proposal
280 and will accept, for between 30 and 120 days after the initial
281 date of publication as determined by the department based on the
282 complexity of the project, other proposals for the same project
283 purpose. A copy of the notice must be mailed to each local
284 government in the affected area.

285 (b) Public-private partnerships shall be qualified by the
286 department as part of the procurement process as outlined in the
287 procurement documents, provided such process ensures that the
288 private firm meets at least the minimum department standards for
289 qualification in department rule for professional engineering
290 services and road and bridge contracting prior to submitting a

596-02183-24

2024266c1

291 proposal under the procurement.

292 (c) The department shall ensure that procurement documents
293 include provisions for performance of the private entity and
294 payment of subcontractors, including, but not limited to, surety
295 bonds, letters of credit, parent company guarantees, and lender
296 and equity partner guarantees. The department shall balance the
297 structure of the security package for the public-private
298 partnership that ensures performance and payment of
299 subcontractors with the cost of the security to ensure the most
300 efficient pricing.

301 (d) After the public notification period has expired, the
302 department shall rank the proposals in order of preference. In
303 ranking the proposals, the department may consider factors that
304 include, but are not limited to, professional qualifications,
305 general business terms, innovative engineering or cost-reduction
306 terms, finance plans, and the need for state funds to deliver
307 the project. If the department is not satisfied with the results
308 of the negotiations, the department may, at its sole discretion,
309 terminate negotiations with the proposer. If these negotiations
310 are unsuccessful, the department may go to the second-ranked and
311 lower-ranked firms, in order, using this same procedure. If only
312 one proposal is received, the department may negotiate in good
313 faith and, if the department is not satisfied with the results
314 of the negotiations, the department may, at its sole discretion,
315 terminate negotiations with the proposer. Notwithstanding this
316 subsection, the department may, at its discretion, reject all
317 proposals at any point in the process up to completion of a
318 contract with the proposer.

319 (e) The department shall provide an independent analysis of

596-02183-24

2024266c1

320 the proposed public-private partnership that demonstrates the
321 cost-effectiveness and overall public benefit at the following
322 times:

- 323 1. Prior to moving forward with the procurement; and
- 324 2. If the procurement moves forward, prior to awarding the
325 contract.

326 (8) Before or in connection with the negotiation of a
327 comprehensive agreement, the department may enter into an
328 interim agreement with the private entity proposing the
329 development or operation of a qualifying project. An interim
330 agreement does not obligate the department to enter into a
331 comprehensive agreement. The interim agreement is discretionary
332 with the parties and is not required on a project for which the
333 parties may proceed directly to a comprehensive agreement
334 without the need for an interim agreement. An interim agreement
335 must be limited to any of the following provisions that:

336 (a) Authorize the private entity to commence activities for
337 which it may be compensated related to the proposed qualifying
338 project, including, but not limited to, project planning and
339 development, designing, environmental analysis and mitigation,
340 surveying, other activities concerning any part of the proposed
341 qualifying project, and ascertaining the availability of
342 financing for the proposed facility or facilities.

343 (b) Establish the process and timing for the negotiation of
344 the comprehensive agreement.

345 (c) Contain such other provisions related to an aspect of
346 the development or operation of a qualifying project which the
347 department and the private entity deem appropriate.

348 (9) ~~(8)~~ The department may enter into comprehensive ~~public-~~

596-02183-24

2024266c1

349 ~~private partnership~~ agreements that include extended terms
350 providing annual payments for performance based on the
351 availability of service or the facility being open to traffic or
352 based on the level of traffic using the facility. In addition to
353 other provisions in this section, the following provisions ~~shall~~
354 apply:

355 (a) The annual payments under any such comprehensive
356 agreement must ~~shall~~ be included in the department's tentative
357 work program developed under s. 339.135 and the long-range
358 transportation plan for the applicable metropolitan planning
359 organization developed under s. 339.175. The department shall
360 ensure that annual payments on multiyear comprehensive ~~public-~~
361 ~~private partnership~~ agreements are prioritized ahead of new
362 capacity projects in the development and updating of the
363 tentative work program.

364 (b) The annual payments are subject to annual appropriation
365 by the Legislature as provided in the General Appropriations Act
366 in support of the first year of the tentative work program.

