

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Infrastructure Strategies
2 Committee

3 Representative Esposito offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 807 and 808, insert:

7 Section 15. Section 337.195, Florida Statutes, is amended
8 to read:

9 337.195 Limits on liability.—

10 (1) As used in this section, the term:

11 (a) "Contract documents" has the same meaning as in the
12 applicable contract between the department and the contractor.

13 (b) "Contractor" means a person or an entity, at any
14 contractual tier, including any member of a design-build team
15 pursuant to s. 337.11, who constructs, maintains, or repairs a

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16 highway, road, street, bridge, or other transportation facility
17 for the department in connection with a department project.

18 (c) "Design engineer" means a person or an entity,
19 including the design consultant of a design-build team, who
20 contracts at any tier to prepare or provide engineering plans,
21 including traffic control plans, for the construction or repair
22 of a highway, road, street, bridge, or other department
23 transportation facility for the department or in connection with
24 a department project.

25 (d) "Traffic control plans" means the maintenance of
26 traffic plans designed by a professional engineer, or otherwise
27 in accordance with the department's standard plans, and approved
28 by the department.

29 (2)-(1) In a civil action for the death of or injury to a
30 person, or for damage to property, against the department ~~of~~
31 ~~Transportation~~ or its agents, consultants, or contractors for
32 work performed on a highway, road, street, bridge, or other
33 transportation facility when the death, injury, or damage
34 resulted from a motor vehicle crash within a construction zone
35 in which the driver of one of the vehicles was under the
36 influence of alcoholic beverages as set forth in s. 316.193,
37 under the influence of any chemical substance as set forth in s.
38 877.111, under the influence of marijuana as authorized by s.
39 381.986, excluding low-THC cannabis, or illegally under the
40 influence of any substance controlled under chapter 893 to the

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41 extent that her or his normal faculties were impaired or that
42 she or he operated a vehicle recklessly as defined in s.
43 316.192, it is presumed that the driver's operation of the
44 vehicle was the sole proximate cause of her or his own death,
45 injury, or damage. This presumption can be overcome if the gross
46 negligence or intentional misconduct of the department of
47 ~~Transportation~~, or of its agents, consultants, or contractors,
48 was a proximate cause of the driver's death, injury, or damage.

49 ~~(3)(2)~~ A contractor who constructs, maintains, or repairs
50 a highway, road, street, bridge, or other transportation
51 facility for the department of ~~Transportation~~ is not liable to a
52 claimant for personal injury, property damage, or death arising
53 from the performance of the construction, maintenance, or repair
54 if, at the time of the personal injury, property damage, or
55 death, the contractor was in compliance with contract documents
56 material to the condition that was the proximate cause of the
57 personal injury, property damage, or death.

58 (a) The limitations ~~limitation~~ on liability contained in
59 this subsection do ~~does~~ not apply when the proximate cause of
60 the personal injury, property damage, or death is a latent
61 condition, defect, error, or omission that was created by the
62 contractor and not a defect, error, or omission in the contract
63 documents; or when the proximate cause of the personal injury,
64 property damage, or death was the contractor's failure to

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65 ~~perform, update, or~~ comply with the ~~maintenance of the~~ traffic
66 control plans ~~safety plan~~ as required by the contract documents.

67 (b) ~~Nothing in~~ This subsection may not ~~shall~~ be
68 interpreted or construed as relieving the contractor of any
69 obligation to provide the department ~~of Transportation~~ with
70 written notice of any apparent error or omission in the contract
71 documents.

72 (c) ~~Nothing in~~ This subsection may not ~~shall~~ be
73 interpreted or construed to alter or affect any claim of the
74 department ~~of Transportation~~ against such contractor.

75 (d) This subsection does not affect any claim of any
76 entity against such contractor, which claim is associated with
77 such entity's facilities on or in department ~~of Transportation~~
78 roads or other transportation facilities.

79 ~~(4)-(3)~~ In all cases involving personal injury, property
80 damage, or death, a design engineer is ~~person or entity who~~
81 ~~contracts to prepare or provide engineering plans for the~~
82 ~~construction or repair of a highway, road, street, bridge, or~~
83 ~~other transportation facility for the Department of~~
84 ~~Transportation shall be~~ presumed to have prepared such
85 engineering plans using the degree of care and skill ordinarily
86 exercised by other engineers in the field under similar
87 conditions and in similar localities and with due regard for
88 acceptable engineering standards and principles if the
89 engineering plans conformed to the department's ~~Department of~~

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90 ~~Transportation's~~ design standards material to the condition or
91 defect that was the proximate cause of the personal injury,
92 property damage, or death. This presumption can be overcome only
93 upon a showing of the design engineer's ~~person's or entity's~~
94 gross negligence in the preparation of the engineering plans and
95 ~~may shall~~ not be interpreted or construed to alter or affect any
96 claim of the department ~~of Transportation~~ against such design
97 engineer ~~person or entity~~. The limitation on liability contained
98 in this subsection ~~does shall~~ not apply to any hidden or
99 undiscoverable condition created by the design engineer. This
100 subsection does not affect any claim of any entity against such
101 design engineer ~~or engineering firm~~, which claim is associated
102 with such entity's facilities on or in department ~~of~~
103 ~~Transportation~~ roads or other transportation facilities.

104 ~~(4) In any civil action for death, injury, or damages~~
105 ~~against the Department of Transportation or its agents,~~
106 ~~consultants, engineers, or contractors for work performed on a~~
107 ~~highway, road, street, bridge, or other transportation facility,~~
108 ~~if the department, its agents, consultants, engineers, or~~
109 ~~contractors are immune from liability pursuant to this section~~
110 ~~or are not parties to the litigation, they may not be named on~~
111 ~~the jury verdict form or be found to be at fault or responsible~~
112 ~~for the injury, death, or damage that gave rise to the damages.~~

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T I T L E A M E N D M E N T

Remove lines 76-77 and insert:
provisions to changes made by the act; amending s. 337.195,
F.S.; providing definitions; providing a presumption that
if a death, injury, or damage results from a motor vehicle
crash within a construction zone in which the driver of a
vehicle was under the influence of certain marijuana, the
driver's operation of such vehicle was the proximate cause
of his or her own death, injury, or damage; revising
conditions under which a contractor is immune from
liability; conforming provisions to changes made by the
act; providing an