

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Transportation and Economic Development Appropriations Committee

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BILL: CS/CS/CS/SB 460

SPONSOR: Transportation and Economic Development Appropriations Committee, Governmental Oversight and Productivity Committee, Transportation Committee, and Senator Sebesta

SUBJECT: Transportation

DATE: April 27, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>CA</u>	<u>Withdrawn</u>
3.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
4.	<u>Weaver</u>	<u>Martin</u>	<u>TA</u>	<u>Fav/CS</u>
5.	<u>_____</u>	<u>_____</u>	<u>RC</u>	<u>Withdrawn</u>
6.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

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## I. Summary:

This Committee Substitute for Senate Bill 460 is a compilation of various issues relating to transportation. The following is a summary of changes included in the committee substitute:

- Establishes a matching grant program for dredging projects in counties with a population of less than 300,000. This grant program is to be administered by rules established by the Florida Seaport Transportation and Economic Development (FSTED) Council and includes a review process by the Florida Department of Community Affairs (DCA), the Florida Department of Transportation (FDOT), and the Office of Tourism, Trade, and Economic Development (OTTED).
- Provides the Florida Department of Transportation (FDOT) the authority to fund a number of aviation activities conducted by the Secure Airports for Florida's Economy (SAFE) Council or other not-for-profit organizations. Eligible activities include master planning, professional education, safety and security planning, and economic development and efficiency enhancements. The committee substitute adjusts the composition and the duties of the Council.
- Allows supplemental agreements and written work orders for up to 25 percent above the original contract amount to proceed without approval of the surety. The surety's approval is required for cumulative modifications in excess of 25 percent of the original contract amount.

- Limits the liability of FDOT's construction and maintenance contractors performing services for FDOT when they are in compliance with contract documents. The committee substitute limits the liability of FDOT's contracted design engineers when they use that degree of care and skill ordinarily exercised by other engineers in the field. Further, in lawsuits against FDOT or its agents in cases involving DUI, speeding or reckless driving, the committee substitute provides a presumption the impaired or speeding driver's actions are the proximate cause of the incident unless the gross negligence or intentional misconduct of the DOT or its contractors was a proximate cause of the death or injury.
- Provides that persons participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty are exempt from the payment of tolls.
- Requires that each long-range transportation plan, each annually updated Transportation Improvement Program, and each amendment that affects projects in the first three years of such plans must be approved by each metropolitan planning organization on a recorded roll call vote of the membership present.
- Updates obsolete language relating to the development of the initial Strategic Intermodal System (SIS) Plan and requires coordination with and inclusion of military interests in development of the SIS Plan.
- Creates the "Northwest Florida Transportation Corridor Authority Law." The Authority is created to improve mobility, traffic safety, and economic development along the U.S. 98 corridor, and identify and develop hurricane evaluation routes.
- Adjusts a provision requiring further development-of-regional-impact review for a proposed change to an airport located in two counties.
- Requires FDOT to contract with a consultant for a study of the bicycle facilities that are on or connected to the State Highway System. The results of the bicycle system study are to be presented to the Governor, the President of the Senate, and Speaker of the House by October 1, 2005.

This committee substitute amends the following sections of the Florida Statutes: ss. 332.007, 337.11, 332.14, 338.155, 339.175, 339.64, and 380.06.

This committee substitute creates the following sections of the Florida Statutes: ss. 311.22, 337.195, 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.837, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, 343.885, and 343.89

## **II. Present Situation:**

### **Seaports and Dredging Programs**

Perhaps more than any other state, Florida's geography lends itself to abundant opportunities for waterborne movement of people and goods. According to the Marine Industries Association of Florida, Inc., Florida's marine industry represents a total economic output of over \$14.1 billion

and represents related employment estimated at over 180,000 jobs. According to the report, recreational boating alone accounts for an estimated 80,800 jobs.

