

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1373 with CS                      Transportation Administration  
**SPONSOR(S):** Reagan  
**TIED BILLS:**    **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Systems</u>	<u>9 Y, 0 N</u>	<u>PUGH</u>	<u>MILLER</u>
2) <u>Transportation</u>	<u>19 Y, 0 N w/CS</u>		
3) <u>Commerce</u>		<u>WINKER</u>	<u>WHITFIELD</u>
4) <u>Appropriations</u>			
5) _____			

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### SUMMARY ANALYSIS

The Florida Department of Transportation (FDOT) is responsible for the construction, maintenance and safety of the state's highways, bridges, and other transportation systems.

HB 1373 with CS addresses a number of FDOT administrative issues:

- Changes a number of transportation contracting provisions intended to provide flexibility and legal clarity.
- Rewrites the sections of law related to FDOT's oversight responsibilities of airports to streamline, clarify and update the statutes.
- Gives FDOT more flexibility to assist local governments in buying right-of-way.
- Gives FDOT the ability to further delegate permitting responsibilities to other governmental entities, as long as the agency is assured the permits will protect state roads and other transportation facilities.
- Creates three honorary road designations.
- Addresses a deficiency in current law related to road dedications.
- Extends another three years the ability of Florida airports to divert their capital improvement grants to pay for security-related needs.
- Clarifies that notwithstanding any general law or special act, local government regulations shall not apply to existing or future transportation facilities on the State Highway System.

Many of the bill's provisions can be described as technical corrections.

HB 1373 with CS raises no apparent constitutional issues. It has an indeterminate, but minimal, fiscal impact on FDOT and local governments.

The airport streamlining provisions take effect October 1, 2003, and the rest of the bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1373c.com.doc  
**DATE:** April 3, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Contracting Issues**

###### Current Situation

The basic process for counties, municipalities, special districts and other political subdivisions of the state to award contracts for construction projects is described in s. 255.20, F.S., and elsewhere in statute. Typically, any construction project with a cost in excess of \$200,000, and any electrical project costing more than \$50,000, must be competitively awarded. However, s. 255.20, F.S., lists 11 types of projects where a competitive award is not required, such as emergency repair of facilities damaged by hurricanes, riots, or other “sudden unexpected turn of events.” The 11<sup>th</sup> exemption – county transportation projects under Chapter 336 -- was added by the Legislature in the 2002 session.

Section 255.20, F.S., also includes a basic definition and framework for the competitive award process, but allows local governmental entities to establish specific procedures for conducting the process. This has resulted in differences among cities and other local governmental entities in bidding and contractor qualification requirements. The 2002 Legislature attempted to resolve that uncertainty by passing CS/HB 261, 3<sup>rd</sup> engrossed. The legislation (Chapter 2002-20, Laws of Florida) specified that any contractor who is prequalified by FDOT and eligible to bid on FDOT projects to perform certain work also is prequalified to obtain bid documents and to submit a bid on those same types of projects for any county or expressway authority. A county or expressway authority is able to disqualify a prospective bidder who is at least 10 percent behind on another construction project for that same entity. Appeal processes also were established. According to proponents of last year’s legislation, municipalities were inadvertently not included in the bill.

Section 337.14, F.S., details FDOT’s contractor certification process. All contractors who wish to bid on transportation projects costing in excess of \$250,000 must meet FDOT qualifications and be certified. For example, s. 337.14(7), F.S., prohibits a contractor who is qualified with FDOT, or the contractor’s affiliate, from also qualifying to perform construction, engineering, and inspection (CEI) services on FDOT construction contracts. This prohibition exists in order to eliminate the possibility of a conflict of interest that would arise from having CEI services on a given project performed by the same or affiliate entity that performs the construction contract. But contracting firms are continuing to broaden their scope, and incorporate other construction activities, such as materials testing, and FDOT attorneys have begun raising new cautions of conflicting interests.

Section 337.14(1), F.S., requires FDOT to act upon an application for qualification to bid within 30 days after the application is presented. Frequently, however, the application is incomplete. Current law

provides a process for FDOT to request information necessary to complete the application, involving two written requests for additional information. If the applicant fails to comply with the initial and second requests within a reasonable period of time as specified, current law provides that the application shall be denied. Although current law implies that the 30-day period is suspended for the "reasonable period of time" within which a contractor is asked to respond to FDOT's requests for additional information to complete an application, that is not expressly stated.

Section 337.14(4), F.S., currently provides that a certificate of qualification is valid for 18 months or "such shorter period as the department prescribes." FDOT attorneys have said this is creating some confusion about the duration of the certificate of qualification.

