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## **CHAPTER 3: AMENDMENTS**

### **1. OVERVIEW**

The Department may amend the Adopted Work Program at any time during the fiscal year. Major changes to the current year of the Work Program will be accommodated through the official amendment process in accordance with Section [339.135, F.S.](#)

Cost estimate changes will be allowed as office changes and are not subject to the statutory Work Program amendment process. Other modifications to the Work Program will be in accordance with the instructions outlined below. While it is the intent of the Department to comply with the statutory provisions applicable to Work Program amendments, certain assumptions must be made by the Department in translating these statutory provisions into practical guidelines to deal with actual situations encountered in the administration of the Adopted Work Program. Please refer to the "*Clarifications...*" section when making the determination of when to apply the statutory provisions of the Work Program amendment process.

For purposes of defining a project or project phase as referenced in Florida Statutes, a project in WPA is an ITEM/SEGMENT. WORK PROGRAM PHASE is a project phase. However, WPA relates data elements for PROJECT COST AMOUNT and FISCAL YEAR to WORK PROGRAM SEQUENCE. Therefore, amendments must be consistent with changes at the ITEM/SEGMENT/PHASE level.

#### **A. Work Program Amendments**

In accordance with Section [339.135, F.S.](#), amendments 1-4 below require approval of the Executive Office of the Governor (EOG):

- 1) To ADVANCE or DEFER the following project phases:
  - a) A R/W, construction or public transportation phase costing over \$500,000 appropriated funds, or
  - b) A preliminary engineering phase costing over \$150,000 appropriated funds.
  - c) No amendment required, regardless of amount, if 90 days or less.

*NOTE:* For the purposes of determining if an amendment requires EOG approval, non-budgeted funds are not included in the computation of cost. Only funds appropriated by the Legislature are to be included in computing the threshold amounts of \$500,000 for R/W, construction, or PTO phases, and \$150,000 for PE phases.

- 2) To ADD a project or project phase costing over \$150,000 appropriated funds;

*NOTE:* For the purposes of determining if an amendment requires EOG approval, non-budgeted funds are not included in the computation of cost. Only funds appropriated by the Legislature are to be included in computing the threshold amount of \$150,000.

- 3) To DELETE a project or project phase; and
- 4) To LOAN funds (3 years max) to maximize use or amount of funds available to the State.

Prior to presenting (to Office of Work Program - Central Office) proposed EOG Work Program amendments for deferrals or deletions of construction phases on capacity projects (items 1 and 3 above), the requesting district office must provide written notification (and include copies of the

notifications in the proposed EOG Work Program amendment package), of proposed amendments, to the chief elected official of each affected county, each municipality in the county, and the chair of each affected Metropolitan Planning Organization (MPO). Affected counties, municipalities and MPOs shall have 14 days to provide written comments, to the District, regarding how the proposed amendments will impact its respective concurrency management systems, including whether any development permits were issued upon the capacity improvements, if applicable. All written comments received from affected counties, municipalities and MPOs are to be included in the proposed EOG Work Program amendment package. Districts should note, in the proposed EOG Work Program amendment packages, if no response was received within the 14 day timeframe, from any noticed entity. Districts should review programmed Work Mixes and Item Group Identifiers to help determine whether or not contemplated construction phase deferrals/deletions are for capacity projects.

The following is suggested language for the District pre-notification cover letter/memo:

Pursuant to Section [339.135 \(7\) \(f\)](#) 1, Florida Statutes, attached/enclosed is a proposed Work Program Amendment for the deferral/deletion of item # \_\_\_\_\_ (**insert project item & segment #**) from the current year of the Florida Department of Transportation's Adopted Work Program. Each affected county and each municipality in the county is encouraged to coordinate with each other to determine how the amendments affects local concurrency management and regional transportation planning efforts.

Please provide \_\_\_\_\_ (**insert name and email address/fax number for assigned District staff**) with any written comments by \_\_\_\_\_ (**enter a date 14 days after notification issuance**). Thank you.

Notification of proposed amendments, which fall in 1-4 above, will be sent out when the amendments are sent to EOG. Per Section [339.135 \(7\), F.S.](#), the Governor may not approve a proposed amendment until 14 days after receipt. Therefore, the minimum time it will take for the Governor's approval, following notification is 14 days. The 14-day clock begins when EOG receives the amendment package and puts the package in a status of "on consultation."

The Department must notify:

- Chairmen of both legislative appropriations committees;
- Chairmen of both legislative transportation committees;
- each legislator who represents a district/Turnpike Enterprise affected by the proposed amendment;
- each Metropolitan Planning Organization affected by the proposed amendment; and
- Each local government affected by the proposed amendment.

