

By the Committee on Transportation; and Senator Sebesta

596-1833-05

1 A bill to be entitled
2 An act relating to transportation; amending s.
3 332.007, F.S.; giving the Department of
4 Transportation the discretion to fund certain
5 eligible aviation planning projects to be
6 performed by not-for-profit organizations
7 representing a majority of public airports;
8 amending s. 337.11, F.S.; adding written work
9 orders to the type of documents covered by the
10 Department of Transportation's contracting
11 laws; specifying changes to surety bondholder's
12 liability under certain circumstances; creating
13 s. 337.195, F.S.; providing presumptions
14 relating to liability in certain actions
15 against the Department of Transportation;
16 limiting liability, in certain circumstances,
17 of contractors and engineers doing work for
18 that department; amending s. 339.64, F.S.;
19 directing the Florida Transportation Commission
20 to include as part of its annual work program
21 review an assessment of the department's
22 progress on the Strategic Intermodal System;
23 requiring an annual report; directing the
24 department to coordinate with federal,
25 regional, and local entities for transportation
26 planning that impacts military installations;
27 requiring the Strategic Intermodal System Plan
28 to include an assessment of the impacts of
29 proposed projects on military installations;
30 adding a military representative to the
31 Governor's appointees to the Strategic

1 Intermodal Transportation Advisory Council;
2 deleting obsolete provisions; providing an
3 effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Subsection (10) is added to section
8 332.007, Florida Statutes, to read:

9 332.007 Administration and financing of aviation and
10 airport programs and projects; state plan.--

11 (10) The department may also fund eligible projects
12 performed by not-for-profit organizations that represent a
13 majority of public airports in this state. Eligible projects
14 may include activities associated with aviation master
15 planning, professional education, safety and security
16 planning, enhancing economic development and efficiency at
17 airports in this state, or other planning efforts to improve
18 the viability of airports in this state.

19 Section 2. Subsection (8) of section 337.11, Florida
20 Statutes, is amended to read:

21 337.11 Contracting authority of department; bids;
22 emergency repairs, supplemental agreements, and change orders;
23 combined design and construction contracts; progress payments;
24 records; requirements of vehicle registration.--

25 (8)(a) The department shall permit the use of written
26 supplemental agreements, written work orders pursuant to a
27 contingency pay item or contingency supplemental agreement,
28 and written change orders to any contract entered into by the
29 department. Any supplemental agreement shall be reduced to
30 written contract form, ~~approved by the contractor's surety,~~
31 and executed by the contractor and the department. Any

1 supplemental agreement modifying any item in the original
2 contract must be approved by the head of the department, or
3 his or her designee, and executed by the appropriate person
4 designated by him or her. Any surety issuing a bond under s.
5 337.18 shall be fully liable under such surety bond to the
6 full extent of any modified contract amount up to and
7 including 25 percent over the original contract amount and
8 without regard to the fact that the surety was not aware of or
9 did not approve such modifications. However, if modifications
10 of the original contract amount cumulatively result in
11 modifications of the contract amount in excess of 25 percent
12 of the original contract amount, the surety's approval shall
13 be required to bind the surety under the bond on that portion
14 in excess of 25 percent of the original contract amount.

15 (b) Supplemental agreements and written work orders
16 pursuant to a contingency pay item or contingency supplemental
17 agreement shall be used to clarify the plans and
18 specifications of a contract; ~~to provide for major quantity~~
19 ~~differences which result in the contractor's work effort~~
20 ~~exceeding the original contract amount by more than 5 percent;~~
21 to provide for unforeseen work, grade changes, or alterations
22 in plans which could not reasonably have been contemplated or
23 foreseen in the original plans and specifications; to change
24 the limits of construction to meet field conditions; to
25 provide a safe and functional connection to an existing
26 pavement; to settle contract claims; and to make the project
27 functionally operational in accordance with the intent of the
28 original contract. Supplemental agreements may be used to
29 expand the physical limits of a project only to the extent
30 necessary to make the project functionally operational in
31 accordance with the intent of the original contract. The cost

1 of any such agreement extending the physical limits of a
2 project shall not exceed \$100,000 or 10 percent of the
3 original contract price, whichever is greater.

4 (c) Written change orders may be issued by the
5 department and accepted by the contractor covering minor
6 changes in the plans, specifications, or quantities of work
7 within the scope of a contract, when prices for the items of
8 work affected are previously established in the contract, but
9 in no event may such change orders extend the physical limits
10 of the work.

11 (d) For the purpose of this section, the term
12 "physical limits" means the length or width of any project and
13 specifically includes drainage facilities not running parallel
14 to the project. The length and width of temporary connections
15 affected by such supplemental agreements shall be established
16 in accordance with current engineering practice.

17 (e) Upon completion and final inspection of the
18 contract work, the department may accept the improvement if it
19 is in substantial compliance with the plans, specifications,
20 special provisions, proposals, and contract and if a proper
21 adjustment in the contract price is made.

22 (f) Any supplemental agreement or change order in
23 violation of this section is null and void and unenforceable
24 for payment.

