

By the Committee on Transportation and Senator Hargrett

306-1748-98

1                                   A bill to be entitled  
2           An act relating to the Department of  
3           Transportation (RAB); amending s. 334.044,  
4           F.S.; authorizing the department to regulate  
5           the transfer of storm water to the right-of-way  
6           as a result of changes to adjacent property;  
7           amending s. 337.105, F.S.; authorizing the  
8           department to suspend a consultant from awards  
9           of department contracts for specified good  
10          cause; amending s. 337.18, F.S.; providing  
11          incentives or damages for contractors for early  
12          completion of projects that provide substantial  
13          benefits to the public; amending s. 339.0805,  
14          F.S.; authorizing the department to suspend or  
15          revoke the certification of a disadvantaged  
16          business enterprise for specified good cause;  
17          providing an effective date.

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

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21           Section 1. Present subsections (15) through (30) of  
22           section 334.044, Florida Statutes, are renumbered as  
23           subsections (16) through (31), respectively, and a new  
24           subsection (15) is added to that section, to read:

25           334.044 Department; powers and duties.--The department  
26           shall have the following general powers and duties:

27           (15) To regulate and prescribe conditions for the  
28           transfer of storm water to the state right-of-way as a result  
29           of man-made changes to adjacent properties.

30           (a) Such regulation shall be through a permitting  
31           process designed to ensure the safety and integrity of the

1 Department of Transportation facilities and to prevent an  
2 unreasonable burden on lower properties.

3 (b) Issuance of a permit under this subsection will  
4 not exempt a property owner from compliance with otherwise  
5 applicable federal, state, local, or regional regulations  
6 governing pollution control, water quality, surfacewater  
7 management, or land use. The permittee will reimburse the  
8 department for any expenses, including fines, abatement, and  
9 cleanup costs incurred by the department as a result of the  
10 permittee's discharge to the right-of-way failing to meet, or  
11 contributing to a violation of, the applicable local, state,  
12 or regional water-quality standards or minimum design and  
13 performance standards.

14 (c) The department may revoke or suspend a permit for  
15 failure to construct, operate, or maintain the facilities  
16 authorized by the permit in accordance with the permit, for  
17 failure to comply with permit conditions, for failure to  
18 reimburse the department in accordance with the provisions of  
19 paragraph (b), or for submission of false or misleading  
20 information to the department with regard to the permitting,  
21 construction, operation, or maintenance of the facilities.

22 Section 2. Subsection (1) of section 337.105, Florida  
23 Statutes, is amended to read:

24 337.105 Qualifications of professional consultants and  
25 other providers of contractual services; performance bonds;  
26 and audits of indirect costs.--

27 (1) Before the employment of a professional consultant  
28 or other provider of service, the department shall make a  
29 finding that the person to be employed is fully qualified to  
30 render the desired service. Among the factors to be  
31 considered in making this finding are the professional

1 reputation, past performance record, and experience of the  
2 candidate and the adequacy of the personnel making up his or  
3 her organization. The department may, for good cause, deny or  
4 suspend for a specified period of time a person or firm from  
5 consideration for award of a professional service contract for  
6 a particular type of work ~~because of unsatisfactory~~  
7 ~~performance of a previously awarded professional service~~  
8 ~~contract.~~ The department shall adopt rules to administer  
9 implement this section. As used in this subsection, the term  
10 "good cause," includes, but is not limited to, circumstances  
11 in which a consultant or other provider of service or its  
12 official representative:

13       (a) Makes or submits false, deceptive, or fraudulent  
14 statements in any bid or proposal to the department, in any  
15 application for certification of qualification, or in any  
16 administrative or judicial proceeding;

17       (b) Becomes insolvent or is the subject of a  
18 bankruptcy petition;

19       (c) Has been qualified by the department based on a  
20 license or registration issued by the state which has  
21 subsequently been revoked or suspended or has been denied;

22       (d) Has been qualified by the department based on the  
23 employment of personnel no longer employed by the consultant  
24 or other provider of service;

25       (e) Fails to maintain adequate professional liability  
26 insurance for the certified areas of work;

27       (f) Fails to satisfactorily perform contract  
28 requirements;

29       (g) Wrongfully employs or otherwise provides  
30 compensation to any employee or officer of the department, or  
31 willfully offers an employee or officer of the department any

1 pecuniary or other benefit, with the intent to influence the  
2 employee's or officer's official action or judgment;

3 (h) Is affiliated with a consultant or other provider  
4 of service whose qualification to render professional services  
5 has been denied or suspended by the department and is  
6 dependent upon such consultant or other provider of service  
7 for personnel, equipment, or finances; or

8 (i) Has been barred or suspended from consideration  
9 for work with any other governmental entity.