**NOTE:** The first two bullets above are provided by Office of Work Program – Central Office; the remaining are provided by the district via e-mail address. If special instruction is needed as to who will receive the amendment, the names must be submitted with the amendment package. When e-mail addresses are not available, the district will be responsible for facsimile and/or mailing information.

The Senate President or House Speaker may object in writing within 14 days of notification of the proposed amendment, specifying the reason for the objection. If this occurs, the Governor shall disapprove the proposed amendment.

- 5) Florida Seaport Transportation and Economic Development Council (FSTED) Work Program Amendments generated pursuant to Section [311.09\(10\), F.S.](#), must be submitted to EOG within ten (10) days of either a) FSTED's request; or b) the effective date of the amendment, termination, or closure of the applicable funding agreement between the Department and the affected seaport, as required to release the funds from the existing commitments.
  - a) Transfers of budget relating to any FSTED Work Program amendment cannot occur until after the Work Program amendment is approved by EOG.

## **B. Budget Amendments and the Legislative Budget Commission**

In accordance with Section [216.181, F.S.](#) a budget adjustment may be requested by the Department through the Executive Office of the Governor and approved by the Governor and the Legislative Budget Commission (LBC). Per [339.135 \(7\) \(g\), F.S.](#) if a meeting of the Legislative Budget Commission cannot be held within 30 days of the department submitting an amendment to the Legislative Budget Commission, then the chair and vice chair of the Legislative Budget Commission may authorize such amendment to be approved pursuant to the provisions of Section [216.177, F.S.](#)

### **Budget amendments are required to:**

- Realign budget within the fiscal year (between entities, appropriation categories, or both).
- Roll forward budget (from one fiscal year to the next).
- To increase approved level of budget (limited circumstances).

Budget amendments will require the standard EOG's Budget Amendment Processing System (BAPS) amendment form with all the appropriate signatures, and supporting pages showing project detail. However, these signed amendment forms will not be subject to the notification process normally required for EOG Work Program amendments. Rather, they are presented to the EOG for information purposes only so that the EOG may assess the impact to the Work Program of the associated budget amendment. For further information on the budget process see the Budget Office Infonet/Intranet website at: <http://infonet.dot.state.fl.us/budgetoffice/>.

## **2. PROGRAMMING GUIDELINES**

### **A. Creating an Amendment**

To avoid delays in processing, proposed amendments **must** include a complete justification of need written in "plain English." An amendment must be in Central Office for processing within 30 days of its proposal. The justification wording on the amendment form is derived directly from the proposed action in WPA as written on the WP24 screen under Comments. Include in the descriptions the four W's (**what** you are doing, **why** you are doing it, **where** the funds/budget is coming from, and **who** requested the amendment). **NOTE:** Do not use a specific name in 'who is requesting,' just list whether requested by the local government (county, city, etc.), MPO, etc. Also the reason as to why the project was not included in the Adopted Work Program and why the project must be added now instead of during the normal gaming cycle must be provided.

- If the request for deferral or deletion is from an outside agency, a copy of the request must be included in the submittal package.
- The reason that displays on the second printed page of the amendment comes from the **WP20 screen**; therefore, the comment section must be thoroughly

completed and reviewed prior to the amendment package being submitted to Central Office.

**B. EOG Amendments Require The Following Status Designations in FM**

1) Status 01-03: District creates, prints, and sends amendment(s) to Central Office. NOTE: The district **must** ensure that the following is filled out on the amendment form before it is sent to Work Program Development:

- Signature of the District Secretary or his/her delegate
- proposed action is checked
- TIP and STIP consistency is checked (see Part IV, Federal Overview, “TIP/STIP Amendments” in Chapter 1, Section B of these instructions for further information)
- Signature of the contact person

2) Status 04: Received by Central Office (Office of Work Program - OWP). Work Program Amendment will only be logged in when received and assigned to the District Rep. The District Rep will only approve the amendment upon receipt of all necessary documentation.

3) Status 05: Sent to Budget Office. Amendment Package is bundled for review and signature verifying that amendments are balanced to funds and budget. Note: a typical package contains at least 4 or 5 amendments; therefore, some amendments are held until there is enough for a package.

4) Status 06-07: Work Program Amendment Package reviewed and signed by the Budget Office verifying that amendments do or do not require a budget amendment.

5) Status 08-09: Work Program Amendment Package reviewed and signed by the Deputy Comptroller verifying amendments are balanced to cash flow.

6) Status 10: Letter to the Governor’s Office prepared and signed for review and signature by Director of the Office of Work Program.