25 Section 3. Section 337.195, Florida Statutes, is
26 created to read:

27 337.195 Limits on liability.--

28 (1) In a civil action for the death of or injury to a
29 person, or for damage to property, against the Department of
30 Transportation or its agents, consultants, or contractors for
31 work performed on a highway, road, street, bridge, or other

1 transportation facility when the death, injury, or damage
2 resulted from a motor vehicle crash within a construction zone
3 in which the driver of one of the vehicles was under the
4 influence of alcoholic beverages as set forth in s. 316.193,
5 under the influence of any chemical substance as set forth in
6 s. 877.111, or illegally under the influence of any substance
7 controlled under chapter 893 to the extent that her or his
8 normal faculties were impaired or operated a vehicle at an
9 unlawful speed as prohibited in s. 316.183 or engaged in
10 reckless driving as prohibited in s. 316.192, it is presumed
11 that the driver's operation of the vehicle was the sole
12 proximate cause of the death, injury, or damage.

13 (2) A contractor who constructs or repairs a highway,
14 road, street, bridge or other transportation facility for the
15 Department of Transportation is not liable to a claimant for
16 personal injury, property damage, or death arising from the
17 performance of the construction or repair if, at the time of
18 the personal injury, property damage, or death, the contractor
19 is in compliance with contract documents material to the
20 condition that was the proximate cause of the personal injury,
21 property damage, or death.

22 (3) In all cases involving personal injury, property
23 damage, or death, a person or entity who contracts to prepare
24 or provide engineering plans for the construction or repair of
25 a highway, road, street, bridge, or other transportation
26 facility for the Department of Transportation is not liable to
27 a claimant for personal injury, property damage, or death
28 arising from the preparation of such engineering plans if the
29 engineer prepared such engineering plans using that degree of
30 care and skill ordinarily exercised by other engineers in the
31 field under similar conditions, and similar localities, and

1 with due regard for acceptable engineering standards and
2 principles. Nothing herein shall be interpreted or construed
3 to alter or affect any claim of the Department of
4 Transportation against such engineer or engineering firm.

5 Section 4. Section 339.64, Florida Statutes, is
6 amended to read:

7 339.64 Strategic Intermodal System Plan.--

8 (1) The department shall develop, in cooperation with
9 metropolitan planning organizations, regional planning
10 councils, local governments, the Statewide Intermodal
11 Transportation Advisory Council and other transportation
12 providers, a Strategic Intermodal System Plan. The plan shall
13 be consistent with the Florida Transportation Plan developed
14 pursuant to s. 339.155 and shall be updated at least once
15 every 5 years, subsequent to updates of the Florida
16 Transportation Plan.

17 (2) In association with the continued development of
18 the ~~initial~~ Strategic Intermodal System Plan ~~and other~~
19 ~~transportation plans~~, the Florida Transportation Commission,
20 as part of its work program review process, shall conduct an
21 annual assessment of the progress that the department and its
22 transportation partners have made in realizing the goals of
23 economic development, improved mobility, and increased
24 intermodal connectivity ~~need for an improved philosophical~~
25 ~~approach to regional and intermodal input in the planning for~~
26 ~~and governing~~ of the Strategic Intermodal System ~~and other~~
27 ~~transportation systems~~. The Florida Transportation Commission
28 shall coordinate with the department, the Statewide Intermodal
29 Transportation Advisory Council, and other appropriate
30 entities when developing this assessment. The Florida
31 Transportation Commission shall deliver a report to the

1 Governor and Legislature no later than 14 days after the
2 regular session begins ~~by December 15, 2003,~~ with
3 recommendations as necessary to fully implement the Strategic
4 Intermodal System.

5 (3)(a) During the development of updates to the
6 Strategic Intermodal System Plan ~~and the development of all~~
7 ~~subsequent updates,~~ the department shall provide metropolitan
8 planning organizations, regional planning councils, local
9 governments, transportation providers, affected public
10 agencies, and citizens with an opportunity to participate in
11 and comment on the development of the ~~proposed plan or~~ update.

12 (b) The department also shall coordinate with federal,
13 regional, and local partners the planning for the Strategic
14 Highway Network and the Strategic Rail Corridor Network
15 transportation facilities that either are included in the
16 Strategic Intermodal System or that provide a direct
17 connection between military installations and the Strategic
18 Intermodal System. In addition, the department shall
19 coordinate with regional and local partners to determine
20 whether the road and other transportation infrastructure that
21 connect military installations to the Strategic Intermodal
22 System, the Strategic Highway Network, or the Strategic Rail
23 Corridor are regionally significant and should be included in
24 the Strategic Intermodal System Plan.

25 (4) The Strategic Intermodal System Plan shall include
26 the following:

27 (a) A needs assessment.

28 (b) A project prioritization process.

29 (c) A map of facilities designated as Strategic
30 Intermodal System facilities; ~~and~~ facilities that are emerging
31 in importance that are likely to become part of the system in

1 the future; and planned facilities that will meet the
2 established criteria.

