

1 A bill to be entitled
2 An act relating to suits by and against the
3 Department of Transportation and public
4 authorities; amending s. 337.11, F.S.;
5 repealing authority for owner controlled
6 insurance plans in the Department of
7 Transportation; amending s. 337.185, F.S.;
8 increasing claim limits with respect to certain
9 contractual claims governed by the State
10 Arbitration Board; revising language with
11 respect to hearings on certain disputes;
12 increasing certain fees; amending s. 337.19,
13 F.S.; revising language with respect to suits
14 at law and in equity brought by or against the
15 department with respect to breach of an express
16 provision or an implied covenant of a written
17 agreement or a written directive issued by the
18 department pursuant to the written agreement;
19 providing for rights and obligations;
20 prohibiting liability under certain
21 circumstances; providing exceptions with
22 respect to liability; amending s. 255.05, F.S.;
23 specifying conditions under which suits may be
24 brought by and against a public authority with
25 respect to specified public works projects;
26 providing for rights and obligations of the
27 public authority and the contractor; excluding
28 specified basis of liability; providing for
29 construction of the act; providing effective
30 dates.
31

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

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3 Section 1. Subsection (16) of section 337.11, Florida
4 Statutes, is amended to read:

5 337.11 Contracting authority of department; bids;
6 emergency repairs, supplemental agreements, and change orders;
7 combined design and construction contracts; progress payments;
8 records; requirements of vehicle registration.--

9 ~~(16) The department is authorized to undertake and~~
10 ~~contract to provide an owner controlled insurance plan (OCIP)~~
11 ~~on any construction project or group of related construction~~
12 ~~projects if the head of the department determines that an OCIP~~
13 ~~will be both cost-effective for the department and otherwise~~
14 ~~in its best interests. Such OCIP may provide insurance~~
15 ~~coverage for the department and for worker's compensation and~~
16 ~~employers liability and general liability and builders risk~~
17 ~~for contractors and subcontractors, for and in conjunction~~
18 ~~with any or all work performed on such projects. The~~
19 ~~department may directly purchase such coverage in the manner~~
20 ~~provided for the purchase of commodities pursuant to s.~~
21 ~~287.057, or self-insure, or use a combination thereof, any~~
22 ~~other statutory provisions or limitations on self-insurance or~~
23 ~~purchase of insurance notwithstanding. The department's~~
24 ~~authority hereunder includes the purchase of risk management,~~
25 ~~risk and loss control, safety management, investigative and~~
26 ~~claims adjustment services, advancement of funds for payment~~
27 ~~of claims, and other services reasonably necessary to process~~
28 ~~and pay claims under and administer the OCIP. In addition to~~
29 ~~any prequalification required under s. 337.14, no contractor~~
30 ~~shall be prequalified to bid on an OCIP project unless the~~
31 ~~contractor's casualty and loss experience and safety record~~

1 ~~meets the minimum requirements for OCIP coverage issuance on~~
2 ~~the project, were the contractor to be awarded the project.~~
3 ~~Exercise of the department's authority under this subsection~~
4 ~~shall not be deemed a waiver of sovereign immunity.~~

5 Section 2. Subsections (1), (2), (3), (7), and (8) of
6 section 337.185, Florida Statutes, are amended to read:

7 337.185 State Arbitration Board.--

8 (1) To facilitate the prompt settlement of claims for
9 additional compensation arising out of construction contracts
10 between the department and the various contractors with whom
11 it transacts business, the Legislature does hereby establish
12 the State Arbitration Board, referred to in this section as
13 the "board." For the purpose of this section, "claim" shall
14 mean the aggregate of all outstanding claims by a party
15 arising out of a construction contract. Every contractual
16 claim in an amount up to ~~\$250,000~~\$100,000 per contract or, at
17 the claimant's option, up to ~~\$500,000~~\$250,000 per contract
18 or, upon agreement of the parties, up to \$1,000,000 per
19 contract that cannot be resolved by negotiation between the
20 department and the contractor shall be arbitrated by the board
21 after acceptance of the project by the department. As an
22 exception, either party to the dispute may request that the
23 claim be submitted to binding private arbitration. A court of
24 law may not consider the settlement of such a claim until the
25 process established by this section has been exhausted.

