

By the Committees on Appropriations; Governmental Oversight and Productivity; and Senator Clary

309-2445-03

1                                   A bill to be entitled  
2           An act relating to construction monitoring and  
3           inspection services; amending s. 768.28, F.S.;  
4           providing that professional firms under  
5           contract with the Department of Transportation  
6           to provide specified construction monitoring  
7           and inspection services are agents of the state  
8           for purposes of sovereign immunity; providing  
9           for indemnification; providing that such agents  
10          are not employees or agents of the state for  
11          purposes of chapter 440, F.S.; providing that  
12          the act does not apply to such a firm or its  
13          employees if an accident occurs while an  
14          employee is operating a vehicle or to a firm  
15          providing design or construction services;  
16          providing an effective date.

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

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20           Section 1. Paragraph (e) is added to subsection (10)  
21 of section 768.28, Florida Statutes, to read:

22           768.28 Waiver of sovereign immunity in tort actions;  
23 recovery limits; limitation on attorney fees; statute of  
24 limitations; exclusions; indemnification; risk management  
25 programs.--

26           (10)

27           (e) For purposes of this section, a professional firm  
28 that provides monitoring and inspection services of the work  
29 required for state roadway, bridge, or other transportation  
30 facility construction projects, or any of the firm's employees  
31 performing such services, shall be considered agents of the

1 Department of Transportation while acting within the scope of  
2 the firm's contract with the Department of Transportation to  
3 ensure that the project is constructed in conformity with the  
4 project's plans, specifications, and contract provisions. Any  
5 contract between the professional firm and the state, to the  
6 extent permitted by law, shall provide for the indemnification  
7 of the department for any liability, including reasonable  
8 attorney's fees, incurred up to the limits set out in this  
9 chapter to the extent caused by the negligence of the firm or  
10 its employees. This paragraph shall not be construed as  
11 designating persons who provide monitoring and inspection  
12 services as employees or agents of the state for purposes of  
13 chapter 440. This paragraph is not applicable to the  
14 professional firm or its employees if involved in an accident  
15 while operating a motor vehicle. This paragraph is not  
16 applicable to a firm engaged by the Department of  
17 Transportation for the design or construction of a state  
18 roadway, bridge, or other transportation facility construction  
19 project or to its employees, agents, or subcontractors.

20 Section 2. This act shall take effect upon becoming a  
21 law.

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23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
24 COMMITTEE SUBSTITUTE FOR  
25 CS for SB 1138

26 The committee substitute limits the potential costs associated  
27 with lawsuits between the Department of Transportation and its  
28 designated agents. Attorney fees may be recovered by the  
department when it has been determined that negligence  
occurred by designated agents.

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