HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 157 Transportation
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

The bill addresses matters related to transportation. The bill:

- Requires a local government to provide mobility fee credits to residential developers for certain capital improvements to a transportation system that the Department of Transportation (DOT) deems necessary in certain circumstances.
- Codifies the Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies (I-STREET) Living Lab within the University of Florida and provides for its duties relating to transportation research, education, workforce development, and related issues.
- Clarifies DOT's authority to engage in progressive design-build contracting as an innovative technique of highway and bridge design and construction.
- Exempts certain progressive design-build contracts from an existing statutory cap on innovative contracts.
- Authorizes landowners to obtain permits from DOT to clear vegetation from the right-of-way on limited access facilities under specified conditions.
- Removes a limitation on design-build contracting to certain types of projects and authorizes design-build contracting for all types of projects.
- Requires contracts for bridge work over navigable waters to contain provisions requiring a minimum amount of general liability insurance.
- Provides that stipends paid by DOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in DOT's legislatively-approved work program are not subject to existing documentation and notification requirements for settlement payments made by DOT to resolve bid protests.
- Authorizes an applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of $2 million or less (increased from $1 million) to submit reviewed annual or reviewed interim financial statements.
- Authorizes an applicant for a contractor certificate of qualification to submit a request to keep an existing certificate, with the current maximum capacity rating, in place until the expiration date of the existing certificate.
- Repeals a public records exemption for documents that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by DOT.
- Changes from 5 years to 10 years the length of time that DOT must adjust toll rates for inflation.

The bill may have an indeterminate positive fiscal impact on state government revenues and a negative fiscal impact on state government expenditures. The bill does not appear to have a fiscal impact to local governments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Mobility Fee Credits

Current Situation

Transportation Concurrency

The Community Planning Act,[1] authorizes local governments (counties or municipalities) to establish a a concurrency management system to assess landowners the costs of maintaining specified levels of service for the local government's transportation system when the projected impacts of their development would adversely impact the system.[2]

Prior to June 2, 2011, Florida law required local government comprehensive plans to provide for transportation concurrency. Under current law, transportation concurrency is optional, and a local government may eliminate transportation concurrency from its comprehensive plan. If the local government eliminates transportation concurrency, it is encouraged, but not required to adopt a mobility fee-based plan in its place.[3]

Impact Fees

Impact fees are used by local governments to fund infrastructure necessitated by new growth.[4] Florida law requires each local government that adopts and collects an impact fee to:

- Ensure that the impact fee is proportional and reasonably connected to the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.
- Ensure that the impact fee is proportional and reasonably connected to the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.[5]

A local government must credit against the collection of the impact fee any contribution related to public facilities or infrastructure, including land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.[6]

Mobility Fees

A mobility fee is a transportation system charge designed to recoup the proportionate costs of transportation demand generated by all new development. Its focus is new development due to the fee's association with transportation concurrency systems and its use to fund planned transportation facilities and services.[7]

[1] Ch. 163, part II, F.S.
[2] Department of Economic Opportunity (DEO), *Transportation Planning*. https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/transportation-planning (last visited Feb. 16, 2022).
[3] *id*.
[4] S. 163.31801(2), F.S.
[5] S. 163.31801(4), F.S.
[6] S. 163.31801(5)(a), F.S.
[7] Center for Urban Transportation Research, *Evaluation of the Mobility Fee Concept Final Report*, University of South Florida (Nov. 2009), available at cutr.usf.edu/wp-content/uploads/2012/08/Evaluation-of-the-Mobility-Fee-Concept-CUTR-Webcast-04.21.11.pdf (last visited Jan. 18, 2021).

If a local government repeals transportation concurrency, Florida law encourages, but does not require, it to adopt an alternative mobility funding system and provides tools and techniques to be used in establishing a mobility fee.[8]

Effect of the Bill

The bill clarifies that a local government, pursuant to current law, must provide mobility fee credits to a residential developer for capital improvements to a transportation system that the Department of Transportation (DOT) deems necessary to ensure the safe and efficient mobility of people, commerce and goods to bring a planned housing community into service.

Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies (I-STREET) Living Lab

Current Situation

Various centers, institutes, and special programs within the State University System are codified in Florida Statutes, including the Florida Industrial and Phosphate Research Institute at Florida Polytechnic University,[9] the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida,[10] the Louis de la Parte Florida Mental Health Institute at the University of South Florida,[11] the Florida Institute for Child Welfare at Florida State University,[12] and the Center for Urban Transportation Research at the University of South Florida.[13]

The University of Florida (UF) College of Engineering's Transportation Institute aims to advance transportation, disseminate research results, and provide educational opportunities related to transportation. The institute is an umbrella organization housing several transportation-related centers.[14]

UF's Transportation Institute, the Department of Transportation (DOT), and the City of Gainesville have partnered to create the Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies (I-STREET) Living Lab. I-STREET's principal objective is to make significant improvements to transportation safety and mobility, utilizing a real-world testbed environment that has been created on and surrounding the UF campus and the expanding set of diverse technology installed on Florida segments of the Interstate Highway System.[15] I-STREET has received funding from the National Science Foundation and through research conducted as part of the United States Department of Transportation's University Transportation Centers Program.[16]

I-STREET's mission and main goals are to:

- Facilitate the development and implementation of advanced and emerging technologies to improve safety and mobility that are suitable for implementation statewide and beyond;
- Foster collaboration with industry wishing to develop, test, and implement their own technologies to improve safety, and mobility; and
- Become a recognized national and global leader in the development and implementation of advanced technologies to improve transportation safety and mobility.[17]

I-STREET projects include:

- I-75 Florida Regional Advanced Mobility Elements;

[8] S. 163.3180(5)(f), F.S.
[9] S. 1004.346, F.S.
[10] S. 1004.43, F.S.
[11] S. 1004.44, F.S.
[12] S. 1004.615, F.S.
[13] S. 334.065(1), F.S.
[14] University of Florida (UF) Transportation Institute, *Overview,* https://www.transportation.institute.ufl.edu/overview/ (last visited Jan 13, 2022).
[15] UF, *I-Street Living Lab*, https://www.transportation.institute.ufl.edu/i-street-living-lab/ (last visited Feb, 11, 2022).
[16] House of Representatives, Appropriations Project Request – Fiscal Year 2022-2023 HB 4285 (2022) p. 5.
[17] UF, *supra* note 14.

- Pedestrian and Bicycle Safety Demonstration;
- Gainesville Autonomous Shuttle Evaluation; and
- Transportation Mobility Assessment and Recommendations for Smart City Planning.[18]

DOT has issued an invitation to transportation industry leaders for participation in the "UF I-STREET program." According to DOT:

> I-STREET is designed to assist in implementing emerging technologies aimed at safety and mobility improvements. DOT will develop requests for proposals utilizing the emerging technologies and will select vendors through a competitive bidding process. The selected vendor for each project will deploy technology solutions. UF will conduct before-and-after evaluations of implemented projects. After evaluation, DOT will consider whether to expand the successful I-STREET projects elsewhere in the state.
>
> DOT has allocated funding for these innovative projects per fiscal year (FY) from FY 2020-2021 until FY 2024-2025. Each FY, DOT will fund multiple projects based on the projects' merits and safety and mobility improvement potential. The number of awards will vary depending on the project type and scope.[19]

Effect of the Bill

The bill codifies the I-STREET Living Lab within UF. The bill requires I-STREET to, at a minimum:

- Conduct and facilitate research on issues related to innovative transportation mobility and safety technology development and deployment in Florida and serve as an information exchange and depository for the most current information pertaining to transportation research, education, workforce development, and related issues.
- Be a continuous resource for the Legislature, DOT, local governments, the nation's metropolitan regions, and the private sector in the area of transportation and related research.
- Promote intercampus transportation and related research activities among Florida universities to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.
- Provide by July 1, 2023, and each July 1 thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that outlines I-STREET's clearly defined goals and its efforts and progress on reaching those goals.

The bill creates an advisory board to periodically review and advise I-STREET concerning its research program. The board must consist of nine members with expertise in transportation-related areas, including:

- A member appointed by the President of the Senate.
- A member appointed by the Speaker of the House of Representatives.
- The Secretary of Transportation or his or her designee.
- The Secretary of Economic Opportunity or his or her designee.
- A member of the Florida Transportation Commission.[20]
- Four members nominated by UF's College of Engineering and approved by UF's president. These nominees may include representatives of UF, other academic and research institutions, or private entities.

Progressive Design-Build and Innovative Contracting

Current Situation

[18] UF Transportation Institute, *Projects,* https://www.transportation.institute.ufl.edu/i-street-living-lab/projects/ (last visited Jan. 13, 2022).
[19] Department of Transportation (DOT), *UF I-Street*, https://www.fdot.gov/traffic/its/projects-deploy/cv/maplocations/uf-testbed.shtm (last visited Jan. 14, 2022).
[20] The Florida Transportation Commission is a citizen's advisory board for the Department of Transportation.

