

**By** the Appropriations Committee on Transportation, Tourism, and Economic Development; the Committee on Transportation; and Senator Hooper

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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 of receipt of an  
22      unsolicited proposal for a public-private  
23      transportation project; authorizing the department to  
24      enter into an interim agreement with a private entity  
25      regarding a qualifying project; providing that an  
26      interim agreement does not obligate the department to  
27      enter into a comprehensive agreement and is not  
28      required under certain circumstances; providing  
29      requirements for an interim agreement; conforming

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30 provisions to changes made by the act; authorizing the  
31 secretary of the department to authorize comprehensive  
32 agreements for a term of up to 75 years for certain  
33 projects; making technical changes; requiring the  
34 department to notify the Division of Bond Finance of  
35 the State Board of Administration before entering into  
36 an interim agreement or comprehensive agreement;  
37 amending s. 336.044, F.S.; prohibiting a local  
38 governmental entity from adopting certain standards or  
39 specifications concerning asphalt pavement material;  
40 amending s. 337.11, F.S.; requiring the department to  
41 receive three letters of interest before proceeding  
42 with requests for proposals for certain contracts;  
43 making technical changes; amending s. 337.18, F.S.;  
44 authorizing the department to allow the issuance of  
45 multiple contract performance and payment bonds in  
46 succession to meet certain requirements; revising the  
47 timeframe for certain actions against the contractor  
48 or the surety; specifying a timeframe for when an  
49 action for recovery of retainage must be instituted;  
50 amending s. 337.195, F.S.; revising a presumption  
51 regarding the proximate cause of death, injury, or  
52 damage in a civil suit against the department;  
53 defining terms; providing for immunity for contractors  
54 under certain circumstances; conforming provisions  
55 related to certain limitations on liability relating  
56 to traffic control plans; making technical changes;  
57 providing construction; providing that certain  
58 provisions do not preclude liability when the

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59 contractor's negligence is the proximate cause of the  
60 personal injury, property damage, or death; revising a  
61 presumption regarding a design engineer's degree of  
62 care and skill; deleting immunity for certain persons  
63 and entities; creating s. 339.2820, F.S.; creating  
64 within the department a local agency program for a  
65 specified purpose; requiring the department to update  
66 certain project cost estimates at a specified time and  
67 include a contingency amount as part of the project  
68 cost estimate; authorizing the department to oversee  
69 certain projects; requiring local agencies to  
70 prioritize budgeting certain local projects through  
71 their respective M.P.O.'s or governing boards for a  
72 specified purpose; specifying that certain funds are  
73 available only to local agencies that are certified by  
74 the department; requiring local agencies to include in  
75 certain contracts a specified document and a  
76 contingency amount for costs incurred due to  
77 unforeseen conditions; amending s. 339.2825, F.S.;  
78 conforming a provision to changes made by the act;  
79 providing an effective date.

80

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

82

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

85 206.46 State Transportation Trust Fund.—

86 (6) The department may not annually commit more than 20  
87 percent of the revenues derived from state fuel taxes and motor

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88 vehicle license-related fees deposited into the State  
89 Transportation Trust Fund to public transit projects, in  
90 accordance with chapter 341. However, this subsection does not  
91 apply to either of the following:

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

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

99 Section 2. Subsections (6) and (7) of section 288.9606,  
100 Florida Statutes, are amended to read:

101 288.9606 Issue of revenue bonds.—

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

111 (7) Notwithstanding any provision of this section, the  
112 corporation in its corporate capacity may, without authorization  
113 from a public agency under s. 163.01(7), issue revenue bonds or  
114 other evidence of indebtedness under this section to:

115 (a) Finance the undertaking of any project within the state  
116 that promotes renewable energy as defined in s. 366.91 or s.

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117 377.803;

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

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

123 (d) Finance the costs of acquisition or construction of a  
124 transportation facility by a private entity or consortium of  
125 private entities under a comprehensive ~~public-private~~  
126 ~~partnership~~ agreement authorized by s. 334.30.

127 Section 3. Present subsections (8) through (13) of section  
128 334.30, Florida Statutes, are redesignated as subsections (9)  
129 through (14), respectively, a new subsection (8) is added to  
130 that section, and subsections (1), (2), and (6) and present  
131 subsections (8), (10), (11), and (13) of that section are  
132 amended, to read:

133 334.30 Public-private transportation facilities.—The  
134 Legislature finds and declares that there is a public need for  
135 the rapid construction of safe and efficient transportation  
136 facilities for the purpose of traveling within the state, and  
137 that it is in the public's interest to provide for the  
138 construction of additional safe, convenient, and economical  
139 transportation facilities.