367 ~~(11)(10)~~ Before ~~Prior to~~ entering into any comprehensive
368 ~~such~~ agreement in which ~~where~~ funds are committed from the State
369 Transportation Trust Fund, the project must be prioritized as
370 follows:

371 (a) The department, in coordination with the local
372 metropolitan planning organization, shall prioritize projects
373 included in the Strategic Intermodal System 10-year and long-
374 range cost-feasible plans.

375 (b) The department, in coordination with the local
376 metropolitan planning organization or local government where
377 there is no metropolitan planning organization, shall prioritize

596-02183-24

2024266c1

378 projects, for facilities not on the Strategic Intermodal System,
 379 included in the metropolitan planning organization cost-feasible
 380 transportation improvement plan and long-range transportation
 381 plan.

382 (12) ~~(11)~~ Comprehensive Public-private partnership
 383 agreements under this section are ~~shall be~~ limited to a term not
 384 exceeding 50 years. Upon making written findings that a
 385 comprehensive ~~an~~ agreement under this section requires a term in
 386 excess of 50 years, the secretary of the department may
 387 authorize a term of up to 75 years for projects that are
 388 partially or completely funded from project user fees.

389 Comprehensive agreements under this section may ~~shall~~ not have a
 390 term in excess of 75 years unless specifically approved by the
 391 Legislature. The department shall identify each new project
 392 under this section with a term exceeding 75 years in the
 393 transmittal letter that accompanies the submittal of the
 394 tentative work program to the Governor and the Legislature in
 395 accordance with s. 339.135.

396 Section 4. Paragraph (e) of subsection (7) and subsection
 397 (13) of section 337.11, Florida Statutes, are amended to read:

398 337.11 Contracting authority of department; bids; emergency
 399 repairs, supplemental agreements, and change orders; combined
 400 design and construction contracts; progress payments; records;
 401 requirements of vehicle registration.-

402 (7)

403 (e) For design-build contracts and phased design-build
 404 contracts, the department must receive at least three letters of
 405 interest in order to proceed with a request for proposals. The
 406 department shall request proposals from no fewer than three of

596-02183-24

2024266c1

407 the ~~design-build~~ firms submitting letters of interest. If a
408 ~~design-build~~ firm withdraws from consideration after the
409 department requests proposals, the department may continue if at
410 least two proposals are received.

411 (13) Any motor vehicle used in ~~Each contract let by the~~
412 ~~department for~~ the performance of road or bridge construction or
413 maintenance work on a department project must ~~shall require all~~
414 ~~motor vehicles that the contractor operates or causes to be~~
415 ~~operated in this state to~~ be registered in compliance with
416 chapter 320.

417 Section 5. Paragraph (d) of subsection (1) of section
418 337.18, Florida Statutes, is amended to read:

419 337.18 Surety bonds for construction or maintenance
420 contracts; requirement with respect to contract award; bond
421 requirements; defaults; damage assessments.-

422 (1)

423 (d) An action, except for an action for recovery of
424 retainage, must be instituted by a claimant, whether in privity
425 with the contractor or not, against the contractor or the surety
426 on the payment bond or the payment provisions of a combined
427 payment and performance bond within 365 days after the
428 performance of the labor or completion of delivery of the
429 materials or supplies. An action for recovery of retainage must
430 be instituted against the contractor or the surety within 365
431 days after final acceptance of the contract work by the
432 department. A claimant may not waive in advance his or her right
433 to bring an action under the bond against the surety. In any
434 action brought to enforce a claim against a payment bond under
435 this section, the prevailing party is entitled to recover a

596-02183-24

2024266c1

436 reasonable fee for the services of his or her attorney for trial
437 and appeal or for arbitration, in an amount to be determined by
438 the court, which fee must be taxed as part of the prevailing
439 party's costs, as allowed in equitable actions.

440 Section 6. Section 337.195, Florida Statutes, is amended to
441 read:

442 337.195 Limits on liability.—

443 (1) In a civil action for the death of or injury to a
444 person, or for damage to property, against the Department of
445 Transportation or its agents, consultants, or contractors for
446 work performed on a highway, road, street, bridge, or other
447 transportation facility when the death, injury, or damage
448 resulted from a motor vehicle crash within a construction zone
449 in which the driver of one of the vehicles was under the
450 influence of alcoholic beverages as set forth in s. 316.193,
451 under the influence of any chemical substance as set forth in s.
452 877.111, or illegally under the influence of any substance
453 controlled under chapter 893, excluding low-THC cannabis, to the
454 extent that her or his normal faculties were impaired or that
455 she or he operated a vehicle recklessly as defined in s.
456 316.192, it is presumed that the driver's operation of the
457 vehicle was the sole proximate cause of her or his own death,
458 injury, or damage. This presumption can be overcome if the gross
459 negligence or intentional misconduct of the Department of
460 Transportation, or of its agents, consultants, or contractors,
461 was a proximate cause of the driver's death, injury, or damage.