Current law authorizes DOT, if it determines that doing so is in the public interest, to combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, referred to as a "design-build" contract.[21] DOT must adopt, by rule, procedures for administering design-build contracts. Such procedures must include, but are not limited to:

- Prequalification requirements.
- Public announcement procedures.
- Scope of service requirements.
- Letters of interest requirements.
- Short-listing criteria and procedures.
- Bid proposal requirements.
- Technical review committee.
- Selection and award processes.
- Stipend requirements.[22]

Under Florida law, DOT is authorized to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must be intended to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of:

- Highway and bridge design, construction, and maintenance;
- Innovative bidding and financing techniques;
- Accelerated construction procedures; and
- Techniques that have the potential to reduce project life cycle costs.

To the maximum extent practical, DOT must use existing processes to award and administer construction and maintenance contracts.[23]

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

- Turnpike Enterprise projects, and
- Low-bid design-build milling and resurfacing contracts.[24]

According to the Design-Build Institute of America (DBIA), design-build projects enable the project owner to manage only one contract, with the designer and contractor working together from the beginning and providing consensus project recommendations to fit the owner's schedule and budget. The entire team addresses any necessary changes, which leads "to collaborative problem-solving and innovation...." This method of project delivery, the DBIA asserts, creates an inherent "culture of collaboration."[25] As described by the DBIA, the "progressive" type of design-build contract "uses a qualifications-based or best value selection, followed by a process whereby the owner then 'progresses' towards a design and contract price with the team."[26]

Effect of the Bill

The bill authorizes DOT to engage in design-build contracting for all types of projects, not just buildings, major bridges, limited access facilities, or rail corridors.

The bill amends DOT's authority to undertake innovative transportation projects, expressly authorizing DOT to use progressive design-build contracts for such projects. If determined to be in the best interest of the public, a progressive design-build approach would combine the design and construction phases

[21] S. 337.11(7)(a), F.S.
[22] S. 337.11(7)(b), F.S.
[23] S. 337.025(1), F.S.
[24] S. 337.025(2), F.S.
[25] *See* DBIA, *What is Design-Build*, available at https://dbia.org/what-is-design-build/ (last visited Jan. 5, 2022).
[26] *See* DBIA, *Progressive Design-Build, Design-Build Procured with a Progressive Design and Price*, at p. 3, available at https://dbia.org/wp-content/uploads/2018/05/Primer-Progressive-Design-Build.pdf (last visited Jan. 5, 2022).

of a project into a single contract and select the design-build firm in the early stages of a project to ensure that the firm is part of the collaboration and development of the design as part of a step-by-step progression through construction.

The bill requires the selection and award processes for a progressive design-build contract to involve a two-phase process. In the first phase, DOT must competitively award the contract to a design-build firm based upon the firm's qualifications. In phase two, the selected firm must competitively bid construction trade and subcontractor packages and, based upon these bids, negotiate with DOT for a fixed price or a guaranteed maximum price that meets the project budget and scope.

In addition, the bill revises DOT's $120 million cap on innovative contracting to eliminate the exception for low-bid design-build milling and resurfacing contracts, and to create an exception for progressive design-build contracts for complex, high-risk projects with a minimum contract value of $400 million. DOT would still be authorized to continue using "traditional" design-build contracting provided that all innovative project contracts do not exceed the $120 million annual cap.

The bill also requires DOT, by rule, to establish procedures for progressive design-build.

Clearing of DOT Right-of-Way by Landowners

Current Situation

Current law does not authorize landowners with land contiguous to DOT's right-of-way to clear land on DOT's right-of-way prior to construction on a limited access facility.[27]

DOT's work program is a five-year plan for transportation projects which DOT plans to undertake.[28] Current law indicates the Legislature's intent that the first three years of DOT's adopted work program stands as the state's commitment to undertake transportation projects. The law also provides that local governments may rely on those years for planning and concurrency purposes and in the development and amendment of the capital improvement elements of their local government comprehensive plans.[29]

Effect of the Bill

The bill provides, that for a construction project funded in the first three years of DOT's adopted work program, a landowner with land contiguous to a limited access facility may be allowed, under a DOT-issued permit, to remove vegetation designated to be removed as part of the construction project on a DOT right-of-way in an area associated with a limited access facility. Such removal must be performed within the same limits of removal as identified in the final plans of the project.