140 (1) The department may receive or solicit proposals and,  
141 with legislative approval as evidenced by approval of the  
142 project in the department's work program, enter into  
143 comprehensive agreements with private entities, or consortia  
144 thereof, for the building, operation, ownership, or financing of  
145 transportation facilities. The department may advance projects

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146 programmed in the adopted 5-year work program or projects  
147 increasing transportation capacity and greater than \$500 million  
148 in the 10-year Strategic Intermodal Plan using funds provided by  
149 public-private partnerships or private entities to be reimbursed  
150 from department funds for the project as programmed in the  
151 adopted work program. The department shall by rule establish an  
152 application fee for the submission of unsolicited proposals  
153 under this section. The fee must be sufficient to pay the costs  
154 of evaluating the proposals. The department may engage the  
155 services of private consultants to assist in the evaluation.  
156 Before approval, the department must determine that the proposed  
157 project:

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

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

161 (c) Would have adequate safeguards in place to ensure that  
162 no additional costs or service disruptions would be realized by  
163 the traveling public and residents of the state in the event of  
164 default or cancellation of the comprehensive agreement by the  
165 department;

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

170 (e) Would be owned by the department upon completion or  
171 termination of the comprehensive agreement.

172  
173 The department shall ensure that all reasonable costs to the  
174 state, related to transportation facilities that are not part of

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175 the State Highway System, are borne by the private entity. The  
176 department shall also ensure that all reasonable costs to the  
177 state and substantially affected local governments and  
178 utilities, related to the private transportation facility, are  
179 borne by the private entity for transportation facilities that  
180 are owned by private entities. For projects on the State Highway  
181 System, the department may use state resources to participate in  
182 funding and financing the project as provided for under the  
183 department's enabling legislation. Because the Legislature  
184 recognizes that private entities or consortia thereof would  
185 perform a governmental or public purpose or function when they  
186 enter into comprehensive agreements with the department to  
187 design, build, operate, own, or finance transportation  
188 facilities, the transportation facilities, including leasehold  
189 interests thereof, are exempt from ad valorem taxes as provided  
190 in chapter 196 to the extent property is owned by the state or  
191 other government entity, and from intangible taxes as provided  
192 in chapter 199 and special assessments of the state, any city,  
193 town, county, special district, political subdivision of the  
194 state, or any other governmental entity. The private entities or  
195 consortia thereof are exempt from tax imposed by chapter 201 on  
196 all documents or obligations to pay money which arise out of the  
197 comprehensive agreements to design, build, operate, own, lease,  
198 or finance transportation facilities. Any private entities or  
199 consortia thereof must pay any applicable corporate taxes as  
200 provided in chapter 220, and reemployment assistance taxes as  
201 provided in chapter 443, and sales and use tax as provided in  
202 chapter 212 shall be applicable. The private entities or  
203 consortia thereof must also register and collect the tax imposed

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204 by chapter 212 on all their direct sales and leases that are  
205 subject to tax under chapter 212. The comprehensive agreement  
206 between the private entity or consortia thereof and the  
207 department establishing a transportation facility under this  
208 chapter constitutes documentation sufficient to claim any  
209 exemption under this section.

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

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

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

226 (c) Any toll revenues shall be regulated by the department  
227 pursuant to s. 338.165(3). The regulations governing the future  
228 increase of toll or fare revenues shall be included in the  
229 comprehensive ~~public-private partnership~~ agreement.

230 (d) The department shall provide the analysis required in  
231 subparagraph (6)(e)2. to the Legislative Budget Commission  
232 created pursuant to s. 11.90 for review and approval prior to



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233 awarding a contract on a lease of an existing toll facility.

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

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

259 (6) The procurement of public-private partnerships by the  
260 department shall follow the provisions of this section. Sections  
261 337.025, 337.11, 337.14, 337.141, 337.145, 337.175, 337.18,

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262 337.185, 337.19, 337.221, and 337.251 may ~~shall~~ not apply to  
263 procurements under this section unless a provision is included  
264 in the procurement documents. The department shall ensure that  
265 generally accepted business practices for exemptions provided by  
266 this subsection are part of the procurement process or are  
267 included in the comprehensive ~~public-private partnership~~  
268 agreement.

