

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Systems</u>	_____	<u>PUGH</u>	<u>MILLER</u>
2) <u>Transportation</u>	_____	_____	_____
3) <u>Commerce</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

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 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.

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

HB 1373 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: h1373.tr.doc
DATE: March 22, 2003

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 11th 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, 3rd 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. By oversight, according to proponents of last year’s legislation, municipalities were not included in the bill.

Meanwhile, s. 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.

In addition, s. 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.

Also, s. 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.

Finally, s. 337.18(4)(a), F.S., caps incentive payments, as well as 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 for an incentive. 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 DOT and eligible to bid on DOT 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, it 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 also 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, the \$10,000-per-day limit on damages assessed against a contractor for delayed completion of a project. Instead, FDOT will have 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. DOT’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:

Chapter 330, F.S., is amended throughout. The site and license fees for all airports are abolished. The proposal 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 changes include authority and requirements for FDOT to establish the data system to register private airports, standards to accomplish self-certification for site approval and registration, and requirements for administering and enforcing the new provisions. The amendments also include editorial 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.

R-O-W 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: the project is funded by the constitutional gas tax allocated to that county, the parcel to be acquired is at least 10 acres, and the total cost of the land is at least \$100,000. This authorization is expressly limited to counties, not 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 called into question, 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.

C. SECTION DIRECTORY:

Section 1: 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 2 through 5: 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 6: Amends s. 336.467, F.S., to broaden FDOT's ability to enter into an agreement with any other governmental entity to acquire rights-of-way for that other entity.

Section 7: 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 8: Amends s. 337.18, F.S., to delete \$10,000-per-day cap on incentive payments or damages to transportation contractors.

Section 9: 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 10: 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:

Not applicable. HB 1373 does not require cities or counties to expend funds or take actions to expend funds; reduce the revenue-raising authority of cities or counties, in the aggregate; or 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