DOT Contracting and Procurement Authority/Settlements and Stipends

Current Situation

Bid Settlements

Under current law, when DOT determines that it is in the public's best interest to resolve a bid protest[30] related to the purchase of personal property or contractual services,[31] through a settlement that requires DOT to pay a nonselected responsive bidder a total sum of $1 million or more, including any

[27] Section 334.03(12) defines the term "limited access facility" to mean a street or highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason.
[28] DOT's work program is developed pursuant to s. 339.135, F.S.
[29] S. 339.135(4)(b)3., F.S.
[30] Bid protests are handled in accordance with s. 120.57(3), F.S.
[31] S. 287.057, F.S.

amount paid relating to patents, copyrights, and trademarks,[32] relating to design-build stipends,[33] or any other law, DOT must:

- Document in a written memorandum prepared by the DOT secretary the specific reasons that such settlement and payment to a nonselected bidder is in the state's best interest. The written memorandum must be included and maintained in DOT's permanent files concerning the procurement and must include:
  - A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that DOT will acquire or retain as a result of such settlement; and
  - The specific appropriation in the existing General Appropriations Act which DOT intends to use to provide such payment.
- Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least five business days, or as soon thereafter as practicable, before DOT makes the settlement agreement final. Such written notification must include the written memorandum.
- Provide, at the time settlement discussions regarding any such payment have begun in earnest, written notification of such discussions to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General.[34]

Design-Build Stipends

Florida law provides that if DOT determines that it is in the public's best interest, it may pay a stipend to nonselected design-build firms that have submitted responsive proposals for construction contracts. The decision and amount of a stipend must be based upon DOT analysis of the estimated proposal development costs and the anticipated degree of engineering design during the procurement process. DOT retains the right to use those designs from responsive nonselected design-build firms that accept a stipend.[35]

Effect of the Bill

The bill provides that stipends paid by DOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in DOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by DOT to resolve a bid protest through a settlement. If DOT pays a stipend to *settle* a bid protest in an amount that triggers the requirements ($1 million), DOT must continue to comply with the documentation and notification requirements.

Contractor Insurance Requirements

Current Situation

DOT Contractor Liability Insurance Requirements

DOT requires each contractor to indemnify and hold harmless DOT, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.[36]

[32] S. 334.049, F.S.
[33] S. 337.11(8), F.S.
[34] S. 337.1101(1), F.S.
[35] S. 337.11(8), F.S.
[36] DOT Specs Book, Section 7-12.1, *Contractor to Provide Indemnification,* January 2017, available at: https://www.fdot.gov/docs/default-source/programmanagement/implemented/specbooks/january2017/files/007-117.pdf (last visited Feb. 18, 2022).

DOT also requires each contractor to carry commercial general liability insurance that provides continuous coverage for all work and operations provided under the contract. Additional requirements exist for construction adjacent to railroad tracks and certain utility facilities.[37]

Federal Limitation of Liability Act of 1851

On September 16, 2020, during Hurricane Sally, the Pensacola Bay Bridge suffered severe damage after multiple barges used in the bridge's construction escaped their moorings and struck the bridge. Once the damage was identified, DOT closed the bridge to all traffic,[38] and the bridge remained was closed until May 2021.[39] In its aftermath, lawsuits were filed by businesses, homeowners, governments, and others claiming direct losses due to the barges destroying a portion of the Pensacola Bay Bridge.[40]

Citing the federal Limitation of Liability Act of 1851,[41] the bridge contractor has sought to limit its liability to the value of the five barges that actually damaged the bridge, approximately $1.43 million.[42] A federal judge subsequently opined that the bridge contractor was negligent in its preparations for Hurricane Sally, and that the company should not be able to limit its liability.[43] Lawsuits are still pending to determine the bridge contractor's liability.

Under the federal Limitation of Liability Act of 1851, the liability of the owner of a vessel for specified claims, debts, or liabilities may not exceed the value of the vessel and pending freight. [44]

Except as otherwise provided, the federal Limitation of Liability Act of 1851 applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats and barges.[45]

Effect of the Bill

The bill requires that each contract let by DOT for performance of bridge construction or maintenance over navigable waters contain a provision requiring general liability insurance in an amount to be determined by DOT covering potential liability for third-party personal injury and property damage claims caused by vessels used by the contractor in the performance of the work.