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

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

287 (c) The department shall ensure that procurement documents  
288 include provisions for performance of the private entity and  
289 payment of subcontractors, including, but not limited to, surety  
290 bonds, letters of credit, parent company guarantees, and lender

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291 and equity partner guarantees. The department shall balance the  
292 structure of the security package for the public-private  
293 partnership that ensures performance and payment of  
294 subcontractors with the cost of the security to ensure the most  
295 efficient pricing.

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

314 (e) The department shall provide an independent analysis of  
315 the proposed public-private partnership that demonstrates the  
316 cost-effectiveness and overall public benefit at the following  
317 times:

- 318 1. Prior to moving forward with the procurement; and
- 319 2. If the procurement moves forward, prior to awarding the

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320 contract.

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

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

338 (b) Establish the process and timing for the negotiation of  
339 the comprehensive agreement.

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

343 (9)~~(8)~~ The department may enter into comprehensive ~~public-~~  
344 ~~private partnership~~ agreements that include extended terms  
345 providing annual payments for performance based on the  
346 availability of service or the facility being open to traffic or  
347 based on the level of traffic using the facility. In addition to  
348 other provisions in this section, the following provisions shall

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349 apply:

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

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

362 ~~(11)-(10)~~ Before ~~Prior to~~ entering into any comprehensive  
363 ~~such~~ agreement in which ~~where~~ funds are committed from the State  
364 Transportation Trust Fund, the project must be prioritized as  
365 follows:

366 (a) The department, in coordination with the local  
367 metropolitan planning organization, shall prioritize projects  
368 included in the Strategic Intermodal System 10-year and long-  
369 range cost-feasible plans.

370 (b) The department, in coordination with the local  
371 metropolitan planning organization or local government where  
372 there is no metropolitan planning organization, shall prioritize  
373 projects, for facilities not on the Strategic Intermodal System,  
374 included in the metropolitan planning organization cost-feasible  
375 transportation improvement plan and long-range transportation  
376 plan.

377 ~~(12)-(11)~~ Comprehensive ~~Public-private partnership~~

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378 agreements under this section are ~~shall be~~ limited to a term not  
379 exceeding 50 years. Upon making written findings that a  
380 comprehensive ~~an~~ agreement under this section requires a term in  
381 excess of 50 years, the secretary of the department may  
382 authorize a term of up to 75 years for projects that are  
383 partially or completely funded from project user fees.  
384 Comprehensive agreements under this section may ~~shall~~ not have a  
385 term in excess of 75 years unless specifically approved by the  
386 Legislature. The department shall identify each new project  
387 under this section with a term exceeding 75 years in the  
388 transmittal letter that accompanies the submittal of the  
389 tentative work program to the Governor and the Legislature in  
390 accordance with s. 339.135.

391 (14) ~~(13)~~ In connection with a proposal to finance or  
392 refinance a transportation facility pursuant to this section,  
393 the department shall consult with the Division of Bond Finance  
394 of the State Board of Administration. The department shall  
395 notify the division before entering into an interim agreement or  
396 comprehensive agreement and provide the division with the  
397 information necessary to provide timely consultation and  
398 recommendations. The Division of Bond Finance may make an  
399 independent recommendation to the Executive Office of the  
400 Governor.

401 Section 4. Subsection (5) of section 336.044, Florida  
402 Statutes, is amended to read:

403 336.044 Use of recyclable materials in construction.—

404 (5) Notwithstanding any law, rule, or ordinance to the  
405 contrary, a local governmental entity may not adopt standards or  
406 specifications that are contrary to the department standards or

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407 specifications for permissible use of reclaimed asphalt pavement  
408 material or deem reclaimed asphalt pavement material as in  
409 ~~construction. For purposes of this section, such material may~~  
410 ~~not be considered~~ solid waste.

411 Section 5. Paragraph (e) of subsection (7) and subsection  
412 (13) of section 337.11, Florida Statutes, are amended to read:

413 337.11 Contracting authority of department; bids; emergency  
414 repairs, supplemental agreements, and change orders; combined  
415 design and construction contracts; progress payments; records;  
416 requirements of vehicle registration.-

417 (7)

418 (e) For design-build contracts and phased design-build  
419 contracts, the department must receive at least three letters of  
420 interest in order to proceed with a request for proposals. The  
421 department shall request proposals from no fewer than three of  
422 the ~~design-build~~ firms submitting letters of interest. If a  
423 ~~design-build~~ firm withdraws from consideration after the  
424 department requests proposals, the department may continue if at  
425 least two proposals are received.