While not always immediately apparent, the infrastructure enabling the robustness of the marine industry is significant. The most obvious and most significant infrastructure in terms of costs, are the state's seaports. Florida's 14 public deepwater ports, as listed in s. 403.021(9)(b) F.S., are Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West. The Legislature, recognizing the importance of Florida's ports, adopted ch. 311, F.S., in 1990 establishing the FSTED Program within FDOT to finance seaport projects that improve the movement of people and goods, and otherwise support the interests, purposes, and requirements of Florida's seaports. To fund the program, s. 311.07(2), F.S., directs the transfer from the State Transportation Trust Fund (STTF) of a minimum of \$8 million annually. These funds are used to provide a 50-50 match with any of Florida's designated deepwater ports for project improvements to seaports including the dredging of channels, harbors, and turning basins. The FSTED program is managed by the Florida Seaport Transportation and Economic Development Council, which consists of the 14 deep water port directors, the Executive Director of OTTED, and the secretaries of Transportation and Community Affairs. The council is responsible for preparing a five-year Florida Seaport Mission Plan which defines the goals and objectives of the seaports. Additionally, the FSTED council meets semi-annually to review project applications submitted by each of the individual seaports and recommends which projects should be forwarded to the agencies for further review and possibly recommended for funding with state funds. The list of FSTED recommended projects is reviewed by OTTED, FDOT, and DCA to ensure each project is consistent with state statutes and local master plans.

Florida's marine economy is, however, significantly more than the oceanic transport of people and goods. In addition to the state's deepwater ports, other waterways play a vital role in the marine economy. These waterways also require development and maintenance. For example, Florida's portion of the Atlantic Intracoastal Waterway (AICW), a series of federally maintained navigation channels, extends from the Georgia border to Miami. For much of its length, the system consists of naturally deep estuaries, rivers and sounds. These natural stretches are connected by man-made "cuts" through land areas and shallows, many of which require periodic dredging to maintain their depths. The authorized project depth of the AICW is 12 ft (at low tide) from Norfolk, Virginia to Ft. Pierce, Florida and 10 feet from Ft. Pierce to Miami. The U.S. Army Corps of Engineers (ACOE) is responsible for maintenance of the channel and the Florida Inland Navigation District serves as the local sponsor. The AICW enables northern vessels to safely make the annual winter 'migration' to the warmer climate of Florida's marinas and harbors.

On the west coast, the Gulf Intracoastal Waterway (GICW) extends about 1,300 miles from Carabelle, Florida to Brownsville, Texas. A short, non-contiguous segment runs between the Anclote River, north of Tampa, to the mouth of the Caloosahatchee River, near Ft. Myers. The West Coast Inland Navigation District performs the duties of local sponsor to the ACOE for sharing the cost of the planning, construction, and maintenance of this 152-mile long segment of the GICW.

In recent years, federal funding for the AICW and GICW has been severely curtailed resulting in deficiencies in maintenance of the waterways. Shoaling and generally shallow depths are commonplace often restricting vessel traffic. Smaller counties and other local governments that rely on the marine industry can be especially impacted by the loss of commercial marine activities and recreational boating revenues.

Several coastal counties do not have a designated intracoastal waterway and thus receive little to no regular assistance from the federal government for navigation. For example, Hernando Beach, Florida, located in the gap between the eastern and western GICW, is home to a live bait shrimp industry, charter fishing vessels, and a growing number of recreational craft. The existing channel is narrow, shallow, and has several sharp curves. An alternative under consideration involves deepening the existing channel, widening it, and straightening it. The ACOE, in a draft project report and environmental assessment, estimates a total cost of the project to be \$5,028,000 with an annual average economic equivalent cost of \$345,600 per year over 50 years. The annual average economic equivalent benefit is \$489,800 per year. Spread between commercial fishing and recreational boating, the total benefit cost ratio is 1.3.

### **Toll Facilities**

Section 338.155, F. S., establishes the requirement that tolls be paid in toll facilities, and provides that certain persons are exempt from paying such tolls.

### **Metropolitan Planning Organizations**

Section 339.175, F.S., provides that metropolitan planning organizations shall develop, in cooperation with the state and public transit operators, transportation plans and programs for metropolitan areas, and provides for the responsibilities and authority for M.P.O.s.

### **Commuter Rail and Regional Transportation Authorities**

Chapter 343, F.S., establishes the powers and duties of the Commuter Rail and Regional Transportation Authorities, the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, and the Tampa Bay Commuter Transit Authority.