Section 337.18(4)(a), F.S., caps incentive payments and damage penalties at \$10,000 per calendar day. FDOT and contractors agree that this amount is insufficient to encourage a contractor to complete large, complex, multi-million-dollar contracts within the period established by contract. Likewise, the \$10,000 per day damage assessment does not represent a disincentive substantial enough to deter delays for large projects. FDOT has recommended that the cap either be raised or deleted.

### Effect of Proposed Changes

Section 255.20, F.S., is amended to correct an oversight from the 2002 legislation. If HB 1373 becomes law, then any contractor who is prequalified by FDOT and eligible to bid on FDOT projects to perform certain work also will be prequalified to obtain bid documents and to submit a bid on those same types of projects for any municipality or other local government. Any local government entity will be able to disqualify a prospective bidder who is at least 10 percent behind on another construction project for that same entity. And, the local government must establish an appeals process to challenge prequalified contractors; a process by which non-qualified contractors can be qualified locally; and an appeals process for those non-qualified contractors who are rejected.

The bill amends s. 337.14 (7), F.S., by removing the potential for a conflict of interest that exists as a result of having material lab testing services performed by the same or affiliate entity that performs the construction contract. Material labs owned by or affiliated with qualified construction companies will be prohibited from acting as material testing labs on FDOT projects

Section 337.14(1), F.S., is amended to provide that the 30-day period begins once FDOT determines the application for qualification is complete, thereby giving FDOT sufficient time to request and receive from the contractor the information necessary to complete the application. It also gives contractors more time to respond to FDOT requests for information about their applications for qualification.

Section 337.14(4), F.S., is amended to expressly state that submission of an application for qualification shall not affect the expiration of a certification of qualification. According to FDOT attorneys, this change in the law will preclude any assertion that a certificate can be valid for longer than the legislatively mandated period.

HB 1373 also amends s. 337.18(4)(a), F.S., to delete the \$10,000-per-day limit on incentive payments to a contractor for early completion of a project and the \$10,000-per-day limit on damages assessed against a contractor for delayed completion of a project. Instead, the bill gives FDOT the flexibility to base their incentive payments and damage penalties on a variety of factors individual to each contract.

### **State Regulation of Airports**

#### Current Situation:

Airports, airlines and aircraft are primarily regulated by the Federal Aviation Administration. Chapter 330, F.S., governs the state regulation of public and private airports. FDOT's general responsibilities include licensing and inspecting public and private airports; reviewing airport siting plans; and providing

funds for expansion or improvements. Florida has 20 commercial service airports, a total of 131 public airports, and in excess of 230 privately operated airports, airparks, heliports and seaplane landing areas.

FDOT has been trying for three legislative sessions to rewrite the statutes applicable to its aviation program, which agency staff indicates is outdated and in need of update and streamlining. For example, the agency advocates eliminating the airport licensing fees, which cost more to collect than is generated in revenue. The annual license fees currently are: \$100 for public airports; \$70 for private airports; \$50 for a limited use airport; and \$25 for a temporary airport.

#### Effect of Proposed Changes:

HB 1373 amends Chapter 330, F.S., by abolishing site and license fees for all airports. The bill also replaces the current requirement for physical inspection of private airport sites for approval and licensing with an electronic self-certification registration program; however, FDOT may continue to inspect and license private airports with 10 or more planes, at the request of the owners of these private airports. This is expected to affect up to 46 private airports or airparks.

The bill provides authority and requirements for FDOT to establish the data system to register private airports, creates standards to accomplish self-certification for site approval and registration, and creates requirements for administering and enforcing the new provisions. The bill also makes technical changes to remove outdated, obsolete, or incorrect language, including airport definitions.

This part of HB 1373 takes effect October 1, 2003, to give FDOT time to update its rules.

### **Right-Of-Way Acquisition**

#### Current Situation

Current law does not provide specific authority to utilize FDOT's condemnation power on county or other local roads. However, s. 336.467, F.S., currently provides that a county may enter into an agreement with FDOT for the state agency to acquire rights-of-way for the county if: (1) the project is funded by the constitutional gas tax allocated to that county, (2) the parcel to be acquired is at least 10 acres, and (3) the total cost of the land is at least \$100,000. This authorization is limited to counties and not to cities or other local governments.

FDOT's legislatively approved Five-Year Work Program frequently contains projects that involve the acquisition of rights-of-way as part of local road improvements. For example, FDOT may be widening a state road that intersects with a local road, and to expedite intersection improvements that the local government has agreed to perform, FDOT acquires the right-of-way for both projects. Given current law, such acquisition could be questioned, as FDOT lacks specific authority to conduct the acquisition outside the described circumstances.

#### Effect of Proposed Changes

HB 1373 would authorize, but not require, other local governmental entities besides counties to contract with FDOT to acquire rights-of-way for them. It also will eliminate the narrow circumstances under which counties are currently authorized to contract with FDOT for these services.