426 (13) Any motor vehicle used in ~~Each contract let by the~~  
427 ~~department for~~ the performance of road or bridge construction or  
428 maintenance work on a department project must ~~shall require all~~  
429 ~~motor vehicles that the contractor operates or causes to be~~  
430 ~~operated in this state to~~ be registered in compliance with  
431 chapter 320.

432 Section 6. Paragraphs (a) and (d) of subsection (1) of  
433 section 337.18, Florida Statutes, are amended to read:

434 337.18 Surety bonds for construction or maintenance  
435 contracts; requirement with respect to contract award; bond

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436 requirements; defaults; damage assessments.-

437 (1) (a) A surety bond shall be required of the successful  
438 bidder in an amount equal to the awarded contract price.  
439 However, the department may choose, in its discretion and  
440 applicable only to multiyear maintenance contracts, to allow for  
441 incremental annual contract bonds that cumulatively total the  
442 full, awarded, multiyear contract price. The department may also  
443 choose, in its discretion and applicable only to phased design-  
444 build construction contracts under s. 337.11(7)(b), to allow the  
445 issuance of multiple contract performance and payment bonds in  
446 succession to align with each phase of the contract to meet the  
447 bonding requirement in this subsection.

448 1. The department may waive the requirement for all or a  
449 portion of a surety bond if:

450 a. The contract price is \$250,000 or less and the  
451 department determines that the project is of a noncritical  
452 nature and that nonperformance will not endanger public health,  
453 safety, or property;

454 b. The prime contractor is a qualified nonprofit agency for  
455 the blind or for the other severely handicapped under s.  
456 413.036(2); or

457 c. The prime contractor is using a subcontractor that is a  
458 qualified nonprofit agency for the blind or for the other  
459 severely handicapped under s. 413.036(2). However, the  
460 department may not waive more than the amount of the  
461 subcontract.

462 2. If the Secretary of Transportation or the secretary's  
463 designee determines that it is in the best interests of the  
464 department to reduce the bonding requirement for a project and



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465 that to do so will not endanger public health, safety, or  
466 property, the department may waive the requirement of a surety  
467 bond in an amount equal to the awarded contract price for a  
468 project having a contract price of \$250 million or more and, in  
469 its place, may set a surety bond amount that is a portion of the  
470 total contract price and provide an alternate means of security  
471 for the balance of the contract amount that is not covered by  
472 the surety bond or provide for incremental surety bonding and  
473 provide an alternate means of security for the balance of the  
474 contract amount that is not covered by the surety bond. Such  
475 alternative means of security may include letters of credit,  
476 United States bonds and notes, parent company guarantees, and  
477 cash collateral. The department may require alternate means of  
478 security if a surety bond is waived. The surety on such bond  
479 shall be a surety company authorized to do business in the  
480 state. All bonds shall be payable to the department and  
481 conditioned for the prompt, faithful, and efficient performance  
482 of the contract according to plans and specifications and within  
483 the time period specified, and for the prompt payment of all  
484 persons defined in s. 713.01 furnishing labor, material,  
485 equipment, and supplies for work provided in the contract;  
486 however, whenever an improvement, demolition, or removal  
487 contract price is \$25,000 or less, the security may, in the  
488 discretion of the bidder, be in the form of a cashier's check,  
489 bank money order of any state or national bank, certified check,  
490 or postal money order. The department shall adopt rules to  
491 implement this subsection. Such rules shall include provisions  
492 under which the department shall refuse to accept bonds on  
493 contracts when a surety wrongfully fails or refuses to settle or

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494 provide a defense for claims or actions arising under a contract  
495 for which the surety previously furnished a bond.