462 (2) (a) For purposes of this section:

463 1. "Contract documents" has the same meaning as in the
464 department's Standard Specifications for Road and Bridge

596-02183-24

2024266c1

465 Construction applicable under the contract between the
466 department and the contractor.

467 2. "Contractor" means a person or an entity, at any
468 contractual tier, including any member of a design-build team
469 pursuant to s. 337.11, who constructs, maintains, or repairs a
470 highway, road, street, bridge, or other transportation facility
471 for the department in connection with a department project.

472 3. "Design engineer" means a person or an entity, including
473 the design consultant of a design-build team, who contracts at
474 any tier to prepare or provide engineering plans, including
475 traffic control plans, for the construction or repair of a
476 highway, road, street, bridge, or other department
477 transportation facility for the department or in connection with
478 a department project.

479 4. "Traffic control plans" means the maintenance of traffic
480 plans designed by a professional engineer, or otherwise in
481 accordance with the department's standard plans, and approved by
482 the department.

483 (b) A contractor is not liable for personal injury,
484 property damage, or death arising from any of the following:

485 1. The performance of the construction, maintenance, or
486 repair of the transportation facility, if, at the time the
487 personal injury, property damage, or death occurred, the
488 contractor was in compliance with the contract documents
489 material to the personal injury, property damage, or death.

490 2. Acts or omissions of a third party that furnishes or
491 contracts at any contractual level to furnish services or
492 materials to the transportation facility, including any
493 subcontractor; sub-subcontractor; laborer; materialman; owner,

596-02183-24

2024266c1

494 lessor, or driver of a motor vehicle, trailer, semitrailer,
495 truck, heavy truck, truck tractor, or commercial motor vehicle,
496 as those terms are defined in s. 320.01; or any person who
497 performs services as an architect, a landscape architect, an
498 interior designer, an engineer, or a surveyor and mapper.

499 3. Acts or omissions of a third party who trespasses within
500 the limits of the transportation facility or otherwise is not
501 authorized to enter the area of the transportation facility in
502 which the personal injury, property damage, or death occurred.

503 4. Acts or omissions of a third party who damages,
504 modifies, moves, or removes any traffic control device, warning
505 device, barrier, or other facility or device used for the
506 public's safety and convenience ~~who constructs, maintains, or~~
507 ~~repairs a highway, road, street, bridge, or other transportation~~
508 ~~facility for the Department of Transportation is not liable to a~~
509 ~~claimant for personal injury, property damage, or death arising~~
510 ~~from the performance of the construction, maintenance, or repair~~
511 ~~if, at the time of the personal injury, property damage, or~~
512 ~~death, the contractor was in compliance with contract documents~~
513 ~~material to the condition that was the proximate cause of the~~
514 ~~personal injury, property damage, or death.~~

515 (c)(a) ~~The limitations~~ limitation on liability contained in
516 this subsection do ~~does~~ not apply when the proximate cause of
517 the personal injury, property damage, or death is a latent
518 condition, defect, error, or omission that was created by the
519 contractor and not a defect, error, or omission in the contract
520 documents; or when the proximate cause of the personal injury,
521 property damage, or death was the contractor's failure to
522 ~~perform, update, or comply with the maintenance of the traffic~~

596-02183-24

2024266c1

523 control plans ~~safety plan~~ as required by the contract documents.

524 ~~(d)(b) Nothing in~~ This subsection may not ~~shall~~ be
525 interpreted or construed as relieving the contractor of any
526 obligation to provide the department ~~of Transportation~~ with
527 written notice of any apparent error or omission in the contract
528 documents, or as relieving the contractor of his or her contract
529 responsibility to manage the work of others performing under the
530 contract.