## Permit Delegation

### Current Situation

The 2002 Legislature granted FDOT the authority to enter into agreements delegating stormwater drainage permitting to a governmental entity in instances where the agency determines that permit issuance is based on requirements that are at least as stringent as its own and will ensure the safety and integrity of FDOT facilities. Such delegation, where possible, produces efficiencies and cost savings through streamlining of the permitting process, especially in cases where applicants must obtain permits from multiple governmental entities.

### Effect of Proposed Changes

HB 1373 amends s. 337.401, F.S., to allow FDOT to work with other governmental entities, where appropriate, to delegate road-connection permitting and permitting of right-of-way use by utilities. This will expand FDOT's ability to delegate permitting authority in an effort to gain additional efficiencies in time and cost of permitting.

### **Other Issues**

During the 2002 legislative session, s. 339.12(10), F.S., was created to give preference for any transportation grants to local governments that met certain criteria: they had more than 50,000 residents and either levied the full 6 cents of local-option fuel taxes pursuant to s. 206.41(1)(e) or 206.87(1)(c), F.S. or dedicated at least 35 percent of its discretionary sales surtax to transportation infrastructure. Twenty-five counties were eligible for the preference at the time of passage. Proviso in the FY 02-03 General Appropriations Act delayed implementation until FY 03-04. However, questions continue to be raised on how FDOT would determine the preference and what grants would be eligible. HB 1373 repeals this provision.

Section 334.071, F.S., explains the process for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not erase the current names of the facilities, nor do they require local governments and private entities to change street signs or addresses. Some public roads and bridges have multiple or overlapping designations. Based on DOT records, 969 honorary road and bridge designations have been approved since 1922.

HB 1373 amends s. 95.361, F.S., to address a deficiency in current law related to public road dedications. The law is silent as to the ownership status of roads, built by private developer or whose origin is unknown, but which have been maintained for many years by a public entity. Based on 1982 case law, the law has been interpreted to prevent dedication of a road to a public entity unless it can be definitively proved that the road was constructed by a public entity.

HB 1373 creates three new honorary designations.

- The bill designates a portion of State Road 19 in Lake County, beginning at the north end of the county to the intersection of State Road 19 and U.S. 441 in the City of Eustis is designated the "Private Robert M. McTureous, Jr., U.S. M.C., Medal of Honor Memorial Highway" in honor of Lake County's only Congressional Medal of Honor winner.
- The bill designates 8<sup>th</sup> Street, between SW 58<sup>th</sup> Avenue and SW 60<sup>th</sup> Avenue in Miami-Dade County as "Cesar Calas Way," in honor of a former city engineer for the City of West Miami and a professional engineer for the Miami-Dade Public Works Department.
- The bill designates Kendall Drive between 127<sup>th</sup> Avenue and 130<sup>th</sup> Avenue in unincorporated Miami-Dade County as "Firpo Garcia Way," a dentist and Dade county community council member.

In Florida where roads were constructed many years ago and records have been lost or destroyed, but a city or county has been maintaining these roads, title insurers have refused to ensure access to property over these publicly maintained roads. Without title insurance, property owners have had difficulty obtaining loans to build on their land adjacent to these types of roads.

HB 1373 specifies that a road which has been maintained by a public entity for at least seven years will vest to the maintaining public entity. Any person, firm, corporation or entity having or claiming any interest in these roads of unknown origin has one year from the effective date of this act to file a claim, or for a period of seven years from the initial date of regular maintenance or repair of the road in question to file a claim, whichever is greater.

Periodically, FDOT encounters hurdles created by local ordinances, such as tree-cutting prohibitions, when widening or maintaining roads or bridges on the State Highway System. HB 1373 clarifies that notwithstanding any general law or special act to the contrary, no local regulations of counties, cities, or special districts shall apply to existing or future transportation projects on the State Highway System.

During special session in 2001, the Legislature provided some funding flexibility for Florida's airports necessary to meet the federal requirements for security enhancements. Airports can request FDOT to allow them to use their state capital-improvement grants for operations, maintenance, and security enhancements, through June 30, 2004, under current law. In the last two years, Florida airports have requested diverting about \$28 million in capital funds for security-related projects. HB 1373 extends that deadline to June 30, 2007.

HB 1373 with CS takes effect upon becoming law, except for the aviation program changes, which take effect October 1, 2003.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 95.361, F.S., to clarify a public-road dedication issue.

Section 2: Amends s. 255.20, F.S., to allow counties, municipalities, special districts under Chapter 189, F.S., and other local governmental entities to require that contractors seeking to perform transportation projects costing in excess of \$250,000 be certified or qualified to perform such work. Specifies that contractors pre-qualified by FDOT to perform comparable state projects shall be presumed to be qualified to perform the local project. The local governmental entity may develop a process to appeal that presumption in court. Specifies that a local government may declare as ineligible any contractor who is at least 10 percent behind schedule on an existing project for local government. Directs local governmental entities to establish and publish prequalification criteria and procedures to deal with contractors not prequalified by FDOT. Specifies requirement for an appeals process.