496 (d) An action, except for an action for recovery of  
497 retainage, must be instituted by a claimant, whether in privity  
498 with the contractor or not, against the contractor or the surety  
499 on the payment bond or the payment provisions of a combined  
500 payment and performance bond within 365 days after the  
501 performance of the labor or completion of delivery of the  
502 materials or supplies. An action for recovery of retainage must  
503 be instituted against the contractor or the surety within 365  
504 days after final acceptance of the contract work by the  
505 department. A claimant may not waive in advance his or her right  
506 to bring an action under the bond against the surety. In any  
507 action brought to enforce a claim against a payment bond under  
508 this section, the prevailing party is entitled to recover a  
509 reasonable fee for the services of his or her attorney for trial  
510 and appeal or for arbitration, in an amount to be determined by  
511 the court, which fee must be taxed as part of the prevailing  
512 party's costs, as allowed in equitable actions.

513 Section 7. Section 337.195, Florida Statutes, is amended to  
514 read:

515 337.195 Limits on liability.—

516 (1) In a civil action for the death of or injury to a  
517 person, or for damage to property, against the Department of  
518 Transportation or its agents, consultants, or contractors for  
519 work performed on a highway, road, street, bridge, or other  
520 transportation facility when the death, injury, or damage  
521 resulted from a motor vehicle crash within a construction zone  
522 in which the driver of one of the vehicles was under the

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523 influence of alcoholic beverages as set forth in s. 316.193,  
524 under the influence of any chemical substance as set forth in s.  
525 877.111, or illegally under the influence of any substance  
526 controlled under chapter 893, excluding low-THC cannabis, to the  
527 extent that her or his normal faculties were impaired or that  
528 she or he operated a vehicle recklessly as defined in s.  
529 316.192, it is presumed that the driver's operation of the  
530 vehicle was the sole proximate cause of her or his own death,  
531 injury, or damage. This presumption can be overcome if the gross  
532 negligence or intentional misconduct of the Department of  
533 Transportation, or of its agents, consultants, or contractors,  
534 was a proximate cause of the driver's death, injury, or damage.

535 (2) (a) For purposes of this section, the term:

536 1. "Contract documents" has the same meaning as in the  
537 department's Standard Specifications for Road and Bridge  
538 Construction applicable under the contract between the  
539 department and the contractor.

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

545 3. "Design engineer" means a person or an entity, including  
546 the design consultant of a design-build team, who contracts at  
547 any tier to prepare or provide engineering plans, including  
548 traffic control plans, for the construction or repair of a  
549 highway, road, street, bridge, or other department  
550 transportation facility for the department or in connection with  
551 a department project.

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552 4. "Traffic control plans" means the maintenance of traffic  
553 plans designed by a professional engineer, or otherwise in  
554 accordance with the department's standard plans, and approved by  
555 the department.

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

558 1. The performance of the construction, maintenance, or  
559 repair of the transportation facility, if, at the time the  
560 personal injury, property damage, or death occurred, the  
561 contractor was in compliance with the contract documents  
562 material to the personal injury, property damage, or death.

563 2. Acts or omissions of a third party that furnishes or  
564 contracts at any contractual level to furnish services or  
565 materials to the transportation facility, including any  
566 subcontractor; sub-subcontractor; laborer; materialman; owner,  
567 lessor, or driver of a motor vehicle, trailer, semitrailer,  
568 truck, heavy truck, truck tractor, or commercial motor vehicle,  
569 as those terms are defined in s. 320.01; or any person who  
570 performs services as an architect, a landscape architect, an  
571 interior designer, an engineer, or a surveyor and mapper.

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

576 4. Acts or omissions of a third party who damages,  
577 modifies, moves, or removes any traffic control device, warning  
578 device, barrier, or other facility or device used for the  
579 public's safety and convenience ~~who constructs, maintains, or~~  
580 ~~repairs a highway, road, street, bridge, or other transportation~~

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581 ~~facility for the Department of Transportation is not liable to a~~  
582 ~~claimant for personal injury, property damage, or death arising~~  
583 ~~from the performance of the construction, maintenance, or repair~~  
584 ~~if, at the time of the personal injury, property damage, or~~  
585 ~~death, the contractor was in compliance with contract documents~~  
586 ~~material to the condition that was the proximate cause of the~~  
587 ~~personal injury, property damage, or death.~~

588 (c)~~(a)~~ The limitations ~~limitation~~ on liability contained in  
589 this subsection do ~~does~~ not apply when the proximate cause of  
590 the personal injury, property damage, or death is a latent  
591 condition, defect, error, or omission that was created by the  
592 contractor and not a defect, error, or omission in the contract  
593 documents; or when the proximate cause of the personal injury,  
594 property damage, or death was the contractor's failure to  
595 ~~perform, update, or comply with the maintenance of the~~ traffic  
596 control plans ~~safety plan~~ as required by the contract documents.