7) Status 11: Work Program Amendment Package sent to the Executive Office of the Governor, Legislature, MPO and local government entities.

8) Status 12: Work Program Amendment Package approved by the Executive Office of the Governor after a minimum of 14 days (required by Florida Statute).

**C. Clarifications For Determining When An EOG Amendment Is Required**

Because of the complex and dynamic nature of the Department’s Work Program, the provisions contained in Section [339.135, F.S.](#), cannot anticipate every situation where a decision must be made to apply or not apply the statutory provisions for amending the Adopted Work Program. Therefore, the Department, with concurrence from the Executive Office of the Governor and legislative staff, has made the following assumptions when applying these statutory provisions to the day-to-day management of changes to the Adopted Work Program:

- 1) When statutory provisions refer to "deleting any project or project phase," or "adding a project estimated to cost over \$150,000," this is intended to refer to only "primary" phases for the Highway and Bridge components (statutory provisions will apply to all phases of Public Transportation projects). "Primary" phases mostly include contract phases for Planning, Preliminary Engineering, R/W Land Acquisition, Environmental Consultants/Contracts, and Construction. **Planning and Preliminary Engineering In-house phases programmed on an item without consultants are primary phases and require Work Program amendments consistent with the statutory provision referenced above.** In addition, payments to local governments (phase x8) are considered primary if there is not an existing primary phase for the phase group. Where the addition or deletion of support phases to existing primary phases do not alter the scope or timing of primary phases no amendment is required. In-house phases are considered support phases except as noted above.
  
- 2) The following table itemizes those support phases to which this assumption refers:

<b>Primary Phase</b>	<b>Support Phase</b>
12- Planning Consultant/Contractor	11 - In-house
14 - Planning Grant	11 - In-house
22 - PD&E Consultant/Contractor	21 - In-house
32 - Preliminary Engineering Consultant 38 – PE Other Agency	31 - In-house
43 - R/W Purchase 48 – R/W Other Agency	41 - In-house 42 - Consultant/Contractor 4B - Service Contract 45 - R/W Relocate 46 - R/W Utility
52 - Construction Contractor 58 - Construction Other Agency	61 - In-house 53 - Construction Purchase 56 - Utility 57 - Railroad 5A - Contract Incentive 62 - Consultant/Contractor C8 - Environmental Other Agency
54 - Construction Grant	
72 - Maintenance Consultant/Contractor	71 - In-house
7B - Maintenance Service Contract	71 - In-house
82 - Operations Consultant/Contractor	81 - In-house
84 - Operations Grant	81 - In-house
88 - Operations Other Agency	81 - In-house
93- Capital Purchase	
94 - Capital Grant	
B2 - Research Consultant/Contractor	B1 - In-house
B4 - Research Grant	B1 - In-house
C2 - Environmental Consultant/Contractor	C1 - In-house
C4 - Environmental Grant	C1 - In-house

All support phases are considered primary phases if there is not a primary phase.

- 3) The general assumption that any change to the Adopted Work Program which is essentially "transparent" to the public should not be subject to the statutory provisions. For example, a preliminary engineering phase is programmed in-house but, in order to balance workloads, a proposal is made to contract this work with consultants. This change has no effect on project scope or the timing of when this work is to be accomplished. Therefore, this is not the type of change subject to the statutory provisions for amendments. This same logic applies to merging or splitting projects when the overall scope of work does not change.

- 4) Adjustments to Box items (targets, reserves or contingency) with contract class 8 do not require Work Program amendments. Box adjustments should be internal office changes only. No commitments are made against boxes.

The following table provides additional descriptions of specific situations encountered in managing the Adopted Work Program that need clarification relative to the Work Program/budget amendment process. Determination of the applicability of statutes to these situations is based upon the assumptions listed above.

