

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1441 Contracted Airport Projects

**SPONSOR(S):** Maggard

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	14 Y, 0 N	Johnson	Vickers
2) Business & Professions Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Current law provides that notwithstanding any other provision of law to the contrary, for a construction project wholly or partially funded by the Department of Transportation (DOT) and administered by a local governmental entity, the same entity may not perform both design services and construction engineering and inspection (CEI) services. However, this provision does not apply to qualifying seaports.

The bill creates an exemption for airports, identical to the current exemption for seaports, from the provision that for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services.

This bill does not appear to have a fiscal impact on state government and may reduce expenditures for local governments operating airports. See Fiscal Analysis for details.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

Under current law, a contractor,<sup>1</sup> or his or her affiliate<sup>2</sup> qualified with the Department of Transportation (DOT) may not also qualify to provide testing services, construction, engineering, and inspection (CEI) services to DOT.<sup>3</sup> This limitation does not apply to any design-build prequalification<sup>4</sup> and does not apply when DOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services, and CEI services.

DOT has adopted procedures governing conflicts of interest involving professional services consultant contracts and design-build contracts. The procedure contains a set of matrixes illustrating the variety of scenarios encountered with prime or subcontractors and when DOT would consider the arrangement a conflict.<sup>5</sup>

In 2019, the Legislature passed HB 905,<sup>6</sup> which provided that for a construction project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. That bill exempted certain seaports from that provision.

According to the Florida Airports Council, the 2019 statutory changes relating to CEI requirements will increase construction costs, increase project schedules due to additional coordination with consultants, and reduce project efficiency. Depending on the project, airports may leverage different delivery methods for CEI activities. Additionally, airports deliver more than road projects and DOT's professional services requirements used do not always accommodate airport construction projects.<sup>7</sup> The Florida Airports Council maintains that due to the unique and specialized nature of airports, they need to remain agile in the projects they delivery to ensure that each project is completed in a safe, timely, and cost effective manner.<sup>8</sup>

#### **Effect of the Bill**

The bill amends s. 337.14(7), F.S., providing an exemption for airports from the requirement that for a project wholly or partially funded by DOT and administered by a local governmental entity, the same entity may not perform both design services and CEI services. This exemption is identical the one currently in place for seaports.

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<sup>1</sup> Section 337.165(1)(d), F.S., defines the term "contractor" as any person who bids or applies to bid on work let by the department or any counterpart agency of any other state or of the Federal Government or who provides professional services to the department or other such agency. The term "contractor" includes the officers, directors, executives, shareholders active in management, employees, and agents of the contractor.

<sup>2</sup> Section 337.165(1)(a), F.S., defines the term "affiliate" as a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

<sup>3</sup> Section 337.14, F.S.

<sup>4</sup> Design-build prequalification is pursuant to s. 337.11(7), F.S.

<sup>5</sup> Topic No.: 375-030-006-c, Conflict of Interest Procedure for Department Contracts. (Copy on file with Transportation & Infrastructure Subcommittee).

<sup>6</sup> Chapter 2019-153, L.O.F.

<sup>7</sup> Email from Darrick McGhee, Florida Airports Council, Re. HB:1441-Airport Contracts. Jan. 21, 2020. (Copy on file with Transportation & Infrastructure Subcommittee).

<sup>8</sup> Email from Darrick McGhee, Florida Airports Council, Re. House Bill: 1441-Contracted Airport Projects. Feb. 1, 2020. (Copy on file with Transportation & Infrastructure Subcommittee).

**B. SECTION DIRECTORY:**

Section 1 amends s. 337.14, F.S., relating to the application for qualification, certificate of qualification; restrictions; request for hearing.

Section 2 provides an effective date of July 1, 2020.

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

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

1. Revenues:

This bill does not appear to impact state government revenues.

2. Expenditures:

This bill does not appear to impact state government expenditures.

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

1. Revenues:

This bill does not appear to impact local government revenues.

2. Expenditures:

Local governments operating airports may see a reduction in expenditure due to the exemption from the construction engineering and inspection requirements in the bill. However, the cost savings is associated with specific projects; therefore, this reduction in expenditures is indeterminate.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or to take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This bill does not provide a grant or rulemaking, nor does it require rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.