597 (d)~~(b)~~ ~~Nothing in~~ This subsection may not ~~shall~~ be  
598 interpreted or construed as relieving the contractor of any  
599 obligation to provide the department ~~of Transportation~~ with  
600 written notice of any apparent error or omission in the contract  
601 documents, or as relieving the contractor of his or her contract  
602 responsibility to manage the work of others performing under the  
603 contract.

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

607 (f)~~(d)~~ This subsection does not affect any claim of any  
608 entity against such contractor, which claim is associated with  
609 such entity's facilities on or in department ~~of Transportation~~

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610 roads or other transportation facilities.

611 (g) This subsection may not be interpreted or construed to  
612 alter or amend any of the provisions of chapter 440, which shall  
613 take precedence in the event of any conflict with this  
614 subsection.

615 (h) This subsection does not preclude liability where the  
616 contractor's negligence is the proximate cause of the personal  
617 injury, property damage, or death.

618 (3) In all cases involving personal injury, property  
619 damage, or death, a design engineer is ~~person or entity who~~  
620 ~~contracts to prepare or provide engineering plans for the~~  
621 ~~construction or repair of a highway, road, street, bridge, or~~  
622 ~~other transportation facility for the Department of~~  
623 ~~Transportation shall be presumed to have prepared such~~  
624 engineering plans using the degree of care and skill ordinarily  
625 exercised by other engineers in the field under similar  
626 conditions and in similar localities and with due regard for  
627 acceptable engineering standards and principles if the  
628 engineering plans conformed to the department's ~~Department of~~  
629 ~~Transportation's~~ design standards material to the condition or  
630 defect that was the proximate cause of the personal injury,  
631 property damage, or death. This presumption can be overcome only  
632 upon a showing of the design engineer's ~~person's or entity's~~  
633 gross negligence in the preparation of the engineering plans and  
634 may shall not be interpreted or construed to alter or affect any  
635 claim of the department ~~of Transportation~~ against such design  
636 engineer ~~person or entity~~. The limitation on liability contained  
637 in this subsection does shall not apply to any hidden or  
638 undiscoverable condition created by the design engineer. This

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639 subsection does not affect any claim of any entity against such  
640 design engineer ~~or engineering firm~~, which claim is associated  
641 with such entity's facilities on or in department ~~of~~  
642 ~~Transportation~~ roads or other transportation facilities.

643 ~~(4) In any civil action for death, injury, or damages~~  
644 ~~against the Department of Transportation or its agents,~~  
645 ~~consultants, engineers, or contractors for work performed on a~~  
646 ~~highway, road, street, bridge, or other transportation facility,~~  
647 ~~if the department, its agents, consultants, engineers, or~~  
648 ~~contractors are immune from liability pursuant to this section~~  
649 ~~or are not parties to the litigation, they may not be named on~~  
650 ~~the jury verdict form or be found to be at fault or responsible~~  
651 ~~for the injury, death, or damage that gave rise to the damages.~~

652 Section 8. Section 339.2820, Florida Statutes, is created  
653 to read:

654 339.2820 Local agency program.—

655 (1) There is created within the department a local agency  
656 program for the purpose of providing assistance to subrecipient  
657 agencies, which include counties, municipalities,  
658 intergovernmental agencies, and other eligible governmental  
659 entities, to develop, design, and construct transportation  
660 facilities using federal funds allocated to the department from  
661 federal agencies which are suballocated to local agencies. The  
662 department shall update the project cost estimate in the year  
663 the project is granted to the local agency and include a  
664 contingency amount as part of the project cost estimate.

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

667 (3) Local agencies shall prioritize budgeting local

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668 projects through their respective M.P.O.'s or governing boards  
669 so that those organizations or boards may receive reimbursement  
670 for the services they provide to the public which are in  
671 compliance with applicable federal laws, rules, and regulations.

672 (4) Federal-aid highway funds are available only to local  
673 agencies that are certified by the department based on the  
674 agencies' qualifications, experience, and ability to comply with  
675 federal requirements, and their ability to undertake and  
676 satisfactorily complete the work.

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

682 Section 9. Subsection (3) of section 339.2825, Florida  
683 Statutes, is amended to read:

684 339.2825 Approval of contractor-financed projects.—

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

687 Section 10. This act shall take effect July 1, 2024.