10 Section 3. Paragraph (a) of subsection (4) of section  
11 337.18, Florida Statutes, is amended to read:

12 337.18 Surety bonds; requirement with respect to  
13 contract award; defaults; damage assessments.--

14 (4)(a) If the department determines and adequately  
15 documents that the timely completion of any project will  
16 provide a substantial benefit ~~is essential~~ to the public  
17 health, safety, or welfare; will limit the disruptive effect  
18 of construction on the community; ~~or~~ is cost beneficial on a  
19 revenue-producing project, the contract for such project may  
20 provide for an incentive payment payable to the contractor for  
21 early completion of the project or critical phases of the work  
22 and for additional damages to be assessed against the  
23 contractor for the completion of the project or critical  
24 phases of the work in excess of the time specified. All  
25 contracts containing such provisions shall be approved by the  
26 head of the department or his or her designee. The amount of  
27 such incentive payment or such additional damages shall be  
28 established in the contract but shall not exceed \$10,000 per  
29 calendar day, except that for revenue-producing projects the  
30 amounts and periods of the incentive may be greater if an  
31 analysis indicates that additional revenues projected to be

1 received upon completion of the project will exceed the cost  
2 of the incentive payments. Any liquidated damages provided for  
3 under subsection (2) and any additional damages provided for  
4 under this subsection shall be payable to the department  
5 because of the contractor's failure to complete the contract  
6 work within the time stipulated in the contract or within such  
7 additional time as may have been granted by the department.

8 Section 4. Subsection (2) of section 339.0805, Florida  
9 Statutes, is amended to read:

10 339.0805 Funds to be expended with certified  
11 disadvantaged business enterprises; specified percentage to be  
12 expended; construction management development program; bond  
13 guarantee program.--It is the policy of the state to  
14 meaningfully assist socially and economically disadvantaged  
15 business enterprises through a program that will provide for  
16 the development of skills through construction and business  
17 management training, as well as by providing contracting  
18 opportunities and financial assistance in the form of bond  
19 guarantees, to primarily remedy the effects of past economic  
20 disparity.

21 (2) The department shall revoke the certification of a  
22 disadvantaged business enterprise upon receipt of notification  
23 of any change in ownership which results in the disadvantaged  
24 individual or individuals used to qualify the business as a  
25 disadvantaged business enterprise, no longer owning at least  
26 51 percent of the business enterprise. Such notification shall  
27 be made to the department by certified mail within 10 days  
28 after the change in ownership, and such business shall be  
29 removed from the certified disadvantaged business list until a  
30 new application is submitted and approved by the department.  
31 Failure to notify the department of the change in the

1 ownership which qualifies the business as a disadvantaged  
2 business enterprise will result in revocation of certification  
3 and subject the business to the provisions of s. 337.135. In  
4 addition, the department may, for good cause, deny or suspend  
5 the certification of a disadvantaged business enterprise. As  
6 used in this subsection, the term "good cause" includes, but  
7 is not limited to, the disadvantaged business enterprise:

8 (a) No longer meeting the certification standards set  
9 forth in department rules;

10 (b) Making a false, deceptive, or fraudulent statement  
11 it its application for certification or in any other  
12 information submitted to the department;

13 (c) Failing to maintain the records required by  
14 department rules;

15 (d) Failing to perform a commercially useful function  
16 on projects for which the enterprise was used to satisfy  
17 contract goals;

18 (e) Failing to fulfill its contractual obligations with  
19 contractors;

20 (f) Failing to respond with a statement of interest to  
21 requests for bid quotations from contractors for three  
22 consecutive lettings;

23 (g) Subcontracting to others more than 49 percent of  
24 the amount of any single subcontract that was used by the  
25 prime contractor to meet a contract goal;

26 (h) Failing to provide notarized certification of  
27 payments received on specific projects to the prime contractor  
28 when required to do so by contract specifications;

29 (i) Failing to schedule an on-site review upon request  
30 of the department; or

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1           (j) Becoming insolvent or the subject of a bankruptcy  
2 proceeding.

3           Section 5. This act shall take effect upon becoming a  
4 law.

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6                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7   COMMITTEE SUBSTITUTE FOR  
8   SB 846

9           The CS clarifies that the issuance of a permit by the  
10 department for the regulation of storm water runoff does not  
11 exempt a property owner from otherwise applicable federal,  
12 state, local or regional regulations governing pollution  
13 control, water quality, surface water management or land use.  
14 Permittees must reimburse the department for any expenses  
15 incurred by the department as a result of the permittee's  
16 unpermitted discharge to the right-of-way.

17           The CS further provides that the department may suspend or  
18 revoke a permit for failure to construct, operate, or maintain  
19 the facilities as authorized by the permit; for failure to  
20 reimburse the department for unpermitted discharge; or for  
21 submission of false or misleading information regarding the  
22 permitting, construction, operation or maintenance of the  
23 facilities.

24           The CS authorizes rules which allows the department to provide  
25 incentives for contractors for early completion of projects,  
26 and collect damages for work not completed in time, on  
27 projects which provide substantial benefits to the public, or  
28 will limit the disruptive effect of construction on the  
29 community.  
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