Situation	WP Amendment requiring EOG approval	Statutory notifications required	Budget Amendment required	Comments
Proposal to advance or defer a R/W, Construction, PTO over \$500,000 or a P.E. or C.E.I. (Primary) consultant phase over \$150,000.	Yes	Yes	Yes, if advancing a project or phase and budget is not available	
Proposal to add or delete a support phase to an existing primary phase, regardless of the dollar value of the support phase.	No	N/A	No, if a box item in the same budget category can be reduced for the amount of budget needed.  Yes, if the budget is to be taken from another budget category.	Support phases that traditionally accompany primary phases (PE, R/W, Construction) do not require EOG amendments. This applies to both additions and deletions of support phases, <u>as long as these actions do not adversely affect the accomplishment of the work specified in the primary phase.</u>
Proposal to delete a support phase that does not have an associated primary phase.	Yes	Yes		
Proposal to defer a support phase over \$150,000 that does not have an associated primary phase.	Yes	Yes		
Proposal to reduce a phase 52 by a certain amount, then add a new item no. & phase 52 in the same amount as the reduction. Scope of work and limits for the sum of both phase 52s remain the same as the original phase 52.	No. Viewed as technical adjustment to split the project into two parts. The same applies to all primary phases.	N/A	No, if the total amount of budget used and the category used remain the same.	Total scope of work has not changed. This type of change is transparent to parties outside the Department. The work will be accomplished regardless of how the project is technically programmed.
Proposal to merge (delete) an existing phase 52 into another phase 52 on another item number. The combined scope and limits for the remaining phase remains the same as the sum of the two original phase 52s.	No. Viewed as technical correction to accomplish the work in a more efficient manner. The same applies to all primary phases.	N/A	No. Total amount of budget used and the category used is the same either way.	Total scope of work has not changed. This type of change is transparent to parties outside the Department. The work will be accomplished regardless of how the project is technically programmed.
Proposal to change from In-House to Consultant and Vice Versa	No. This is viewed as a technical adjustment to balance the workload of in-house forces. The same applies to R/W in-house, OPS/Consultant and CEI phases	N/A	No, if going from a consultant category to an in-house category.  No, if going from an in-house category to a consultant budget category, and budget is available from a box item in that same consultant category.	Total scope of work has not changed. This type of change is transparent to parties outside the Department. The work will still be accomplished whether performed by in-house forces or by consultants. This also applies to proposals that go from in-house or consultant to a phase 38 where a local government will do the PE work.

Situation	WP Amendment requiring EOG approval	Statutory notifications required	Budget Amendment required	Comments
Proposal to split out (create) a new item number and phase from an existing "program" box. (Example: Seaports Program where a Statewide box is programmed until such time as individual projects can be identified)	Yes, if over \$150,000.	Yes, if over \$150,000.	No	This applies to all programs where box items are programmed until such time as individual projects are identified.
Proposal to add a current year phase to a prior year project	No	N/A	No, if a box item in the same budget category can be reduced for the amount of budget needed.  Yes, if the budget is to be taken from another budget category.	Total scope of work has not changed. This type of change is transparent to parties outside the Department. The work will be accomplished regardless of how the project is technically programmed. The phase added must be same phase as prior year phase.
Proposal to add, delete, defer, or advance a Fixed Capital Outlay (FCO) project.	N/A	N/A	Yes, if increasing or decreasing an existing FCO appropriation category.	Work Program amendments are not required on DOT FCO facilities.
Proposal to delete a support phase in current year with primary phase adopted in next year	No	No	No	
Proposal to delete prior year phase	Yes, if primary phase	Yes	No	
Fund Loans between Districts	Yes, if loan is in current year.	Yes, if loan is in current year.	Yes, if budget crosses appropriation categories.  NO, if budget stays in the same category.	

#### **D. Emergency Situations**

If an emergency situation exists where, as a result of the 14-day period for required notifications, it would be detrimental to the interests of the state to comply with the statutory Work Program amendment provisions, the Secretary may request a waiver of the notification period. Section [339.135 \(7\) \(g\), F.S.](#) provides detailed language on the procedure that must be followed. An amendment will be needed if the item meets the amendment criteria as discussed above, within three (3) days after the emergency.

#### **E. Changes To The Tentative Work Program**

When the Tentative Work Program is completed, it is submitted to the Executive Office of the Governor, the Legislature, and the Florida Transportation Commission. This program represents what the Department plans to do for the next five fiscal years and is the basis for the upcoming year. No changes should be made to this program unless absolutely necessary.

**In the event a change is absolutely necessary, it must be submitted to the Work Program Development and Operations Office for review and approval.** Change is defined as any action that affects the budget, adds or deletes a project/phase(s), or advances/defers a project/phase(s). If the budget will be impacted in the first year of the Tentative, a Work Program amendment is required, regardless of the Work Program amendment thresholds. These amendments will be processed the same as current year Work Program amendments. If a change is approved, a Work Program amendment must be manually prepared with all applicable

parties notified. Amendments are required for **ANY** year of the Tentative Work Program. The change must be made in the Tentative (G1) file.

When estimate changes are required, it is necessary to update the file and keep the program current. In these cases, a boxed item must be reduced to keep the funds and budget balanced. Amendments are not required for estimate changes (as long as an equal offset is made to an existing box).

### **3. REFERENCE**

Section [339.135 \(7\), F.S.](#)

Procedure Topic No. [340-000-001](#) "Legislative Budget Preparation, Allocation, and Administration"

Section [311.09\(10\), F.S.](#)