### **Aviation Programs**

Section 332.007, F.S., requires the FDOT to prepare and continuously update an aviation and airport work program. The plan must be consistent with the statewide aviation system plan and to the maximum extent feasible, local government comprehensive plans. The section restricts state funding to those aviation and airport projects and programs contributing to the implementation of the state aviation system plan. In addition to funding capital projects, FDOT also provides staffing assistance and pays some administrative costs of the SAFE Council, a 27-member group representing aviation-related businesses and state agencies created in 2003 by the Legislature. The SAFE Council's primary responsibility is to prepare a five-year SAFE Master Plan, which recommends the acquisition and construction of specific transportation facilities linking airports to other transportation modes, protecting the safety and security of passengers and cargo, or enhancing international trade and other economic benefits. Since its creation, the SAFE Council has received funding from FDOT by means of proviso language in the annual General Appropriations Act.

### **Surety**

Section 337.11, F.S., establishes FDOT's authority to contract with road builders, design professionals, product vendors, and others for the construction and maintenance of roads and other facilities under its jurisdiction. FDOT also contracts for planning and other non-construction activities. A successful bid over \$150,000 requires the contractor to post a surety bond payable to FDOT for the purposes of ensuring the prompt, faithful, and efficient performance of the contract according to plans and specifications within the time period specified, and for the prompt payment of all persons furnishing labor, material, equipment, and supplies for work provided in the contract. Surety bonds are provided by a third party. When a contract item needs to be renegotiated, FDOT and the contractor enter into a "supplemental agreement" or in the case of smaller amounts, a "work order", which the contractor's surety provider must approve. There can be as much as a two-month delay in closing out the contract while waiting for a surety company's approval of a small-dollar supplemental pay item project. This results in unnecessary delays to a contractor's final payment and to FDOT in closing out its project accounting.

### **Liability**

Sovereign immunity prohibits suits against the government, unless the government waives the protection. Section 768.28, F.S., provides a partial waiver of sovereign immunity in tort actions by allowing individuals to sue state government, subdivisions of the state, and municipalities. The statute imposes a \$100,000 limit on the government's liability to a single person. Furthermore, it imposes a \$200,000 limit on the government's liability for claims arising out of a single incident. These limits do not preclude plaintiffs from obtaining judgments in excess of the recovery cap. However, plaintiffs cannot force the government to pay damages that exceed the recovery cap. Plaintiffs in such cases can receive additional compensation through passage of a claims bill filed with the Florida Legislature. Most contractors and consultants to FDOT are not afforded the protection of sovereign immunity. However, s. 728.28, F.S., confers sovereign immunity on a number of entities that perform public service. Among those entities are professional firms providing monitoring and inspection services of work required for FDOT roadway, bridge, or other transportation facility projects. Construction contracting firms performing work for FDOT, as well as FDOT itself, are periodically named as parties to litigation filed by plaintiffs involved in traffic accidents. These lawsuits can impose a significant financial burden and raise the cost of liability insurance required to participate in public transportation projects. Other costs include the expense of lost man-hours for depositions, record recovery, and court appearances.

### **Strategic Intermodal System**

The SIS was created by the Legislature in 2003 as a network of highways, bridges, airports, ports, and other transportation facilities to provide for the statewide and interregional movement of people and goods. The SIS is composed of the Florida Intrastate Highway System, the state's seven busiest airports, its seven largest seaports, Florida's spaceport, and major rail lines. A number of smaller highways, airports and seaports, and other transportation facilities are defined as "emerging systems." Development of the SIS Plan was guided by the Strategic Intermodal Transportation Advisory Council (SITAC). Recognizing the importance of an interconnected intermodal transportation system to national defense and the impact military facilities have on Florida's public transportation system and its economic viability, the SIS Plan recommends greater military coordination in future updates of the plan.

### III. Effect of Proposed Changes:

**Section 1** creates s. 311.22, F.S., to create within the Florida Seaport Transportation and Economic Development (FSTED) Council a program to help fund dredging projects in counties that meet the following criteria:

- The counties must have a population of less than 300,000 based on the last official U.S. Census;
- The counties must be able to provide a 50-50 match for the funds;
- The counties must have a port authority as defined in s. 315.02(02), F.S., which is in compliance with financial management and reporting procedures pursuant to part III, ch. 218, F.S.; and
- The project must be in compliance with the water quality permitting requirements in part IV of chapter 373 F.S.