Contractor Certificate of Qualification

Current Situation

A contractor desiring to bid on any DOT construction contract in excess of $250,000 must obtain a certificate of qualification from DOT.[46] Each application for certification must be accompanied by the contractor's latest audited annual financial statements. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which

[37] DOT Specs Book, Section 7-13.2, 3, and 4. *Commercial General Liability Insurance,* January 2017, available at: https://www.fdot.gov/docs/default-source/programmanagement/implemented/specbooks/january2017/files/007-117.pdf (last visited Feb. 18, 2022).
[38] DOT, *Pensacola Bay Bridge Project*, https://www.fdot.gov/info/PensacolaBay (last visited Feb. 10, 2022).
[39] Emma Kennedy, *Pensacola Bay Bridge Finally Opens after 8-month Closure; Drivers Can Expect Some Delays,* Pensacola News Journal, https://www.pnj.com/story/news/2021/05/28/pensacola-bay-bridge-reopen-traffic-memorial-day-hurricane-sally-skanska/7466670002/ (last visited Feb. 10, 2022).
[40] *Skanska Loses Federal Lawsuit Over Hurricane Sally Barge Damage,* Dec. 29, 2021. http://www.northescambia.com/2021/12/skanska-loses-federal-lawsuit-over-hurricane-sally (last visited Feb. 10, 2022).
[41] 46 U.S.C. s. 30501, et. seq.
[42] Joe Bousquin, *Skanska Wins Key Ruling in Pensacola Bridge Case,* Construction Dive, Aug. 3, 2011. https://www.constructiondive.com/news/skanska-wins-key-ruling-in-pensacola-bridge-case/604340/ (last visited Feb. 17, 2022).
[43] Emma Kennedy, *Skanska Loses Hurricane Sally Trial, Judge Finds Company Negligent for Failing to Prepare,* Pensacola News Journal, Dec. 29, 2021. https://www.pnj.com/story/news/local/pensacola/2021/12/29/skanska-trial-judge-sides-claimants-hurricane-sally-case-largely-centered-on-pensacola-bay-bridge/9045991002/ (last visited Feb. 17, 2022).
[44] 46 USC s. 30505(a).
[45] 46 U.S.C. s. 30502.
[46] S. 337.14, F.S., and R. 14-22, F.A.C.

DOT receives the application, the contractor must also submit audited interim financial statements and an updated application.[47]

DOT's rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. DOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.[48]

Part of DOT's inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating, which is the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.[49] According to DOT's rules, the maximum capacity rating is established by a formula, one element of which is the "ability factor."[50] DOT's rules require an applicant's maximum capacity rating to be reduced by the total value of their current uncompleted work, producing the applicant's "current capacity," or bidding capacity. Under the rule, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.[51]

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, DOT must issue the applicant a certificate, which, unless revoked by DOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as DOT prescribes. Submission of an application does not affect expiration of an existing certificate, the ability factor of the applicant, or the maximum capacity rating of the applicant.[52]

Under Florida law, an applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant, instead of audited, certified financial statements. DOT may waive these requirements for projects having a contract price of $500,000 or less if DOT determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.[53]

Effect of the Bill

The bill removes current provisions providing that submission of an application does not affect the ability factor or the maximum capacity rating of an applicant for DOT certificate of qualification. Instead, the bill authorizes an applicant to submit a written request to DOT, along with its timely submitted application, to keep an existing certificate in place until its expiration date. If DOT approves the request, the applicant's current maximum capacity rating must remain in place until expiration of the current certification. In the absence of DOT's approval and in accordance with DOT's existing rules, the current capacity rating must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.

The bill increases from $1 million to $2 million the proposed budget estimate amount for contracts under which an applying contractor may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. Thus, an applying contractor who desires to bid

[47] The interim financial statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date DOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the DOT within 15 days after either four-month period is considered timely.
[48] R. 14.22-003(1), F.A.C.
[49] R. 14.22-003(1)(d) and (2), F.A.C.
[50] The ability factor is a performance score which a contractor receives from DOT upon completion of a project. The initial abil ityfactor is based on the applicant's organization, management, work experience, and letters of recommendation. R. 14 -22-003, F.A.C.
[51] R. 14-22.006(1), F.A.C.
[52] S. 337.14(4), F.S.
[53] S. 337.14(1), F.S.

exclusively on construction contracts with proposed budget estimates of $2 million or less may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant.

