

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 240

SPONSOR: Senator Sebesta

SUBJECT: DOT/Suits By & Against

DATE: February 9, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill permits suits at law and equity to be maintained by and against the Department of Transportation on any contract claim arising from the breach of an express provision or an implied covenant of a written agreement or a written directive issued by the department. Any oral modifications of either the written contract or written directive do not result in liability on behalf of the department. No suit sounding in tort shall be maintained against the department .

This bill substantially amends section 337.19(1), Florida Statutes.

II. Present Situation:

Section 337.19(1), F.S., provides suits at law and in equity may be brought and maintained by and against the department on any claim under contract for work done; provided, no suit sounding in tort shall be maintained against the department.

To the extent there is no express waiver of sovereign immunity for contract claims, case law finds an implied waiver of sovereign immunity in contract under the premise that because the Legislature authorized the state entities to enter into contracts, it must have intended such contracts to be valid and binding on both parties, but only on suits arising from express, written contracts which the state agency has statutory authority to enter. See *County of Brevard, v. Miorelli Engineering, Inc.*, 703 So.2d 1049 (Fla. 1997). In addition, case law finds suits against agencies may also be maintained upon breach of implied covenants or conditions contained within the scope of an express, written contract. *Id.* For example, every contract includes an implied covenant the parties will perform in good faith. *Id.* In construction contract law, an owner has (a) an implied obligation not to do anything to hinder or obstruct performance by the other person; (b) an implied obligation not to knowingly delay unreasonably the performance of duties assumed under the contract; and (c) an implied obligation to furnish information which would not mislead prospective bidders. *Id.*

III. Effect of Proposed Changes:

Section 337.19(1), F.S., is amended to codify the existing case law found in *Miorelli* by authorizing suits at law and in equity to be brought and maintained by and against the department on any contract claim arising from breach of an express provision or implied covenant of a written agreement. In addition, section 337.19(1), F.S. is amended to allow suits to be maintained on any written directive issued by the department pursuant to the written agreement. In any such suit, the department and contractor shall have all the same rights, obligations, remedies and defenses as a private person under a like contract, except no liability may be based on an oral modification of the written contract or written directive. The section is further amended to provide no employee or agent of the department may be held personally liable to an extent greater than described under s. 768.28, F.S.

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:

Contractors who enter into written construction or maintenance contracts with the department under chapter 337, Florida Statutes, will be impacted. However, the impact, if any, is impossible to determine.

C. Government Sector Impact:

The department reports the fiscal impact, if any, is impossible to determine.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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