The grants must be used only to fund projects for dredging or deepening channels, turning basins, or harbors.

This section also directs the FSTED Council to develop by rule procedures and criteria for evaluating project applications submitted for funding under the new program. The rules will provide criteria for evaluating the project's economic benefit. The committee substitute specifies that this review process shall be similar to that currently in place for FSTED projects, which are reviewed by FDOT, DCA, and OTTED.

**Section 2** provides FDOT the authority to fund a number of aviation activities conducted by the SAFE Council or other not-for-profit organizations. Eligible activities include master planning, professional education, safety and security planning, and economic development and efficiency enhancements.

**Section 3** amends s. 332.14, F.S., by reducing the number of members on the Secure Airports for Florida's Economy (SAFE) Council within the Department of Transportation from 27 to 7, and by providing that the members are to be appointed by the DOT from recommendations submitted by the Board of the Florida Airports Council. The committee substitute also provides that the DOT shall fund the Council, and that the Council may contract from not-for-profit organizations that represent a majority of public airports in Florida. The committee substitute provides that the Council may establish an advisory board of industry and agency representatives. The committee substitute clarifies the duties of the Council, and provides that the Council shall sunset on January 1, 2009.

**Section 4** allows FDOT and its contractors and consultants to negotiate and implement supplemental agreements and written work orders for up to 25 percent above the original contract amount without the approval of the surety. The surety's approval is required for cumulative modifications in excess of 25 percent of the original contract amount.

**Section 5** creates s. 337.195, F.S., to limit the liability of FDOT's construction and maintenance contractors performing services for FDOT when they are in compliance with contract

documents. The committee substitute limits the liability of FDOT's contracted design engineers when they use that degree of care and skill ordinarily exercised by other engineers in the field. Claims by the DOT against any contractor are unaffected. In lawsuits against FDOT or its agents in cases involving DUI, speeding or reckless driving, the committee substitute provides a presumption the impaired or speeding driver's actions are the proximate cause of death or injury, unless the gross negligence or intentional misconduct of the DOT or its contractors was a proximate cause of the death or injury.

**Section 6** amends s. 338.155, F.S., to provide that persons participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty are exempt from the payment of tolls.

**Section 7** adds subsection (12) to s. 339.175, F.S., to require that each long-range transportation plan, each annually updated Transportation Improvement Program, and each amendment that affects projects in the first three years of such plans must be approved by each metropolitan planning organization on a recorded roll call vote of the membership present.

**Section 8** directs FDOT to coordinate with its federal and local partners in planning and implementing transportation improvements on roads and rail corridors linked to military installations and adds a military representative with command responsibilities to the Statewide Intermodal Transportation Advisory Council. The committee substitute also deletes obsolete provisions relating to the initial development of the Strategic Intermodal System plan.

**Section 9** creates Part IV of ch. 343, F. S., the "Northwest Florida Transportation Corridor Authority Law." The Authority is created to improve mobility, traffic safety, and economic development along the U.S. 98 corridor stretching through Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla counties. Another goal of the Authority is to identify and develop hurricane evacuation routes. Specifically, the committee substitute:

- Provides that the governing board shall be composed of a resident from each of the eight counties, to be appointed by the governor to 4-year terms. They can be removed by the Governor for cause. The board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to s. 112.061, F.S. The board also can hire an executive director and other staff, and consultants, as needed;
- The FDOT District 3 secretary shall serve as an ex-officio, not-voting member;
- Directs the Authority to adopt a master plan by July 1, 2007, that identifies areas of the corridor where mobility, traffic safety, and efficient hurricane evacuation needs to be improved; evaluates the economic development potential of the corridor and considers strategies to develop that potential; identifies methods of building partnerships with local governments, other state and federal entities, the private-sector business community, and the public in support of corridor improvements; and to identify projects that will accomplish these goals and objectives. This plan must be updated annually, and presented to the county commissions within the corridor and to the legislative delegation members whose districts lie within the eight-county region within 90 days of adoption;
- Directs the Authority to build and maintain highways and other transportation facilities within the U.S. 98 corridor that will help meet its statutory goals. These projects may be undertaken in phases, as the projects or segments thereof become feasible and as funding is available;