531 ~~(e)(c) Nothing in~~ This subsection may not ~~shall~~ be
532 interpreted or construed to alter or affect any claim of the
533 department ~~of Transportation~~ against such contractor.

534 ~~(f)(d)~~ This subsection does not affect any claim of any
535 entity against such contractor, which claim is associated with
536 such entity's facilities on or in department ~~of Transportation~~
537 roads or other transportation facilities.

538 (3) In all cases involving personal injury, property
539 damage, or death, a design engineer is person or entity who
540 ~~contracts to prepare or provide engineering plans for the~~
541 ~~construction or repair of a highway, road, street, bridge, or~~
542 ~~other transportation facility for the Department of~~
543 ~~Transportation shall be presumed to have prepared such~~
544 engineering plans using the degree of care and skill ordinarily
545 exercised by other engineers in the field under similar
546 conditions and in similar localities and with due regard for
547 acceptable engineering standards and principles if the
548 engineering plans conformed to the department's ~~Department of~~
549 ~~Transportation's~~ design standards material to the condition or
550 defect that was the proximate cause of the personal injury,
551 property damage, or death. This presumption can be overcome only

596-02183-24

2024266c1

552 upon a showing of the design engineer's ~~person's or entity's~~
553 gross negligence in the preparation of the engineering plans and
554 may shall not be interpreted or construed to alter or affect any
555 claim of the department ~~of Transportation~~ against such design
556 engineer ~~person or entity~~. The limitation on liability contained
557 in this subsection does shall not apply to any hidden or
558 undiscoverable condition created by the design engineer. This
559 subsection does not affect any claim of any entity against such
560 design engineer ~~or engineering firm~~, which claim is associated
561 with such entity's facilities on or in department ~~of~~
562 ~~Transportation~~ roads or other transportation facilities.

563 ~~(4) In any civil action for death, injury, or damages~~
564 ~~against the Department of Transportation or its agents,~~
565 ~~consultants, engineers, or contractors for work performed on a~~
566 ~~highway, road, street, bridge, or other transportation facility,~~
567 ~~if the department, its agents, consultants, engineers, or~~
568 ~~contractors are immune from liability pursuant to this section~~
569 ~~or are not parties to the litigation, they may not be named on~~
570 ~~the jury verdict form or be found to be at fault or responsible~~
571 ~~for the injury, death, or damage that gave rise to the damages.~~

572 Section 7. Subsection (2) of section 337.401, Florida
573 Statutes, is amended to read:

574 337.401 Use of right-of-way for utilities subject to
575 regulation; permit; fees.—

576 (2) The authority may grant to any person who is a resident
577 of this state, or to any corporation that ~~which~~ is organized
578 under the laws of this state or licensed to do business within
579 this state, the use of a right-of-way for the utility in
580 accordance with such rules or regulations as the authority may

596-02183-24

2024266c1

581 adopt. A utility may not be installed, located, or relocated
582 unless authorized by a written permit issued by the authority.
583 However, for public roads or publicly owned rail corridors under
584 the jurisdiction of the department, a ~~utility relocation~~
585 ~~schedule and~~ relocation agreement may be executed in lieu of a
586 written permit. The permit or relocation agreement must require
587 the utility owner ~~permitholder~~ to be responsible for any damage
588 resulting from the work performed under ~~issuance of~~ such permit
589 or relocation agreement. The relocation agreement must contain a
590 reasonable utility relocation schedule to expedite the
591 completion of the department's construction or maintenance
592 project and specify a reasonable liquidated damage amount for
593 each day the work remains incomplete beyond the completion date
594 specified in the permit or relocation agreement. The authority
595 may initiate injunctive proceedings as provided in s. 120.69 to
596 enforce provisions of this subsection or any rule or order
597 issued or entered into pursuant thereto. A permit application
598 required under this subsection by a county or municipality
599 having jurisdiction and control of the right-of-way of any
600 public road must be processed and acted upon in accordance with
601 the timeframes provided in subparagraphs (7)(d)7., 8., and 9.