26 (2) The board shall be composed of three members. One
27 member shall be appointed by the head of the department, and
28 one member shall be elected by those construction companies
29 who are under contract with the department. The third member
30 shall be chosen by agreement of the other two members.
31 Whenever the third member has a conflict of interest regarding

1 affiliation with one of the parties, the other two members
2 shall select an alternate member for that hearing. The head of
3 the department may select an alternative or substitute to
4 serve as the department member for any hearing or term. Each
5 member shall serve a 2-year term. The board shall elect a
6 chair, each term, who shall be the administrator of the board
7 and custodian of its records.

8 (3) A hearing may be requested by the department or by
9 a contractor who has a dispute with the department which,
10 under the rules of the board, may be the subject of
11 arbitration. The board shall conduct the hearing within 45
12 days of the request. The party requesting the board's
13 consideration shall give notice of the hearing to each member.
14 If the board finds that a third party is necessary to resolve
15 the dispute, the board may vote to dismiss the claim, which
16 may thereafter be pursued in accordance with the laws of the
17 State of Florida ~~a court of law~~.

18 (7) The members ~~member~~ of the board ~~elected by~~
19 ~~construction companies and the third member of the board~~ may
20 receive compensation for the performance of their duties
21 hereunder, from administrative fees received by the board,
22 except that no employee of the department may receive
23 compensation from the board. The compensation amount shall be
24 determined by the board, but shall not exceed \$125 per hour,
25 up to a maximum of \$1,000~~\$750~~ per day for each member
26 authorized to receive compensation. Nothing in this section
27 shall prevent the member elected by construction companies
28 from being an employee of an association affiliated with the
29 industry, even if the sole responsibility of that member is
30 service on the board. Travel expenses for the industry member
31 may be paid by an industry association, if necessary. The

1 board may allocate funds annually for clerical and other
2 administrative services.

3 (8) The party requesting arbitration shall pay a fee
4 to the board in accordance with a schedule established by it,
5 not to exceed \$500 per claim which is \$25,000 or less, not to
6 exceed \$1,000 per claim which is in excess of \$25,000 but not
7 exceeding \$50,000, not to exceed \$1,500 per claim which is in
8 excess of \$50,000 but not exceeding \$100,000, not to exceed
9 \$2,000 per claim which is in excess of \$100,000 but not
10 exceeding \$200,000, ~~and not to exceed \$3,000~~~~\$2,500~~ per claim
11 which is in excess of \$200,000 but not exceeding \$300,000
12 ~~\$250,000~~, not to exceed \$4,000 per claim which is in excess of
13 \$300,000 but not exceeding \$400,000, and not to exceed \$5,000
14 per claim which is in excess of \$400,000, to cover the cost of
15 administration and compensation of the board.

16 Section 3. Subsection (1) of section 337.19, Florida
17 Statutes, is amended to read:

18 337.19 Suits by and against department; limitation of
19 actions; forum.--

20 (1) Suits at law and in equity may be brought and
21 maintained by and against the department on any contract claim
22 arising from breach of an express provision or an implied
23 covenant of a written agreement or a written directive issued
24 by the department pursuant to the written agreement. In any
25 such suit, the department and the contractor shall have all of
26 the same rights and obligations as a private person under a
27 like contract except that no liability may be based on an oral
28 modification of either the written contract or written
29 directive. Nothing herein shall be construed to waive the
30 sovereign immunity of the state and its political subdivisions
31 from equitable claims and equitable remedies. Notwithstanding

1 anything to the contrary contained in this section, no
2 employee or agent of the department may be held personally
3 liable to an extent greater than that pursuant to s. 768.28
4 ~~under contract for work done,~~ provided, that no suit sounding
5 in tort shall be maintained against the department.

6 Section 4. Effective July 1, 1999, subsection (9) is
7 added to section 255.05, Florida Statutes, 1998 Supplement, to
8 read:

9 255.05 Bond of contractor constructing public
10 buildings; form; action by materialmen.--

11 (9) On any public works project for which the public
12 authority requires a performance and payment bond, suits at
13 law and in equity may be brought and maintained by and against
14 the public authority on any contract claim arising from breach
15 of an express provision or an implied covenant of a written
16 agreement or a written directive issued by the public
17 authority pursuant to the written agreement. In any such
18 suit, the public authority and the contractor shall have all
19 of the same rights and obligations as a private person under a
20 like contract except that no liability may be based on an oral
21 modification of either the written contract or written
22 directive. Nothing herein shall be construed to waive the
23 sovereign immunity of the state and its political subdivisions
24 from equitable claims and equitable remedies. The provisions
25 of this subsection shall apply only to contracts entered into
26 on or after July 1, 1999.

27 Section 5. Except as otherwise provided herein, this
28 act shall take effect upon becoming law.