- Empowers the Authority to issue revenue bonds, either on its own or through the state Division of Bond Finance. In both cases, the bonds and the issuance process must conform to the State Bond Act requirements. These bonds' term shall not exceed 40 years. The bonds shall not be pledges against the credit of the State of Florida;
- Allows the Authority to set and collect tolls, fees, and other charges; acquire land by purchase, donation, or eminent domain; borrow money; to sue and be sued; enter into contracts, agreements, and partnerships;
- Allows the Authority to enter into lease-purchase agreements with FDOT to manage the U.S. 98 Corridor System, which shall be a part of the State Highway System. The FDOT also may be appointed by the Authority as its agent to oversee construction of the system's components; and
- Allows the Authority to enter into public-private partnerships to construct, operate, own, or finance transportation facilities that are part of the system.

**Section 10** amends s. 380.06(19)(b), F.S., by deleting a provision requiring further development-of-regional-impact review for a proposed change to an airport located in two counties, when the change is a 10 percent lengthening of an existing runway or a 20 percent increase in the number of gates in an existing terminal. The effect of the deletion is to default to standards applicable to all airports, which have higher thresholds before the development-of-regional-impact review is required.

**Section 11** requires FDOT to contract with a consultant for a study of the bicycle facilities that are on or connected to the State Highway System. Provides specific criteria for review and inclusion in the study. The results of the bicycle system study are to be presented to the Governor, the President of the Senate, and Speaker of the House by October 1, 2005.

**Section 12** provides that the act takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Road and bridge contractors and design engineers working on FDOT projects will likely benefit from the limited liability provision and the evidentiary presumption provision due to the potential for reduced insurance and legal costs.

Drivers and occupants involved in litigated crashes may be adversely affected by the limited liability and evidentiary presumption provisions.

**C. Government Sector Impact:**

While this committee substitute does not designate a state funding source for the matching grants program in section 1, the Senate appropriations bill for Fiscal Year 2005-2006 (SB 2600) includes \$5.0 million and the House appropriations bill for Fiscal Year 2005-2006 (HB 1885) includes \$2.5 million in state matching funds for the waterway dredging program created by this act.

The limited liability provision for FDOT contractors and the evidentiary presumption provision may result in lower than expected future costs for state road and bridge projects due to the potential for contractors' savings in insurance and legal costs.

The fiscal impact of the Northwest Florida Transportation Corridor Authority Law is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Supreme Court of Florida has held<sup>1</sup> that the "government specification defense" is inappropriate in a products liability action where the contract in question is to supply services or goods of a commercial, nonmilitary nature. The court recognized a contract specification defense that exists where an independent contractor strictly follows the plans, directions or specifications supplied by his employer, whether or not that employer is a sovereign, and has no knowledge and no reason to believe that those plans, directions or specifications pose a danger of harm.<sup>2</sup>

Section 1 of the committee substitute permits the FDOT to provide funds for "eligible projects performed by not-for-profit organizations that represent a majority of public airports in this state." There is only one organization that meets that definition: the Florida Airports Council, a private organization that claims to be ". . . the largest airport-specific organization in Florida."<sup>3</sup> It is unclear how the Council will allocate funds for the projects, which later portions of that section define to include "aviation master planning, professional education, safety and security planning, enhancing economic development and efficiency at airports in the state, or other

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<sup>1</sup> *Dorse v. Armstrong World Industries*, 513 So.2d 1265 (Fla. 1987).

<sup>2</sup> *Dorse* at 1267.

<sup>3</sup> [www.floridaairports.org](http://www.floridaairports.org)

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planning efforts to improve the viability of airports in the state.” An accepted method of identifying appropriate contract vendors is through a request for information or qualifications solicitation. Following receipt of information from such a solicitation, a funding agency can make a determination whether a competitive procurement should proceed. As presently phrased, section 1 would permit the Florida Airports Council to distribute state funds for the achievement of the above objectives without the transparency that ordinarily accompanies the allocation of public funds.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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