Identities of Potential Bidders on DOT Contracts

Current Situation

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.[54]

Current law provides that a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by DOT is confidential and exempt from the public records law for the period which begins two working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of such persons more than the two working days before the deadline for obtaining bid packages, plans, or specifications remains a public record.[55]

Effect of the Bill

The bill eliminates the public records exemption for documents revealing the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by DOT for the period that begins two working days before the deadline for obtaining bid packages plans, or specifications, and ends with the letting of the bid. These documents will now be public records.

Toll Indexing and Cashless Tolling

Current Situation

With limited exceptions, all users of a toll facility must pay the appropriate toll.[56] Under Florida law, DOT must index its toll rates to the annual Consumer Price Index or similar inflation indicators. Toll rate adjustments for inflation may be made no more frequently than once a year and must be made no less frequently than once every five years, as necessary to accommodate cash toll rate schedules. Toll rates may be increased beyond these limits as directed by bond documents, covenants, or governing body authorization or pursuant DOT administrative rule.[57] These toll rate adjustments are exempt from the rule ratification requirements in the Administrative Procedures Act.[58]

The last time that DOT adjusted its toll rates for inflation was in October 2017.[59] Therefore, under current law, DOT must adjust its toll rates in 2022.

Effect of the Bill

The bill changes the frequency that DOT must adjust its toll rates for inflation. Instead of adjusting for inflation every five years, DOT must adjust its toll rates every 10 years. DOT may still adjust its toll rates to comply with bond documents or other obligations.

The bill also removes the provision that provides for toll rate adjustments to be made as necessary to accommodate cash toll rate schedules.

[54] Art. I, s. 24(c), Fla. Const.
[55] S. 336.168(2), F.S.
[56] S. 338.155(1)(a), F.S. Exceptions include emergency vehicles and emergency evacuations.
[57] S. 338.165(3), F.S.
[58] S. 120.80(18), F.S.
[59] DOT, *Toll Rats for Florida Turnpike and Florida Department of Transportation Toll Facilities, South Florida,* https://floridasturnpike.com/wp-content/uploads/2020/04/Toll-Rates-Booklet-South-Florida.pdf (last visited Feb. 15, 2022).

Effective Date

The bill has an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1 Creates s. 163.31803, F.S., relating to mobility fee credits for certain planned housing communities.

Section 2 Creates s. 334.066, F.S., relating to Implementing Solutions from Transportation Research and Evaluating Emerging Technologies (I-STREET) Living Lab.

Section 3 Amends s. 337.025, F.S., relating to innovative transportation projects.

Section 4 Amends s. 337.107, F.S., relating to contracts for right-of-way services.

Section 5 Amends s. 337.11, F.S., relating to contracting authority of the department.

Section 6 Amends s. 337.1101, F.S., relating to contracting and procurement authority of the department; settlements; notifications required.

Section 7 Amends s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 8 Amends s. 337.168, F.S., relating to confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.

Section 9 Amends s. 338.165, F.S., relating to the continuation of tolls.

Section 10 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The costs associated with I-STREET are unknown but are expected to be absorbed within the existing resources of the UF, DOT, and other potential government sector participants. The bill does not provide funding for any costs associated with participation.

   The fiscal impact of the revisions relating to design-build, progressive design-build, and innovative contracting authority is indeterminate because the number and details of any such contracts to be undertaken by DOT is unknown.

   The fiscal impact of the revisions relating to DOT contractor certificates of qualification is indeterminate.

   Any expenses incurred by DOT associated with rulemaking can be absorbed within existing resources.

   DOT may incur expenditures related to public records requests for documents that identify a potential bidder on a transportation project. These costs are indeterminate but likely insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The costs associated with I-STREET are unknown but are expected to be absorbed within the existing resources of the UF, DOT, and other potential government sector participants. The bill does not provide funding for any costs associated with participation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce costs for certain contractors to provide required financial statements. A reviewed annual or reviewed interim financial statement is less expensive than an audited, certified annual or interim financial statement.

Motorists may not see inflation-based toll increases as frequently.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill revises DOT's rulemaking authority regarding procedures for design-build projects to provide for progressive design build projects.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOT, the repeal of the public records exemption may have a negative impact on procurement by eliminating confidentiality of potential bidders and by allowing bid documents, such as letters of interest, to be produced as public records during the procurement process.[60]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[60] DOT Agency Analysis, 2022 House Bill 157, p. 6. (Sep. 24, 2021).