602 Section 8. Subsections (1) and (3) of section 337.403,
603 Florida Statutes, are amended to read:

604 337.403 Interference caused by utility; expenses.—

605 (1) If a utility that is placed upon, under, over, or
606 within the right-of-way limits of any public road or publicly
607 owned rail corridor is found by the authority to be unreasonably
608 interfering in any way with the convenient, safe, or continuous
609 use, or the maintenance, improvement, extension, or expansion,

596-02183-24

2024266c1

610 of such public road or publicly owned rail corridor, the utility
611 owner shall, upon 30 days' written notice to the utility or its
612 agent by the authority, provide to the authority a reasonable
613 utility relocation schedule to expedite the completion of the
614 authority's construction or maintenance project identified in
615 the notice, and initiate the work necessary to alleviate the
616 interference within 60 days after receipt of the written notice
617 from the authority at its own expense except as provided in
618 paragraphs (a)-(j). The notice must specify a reasonable
619 liquidated damage amount for each day the work remains
620 incomplete if not ~~The work must be~~ completed within such
621 reasonable time as stated in the notice or such time as agreed
622 to by the authority and the utility owner.

623 (a) If the relocation of utility facilities, as referred to
624 in s. 111 of the Federal-Aid Highway Act of 1956, Pub. L. No.
625 84-627, is necessitated by the construction of a project on the
626 federal-aid interstate system, including extensions thereof
627 within urban areas, and the cost of the project is eligible and
628 approved for reimbursement by the Federal Government to the
629 extent of 90 percent or more under the Federal-Aid Highway Act,
630 or any amendment thereof, then in that event the utility owning
631 or operating such facilities shall perform any necessary work
632 upon notice from the department, and the state shall pay the
633 entire expense properly attributable to such work after
634 deducting therefrom any increase in the value of a new facility
635 and any salvage value derived from an old facility.

636 (b) When a joint agreement between the department and the
637 utility is executed for utility work to be accomplished as part
638 of a contract for construction of a transportation facility, the

596-02183-24

2024266c1

639 department may participate in those utility work costs that
640 exceed the department's official estimate of the cost of the
641 work by more than 10 percent. The amount of such participation
642 is limited to the difference between the official estimate of
643 all the work in the joint agreement plus 10 percent and the
644 amount awarded for this work in the construction contract for
645 such work. The department may not participate in any utility
646 work costs that occur as a result of changes or additions during
647 the course of the contract.

648 (c) When an agreement between the department and utility is
649 executed for utility work to be accomplished in advance of a
650 contract for construction of a transportation facility, the
651 department may participate in the cost of clearing and grubbing
652 necessary to perform such work.

653 (d) If the utility facility was initially installed to
654 exclusively serve the authority or its tenants, or both, the
655 authority shall bear the costs of the utility work. However, the
656 authority is not responsible for the cost of utility work
657 related to any subsequent additions to that facility for the
658 purpose of serving others. For a county or municipality, if such
659 utility facility was installed in the right-of-way as a means to
660 serve a county or municipal facility on a parcel of property
661 adjacent to the right-of-way and if the intended use of the
662 county or municipal facility is for a use other than
663 transportation purposes, the obligation of the county or
664 municipality to bear the costs of the utility work shall extend
665 only to utility work on the parcel of property on which the
666 facility of the county or municipality originally served by the
667 utility facility is located.

596-02183-24

2024266c1

668 (e) If, under an agreement between a utility and the
669 authority entered into after July 1, 2009, the utility conveys,
670 subordinates, or relinquishes a compensable property right to
671 the authority for the purpose of accommodating the acquisition
672 or use of the right-of-way by the authority, without the
673 agreement expressly addressing future responsibility for the
674 cost of necessary utility work, the authority shall bear the
675 cost of removal or relocation. This paragraph does not impair or
676 restrict, and may not be used to interpret, the terms of any
677 such agreement entered into before July 1, 2009.

678 (f) If the utility is an electric facility being relocated
679 underground in order to enhance vehicular, bicycle, and
680 pedestrian safety and in which ownership of the electric
681 facility to be placed underground has been transferred from a
682 private to a public utility within the past 5 years, the
683 department shall incur all costs of the necessary utility work.

684 (g) An authority may bear the costs of utility work
685 required to eliminate an unreasonable interference when the
686 utility is not able to establish that it has a compensable
687 property right in the particular property where the utility is
688 located if:

689 1. The utility was physically located on the particular
690 property before the authority acquired rights in the property;

691 2. The utility demonstrates that it has a compensable
692 property right in adjacent properties along the alignment of the
693 utility or, after due diligence, certifies that the utility does
694 not have evidence to prove or disprove that it has a compensable
695 property right in the particular property where the utility is
696 located; and

596-02183-24

2024266c1

697 3. The information available to the authority does not
698 establish the relative priorities of the authority's and the
699 utility's interests in the particular property.