3 (d) A finance plan based on reasonable projections of
4 anticipated revenues, including both 10-year and 20-year
5 cost-feasible components.

6 (e) An assessment of the impacts of proposed
7 improvements to Strategic Intermodal System corridors on
8 military installations that are either located directly on the
9 Strategic Intermodal System or located on the Strategic
10 Highway Network or Strategic Rail Corridor Network.

11 (5) STATEWIDE INTERMODAL TRANSPORTATION ADVISORY
12 COUNCIL.--

13 (a) The Statewide Intermodal Transportation Advisory
14 Council is created to advise and make recommendations to the
15 Legislature and the department on policies, planning, and
16 funding of intermodal transportation projects. The council's
17 responsibilities shall include:

18 1. Advising the department on the policies, planning,
19 and implementation of strategies related to intermodal
20 transportation.

21 2. Providing advice and recommendations to the
22 Legislature on funding for projects to move goods and people
23 in the most efficient and effective manner for the State of
24 Florida.

25 (b) MEMBERSHIP.--Members of the Statewide Intermodal
26 Transportation Advisory Council shall consist of the
27 following:

28 1. Six ~~Five~~ intermodal industry representatives
29 selected by the Governor as follows:
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1 a. One representative from an airport involved in the
2 movement of freight and people from their airport facility to
3 another transportation mode.

4 b. One individual representing a fixed-route,
5 local-government transit system.

6 c. One representative from an intercity bus company
7 providing regularly scheduled bus travel as determined by
8 federal regulations.

9 d. One representative from a spaceport.

10 e. One representative from intermodal trucking
11 companies.

12 f. One representative having command responsibilities
13 of a major military installation.

14 2. Three intermodal industry representatives selected
15 by the President of the Senate as follows:

16 a. One representative from major-line railroads.

17 b. One representative from seaports listed in s.
18 311.09(1) from the Atlantic Coast.

19 c. One representative from an airport involved in the
20 movement of freight and people from their airport facility to
21 another transportation mode.

22 3. Three intermodal industry representatives selected
23 by the Speaker of the House of Representatives as follows:

24 a. One representative from short-line railroads.

25 b. One representative from seaports listed in s.
26 311.09(1) from the Gulf Coast.

27 c. One representative from intermodal trucking
28 companies. In no event may this representative be employed by
29 the same company that employs the intermodal trucking company
30 representative selected by the Governor.

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1 (c) Initial appointments to the council must be made
2 no later than 30 days after the effective date of this
3 section.

4 1. The initial appointments made by the President of
5 the Senate and the Speaker of the House of Representatives
6 shall serve terms concurrent with those of the respective
7 appointing officer. Beginning January 15, 2005, and for all
8 subsequent appointments, council members appointed by the
9 President of the Senate and the Speaker of the House of
10 Representatives shall serve 2-year terms, concurrent with the
11 term of the respective appointing officer.

12 2. The initial appointees, and all subsequent
13 appointees, made by the Governor shall serve 2-year terms.

14 3. Vacancies on the council shall be filled in the
15 same manner as the initial appointments.

16 (d) Each member of the council shall be allowed one
17 vote. The council shall select a chair from among its
18 membership. Meetings shall be held at the call of the chair,
19 but not less frequently than quarterly. The members of the
20 council shall be reimbursed for per diem and travel expenses
21 as provided in s. 112.061.

22 (e) The department shall provide administrative staff
23 support and shall ensure that council meetings are
24 electronically recorded. Such recordings and all documents
25 received, prepared for, or used by the council in conducting
26 its business shall be preserved pursuant to chapters 119 and
27 257.

28 Section 5. This act shall take effect upon becoming a
29 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 460

4 The CS provides the Florida Department of Transportation the
5 authority to fund a number of aviation activities conducted by
6 the Secure Airports for Florida's Economy Council or other
7 not-for-profit organizations. Eligible activities include
8 master planning, professional education, safety and security
9 planning, and economic development and efficiency
10 enhancements.

11 The CS allows supplemental agreements and written work orders
12 for up to 25% above the original contract amount to proceed
13 without approval of the surety. The surety's approval is
14 required for cumulative modifications in excess of 25% of the
15 original contract amount.

16 The CS limits the liability of the Florida Department of
17 Transportation's construction and maintenance contractors
18 performing services for the Florida Department of
19 Transportation when they are in compliance with contract
20 documents. The CS limits the liability of the Florida
21 Department of Transportation's contracted design engineers
22 when they use that degree of care and skill ordinarily
23 exercised by other engineers in the field. Further, in
24 lawsuits against the Florida Department of Transportation or
25 its agents, a driver's actions are presumed to be the
26 proximate cause of the incident if the driver was under the
27 influence of drugs or alcohol, or speeding, or reckless at the
28 time of the incident.

29 The CS updates obsolete language relating to the development
30 of the initial Strategic Intermodal System Plan and requires
31 coordination with the inclusion of military interests in
32 development of the Strategic Intermodal System Plan.