Sections 3 through 6: Effective October 1, 2003, amends ss. 330.27, 330.29, 330.30, and 330.35, F.S., related to FDOT's aviation programs. Makes numerous technical changes throughout. Eliminates or updates obsolete definitions. Directs FDOT to establish and maintain a state aviation facility data system for registration purposes. Specifies conditions for site approvals for public airports and for private airports. Clarifies that licenses are issued for public airports and registrations for private airports. Specifies requirements. Eliminates airport licensure and registration fees. Eliminates inspections and licensure for private airports, except that private airports with 10 or more based aircraft may be licensed and inspected at their request.

Section 7: Amends s. 332.007, F.S., to extend by three years, to June 30, 2007, capital grant funding flexibility for Florida's airports.

Section 8: Amends s. 335.02, F.S., to specify that no local-government ordinance shall apply to existing or future transportation projects on the State Highway System.

Section 9: Amends s. 336.467, F.S., to broaden FDOT's authority to enter into an agreement with any other governmental entity to acquire rights-of-way for that other entity.

Section 10: Amends s. 337.14, F.S., to specify that a contractor's application for qualification will be acted upon by FDOT within 30 days after it is deemed complete, not when it is delivered to the agency. Specifies submission of an application shall not affect the certificate of qualification's expiration date. Adds to the list of contractor affiliates those entities that provide testing services.

Section 11: Amends s. 337.18, F.S., to delete \$10,000-per-day cap on incentive payments or damages to transportation contractors.

Section 12: Amends s. 337.401, F.S., to allow FDOT to enter into a permit-delegation agreement with another governmental entity, based on requirements that FDOT's facilities will be handled with safety.

Section 13: Amends s. 338.2216, F.S., Makes a technical correction.

Section 14: Designates "Cesar Calas Way."

Section 15: Designates "Firpo Garcia Way."

Section 16: Designates the "Private Robert M. McTureous, Jr., U.S.M.C., Medal of Honor Memorial Highway."

Section 17: Repeals the transportation grant preference program

Section 18: Except as otherwise provided, specifies this act shall take effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

Minimal. FDOT collects on the average about \$90,000 a year in the airport registration fees, but DOT has estimated it costs the agency at least \$100,000 annually to administer the collection program.

#### **2. Expenditures:**

Indeterminate, but minimal. FDOT will incur some expense in setting up the electronic registration for private airports, but the added convenience and data accessibility will have many benefits.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

Local governments may experience some savings in time and money if FDOT acquires rights-of-way on their behalf in order to complete local road projects connected to state projects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Transportation contractors and related businesses may experience some cost-savings and time savings because of some of the provisions in HB 1373.

Private airports may experience some savings in time and money by using the electronic registration process.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 1373 does not require cities or counties to expend funds or take actions to expend funds, does not reduce the revenue-raising authority of cities or counties in the aggregate, and does not reduce the percentage of state tax revenues shared with cities or counties.

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

FDOT has sufficient existing rule-making authority to implement the applicable provisions of HB 1373.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDOT, the Florida Road Builders Association and other transportation-related groups support HB 1373.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

#### Transportation Systems Subcommittee

The Transportation Systems Subcommittee on March 26, 2003, adopted without objection one amendment by the bill's sponsor. The amendment repealed a provision in chapter 2002-20, Laws of Florida, as amended by chapter 202-402, Laws of Florida creating preference for certain counties applying for transportation incentive grants from FDOT. The provision had not been implemented because none of the incentive grant programs targeted by the language were funded this fiscal year.

HB 1373 as amended was reported favorably by a 9-0 vote of the subcommittee.

#### Transportation Committee

At its April 2, 2003, meeting, the Transportation Committee adopted seven amendments, including the subcommittee amendment. The six additional amendments:

- Designates a portion of S.R. 19 in Lake County the "Private Robert M. McTureous Jr. Memorial Highway."
- Designates portions of two roads in Miami-Dade County in honor Cesar Calas and Firpo Garcia.
- Clarifies the process by which public entities can legally claim a privately built road (or a road built by an unknown entity) that has been publicly maintained for at least 7 years.
- Corrects a clerical reference in chapter 338, F.S., requested by the Legislature's Office of Statutory Revision.

- Specifies that notwithstanding any general law or special act, local ordinances shall not inhibit current or future state transportation projects.
- Extends from 2004 to 2007 the ability of Florida airports to use their capital grant money for security-related operations and enhancements.