700 (h) If a municipally owned utility or county-owned utility
701 is located in a rural area of opportunity, as defined in s.
702 288.0656(2), and the department determines that the utility is
703 unable, and will not be able within the next 10 years, to pay
704 for the cost of utility work necessitated by a department
705 project on the State Highway System, the department may pay, in
706 whole or in part, the cost of such utility work performed by the
707 department or its contractor.

708 (i) If the relocation of utility facilities is necessitated
709 by the construction of a commuter rail service project or an
710 intercity passenger rail service project and the cost of the
711 project is eligible and approved for reimbursement by the
712 Federal Government, then in that event the utility owning or
713 operating such facilities located by permit on a department-
714 owned rail corridor shall perform any necessary utility
715 relocation work upon notice from the department, and the
716 department shall pay the expense properly attributable to such
717 utility relocation work in the same proportion as federal funds
718 are expended on the commuter rail service project or an
719 intercity passenger rail service project after deducting
720 therefrom any increase in the value of a new facility and any
721 salvage value derived from an old facility. In no event shall
722 the state be required to use state dollars for such utility
723 relocation work. This paragraph does not apply to any phase of
724 the Central Florida Commuter Rail project, known as SunRail.

725 (j) If a utility is lawfully located within an existing and

596-02183-24

2024266c1

726 valid utility easement granted by recorded plat, regardless of
727 whether such land was subsequently acquired by the authority by
728 dedication, transfer of fee, or otherwise, the authority must
729 bear the cost of the utility work required to eliminate an
730 unreasonable interference. The authority shall pay the entire
731 expense properly attributable to such work after deducting any
732 increase in the value of a new facility and any salvage value
733 derived from an old facility.

734 (3) Whenever a notice from the authority requires such
735 utility work and the owner thereof fails to perform the work at
736 his or her own expense within the time stated in the notice or
737 such other time as agreed to by the authority and the utility
738 owner, the authority shall proceed to cause the utility work to
739 be performed. The utility shall pay to the authority reasonable
740 costs resulting from the utility's failure or refusal to timely
741 perform the work, including payment of any liquidated damages
742 assessed by the authority ~~The expense thereby incurred shall be~~
743 ~~paid out of any money available therefor, and such expense~~
744 ~~shall, except as provided in subsection (1), be charged against~~
745 ~~the owner and levied and collected and paid into the fund from~~
746 ~~which the expense of such relocation was paid.~~

747 Section 9. Section 339.2820, Florida Statutes, is created
748 to read:

749 339.2820 Local agency program.—

750 (1) There is created within the department a local agency
751 program for the purpose of providing assistance to subrecipient
752 agencies, which include counties, municipalities,
753 intergovernmental agencies, and other eligible governmental
754 entities, to develop, design, and construct transportation

596-02183-24

2024266c1

755 facilities using federal funds allocated to the department from
756 federal agencies which are suballocated to local agencies. The
757 department shall update the project cost estimate in the year
758 the project is granted to the local agency and include a
759 contingency amount as part of the project cost estimate.

760 (2) The department is authorized to oversee projects funded
761 by the Federal Highway Administration.

762 (3) Local agencies shall prioritize budgeting local
763 projects through their respective M.P.O.'s or governing boards
764 so that those organizations or boards may receive reimbursement
765 for the services they provide to the public which are in
766 compliance with applicable federal laws, rules, and regulations.

767 (4) Federal-aid highway funds are available only to local
768 agencies that are certified by the department based on the
769 agencies' qualifications, experience, and ability to comply with
770 federal requirements, and their ability to undertake and
771 satisfactorily complete the work.

772 (5) Local agencies shall include in their contracts to
773 develop, design, or construct transportation facilities the
774 department's Division I General Requirements and Covenants for
775 local agencies as well as a contingency amount to cover costs
776 incurred due to unforeseen conditions.

777 Section 10. Subsection (3) of section 339.2825, Florida
778 Statutes, is amended to read:

779 339.2825 Approval of contractor-financed projects.—

780 (3) This section does not apply to a comprehensive public-
781 private partnership agreement authorized in s. 334.30(2)(a).

782 Section 11. This act shall take effect July 1, 2024.