

**STORAGE NAME:** h0757.tr.doc

**DATE:** January 22, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
TRANSPORTATION  
ANALYSIS**

**BILL #:** HB 757

**RELATING TO:** Transportation

**SPONSOR(S):** Representative(s) Russell

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) TRANSPORTATION
  - (2) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
  - (3) READY INFRASTRUCTURE COUNCIL
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 757 is an omnibus bill that addresses a number of transportation-related issues, including:

- Any contractor who is pre-qualified by the Department of Transportation (DOT) and eligible to bid on DOT projects to perform certain work also would be pre-qualified to obtain bid documents and to submit a bid on similar types of projects for any local government or expressway authority.
- Obsolete responsibilities and outmoded chain-of-command structures within the Department of Transportation (DOT) are deleted or streamlined.
- A requirement that Community Improvement Districts use the competitive negotiation provisions in chapter 287, F.S., when hiring architects and other design professionals, is reinstated.
- Expressway authorities would have the same ability as DOT to set aside funds in special accounts, for use by the water management districts or the Department of Environmental Protection to mitigate adverse impacts on wetlands caused by expressway projects.
- Charitable solicitation would be banned at DOT rest areas, roadside welcome stations, and toll service plazas.
- Extends sovereign immunity to operators and security providers with the Tri-County Rail system.

All of the substantive issues in HB 757 were part of CS/CS/HB 1053, 3<sup>rd</sup> Engrossed, which was the 2000 Session's transportation package. That bill passed the Legislature, but was vetoed by the Governor.

HB 757 has an indeterminate, but likely minimal impact on state funding.

It takes effect July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

HB 757 supports the principle of less government by eliminating unnecessary or obsolete rulemaking. The bill contradicts the principle of less government by requiring counties, cities and expressway or bridge authorities to consider DOT-pre-qualified construction contractors for their local transportation projects, except in a narrow circumstance.

B. PRESENT SITUATION:

Because of the comprehensive nature of the changes in this bill, the "Present Situation" relating to each issue is set out in the "Section-By-Section Analysis."

C. EFFECT OF PROPOSED CHANGES:

Because of the comprehensive nature of the changes in this bill, the "Effect of Proposed Changes" relating to each issue is set out in the "Section-By-Section Analysis."

D. SECTION-BY-SECTION ANALYSIS:

**Sections 1 and 2: DOT reorganization**

Present Situation:

The Department of Transportation has one of the most detailed statutory descriptions of any state agency, in terms of internal organization, the duties and responsibilities of agency officers, and DOT reporting requirements. DOT staff say there are no plans to reorganize the agency, but as staffing and other changes occur through outsourcing efforts and efficiencies, amending s. 20.23, F.S., provides the Secretary the flexibility needed to address these changes

Effect of Proposed Changes:

The bill heavily amends s. 20.23, F.S., deleting unnecessary instructions on the Secretary's responsibilities and to whom the Secretary may delegate, the tasks assigned to other DOT officers and supervisors, and obsolete references in general.

Section 2 of the bill corrects cross-references in s. 110.205, F.S., necessary because of the changes in s. 20.23, F.S.

### **Sections 3 and 6: Consultant Competitive Negotiation Act**

#### Present Situation:

Chapter 287, F.S., regulates the bidding, negotiation for, and procurement of goods and services by public agencies. In addition, it specifies circumstances where some activities don't have to be competitively bid, or even re-bid every year.

Section 287.055, F.S., the "Consultants' Competitive Negotiation Act," (or CCNA) was created by the Legislature in 1975 to address the special circumstances faced by agencies in the hiring of engineers, architects, surveyors and other consultants. The law requires agencies to publicly notice projects for which they need consultant services, and to select at least three pre-certified firms, among those that submit proposals. Agencies are required to negotiate first with the top-ranked firm, and if they can't come to terms, then negotiate with the next firm.

During the 2000 legislative session, CS/SB 2346, 2nd Engrossed, became law. It created s. 189.441, F.S., which allowed Community Improvement Districts to develop their own competitive bidding processes, outside of chapter 287, F.S. In part, the Legislature's intent was for the bill to promote the activities of these special districts. Proponents of the legislation now say they did not intend to exempt Community Improvement Districts from s. 287.055, F.S.

#### Effect of Proposed Changes:

The "glitch" discussed above is corrected by the bill. Section 189.441, F.S., is amended to delete exemptions to the CCNA.

In addition, s. 287.055, F.S., is amended to raise the threshold amount that triggers when a continuing contract must be re-bid. Under the bill, no rebidding of professional service continuing contracts is required for projects in which the construction costs do not exceed \$1 million, nor for studies to be performed by a professional-service continuing contract that does not exceed \$50,000. These amounts are double the current statutory thresholds. Proponents say the increased thresholds are necessary because the costs of doing business have grown in recent years.

### **Sections 4, 15, 16 and 17: Obsolete state requirements for transit planning**

#### Present Situation:

DOT's Transit Office administers federal and state transit grants; monitors compliance with transit regulations; and provides planning and technical assistance to Florida's transit agencies and communities. The federal government heavily regulates public bus systems and other public transit, and states must comply with those regulations in order to receive federal funds. However, Florida statutes include requirements, such as for transit investment policies, that have either been superseded by federal law or are unnecessary because of federal changes.

#### Effect of Proposed Changes:

Section 16 deletes references in s. 341.051(5), F.S., to DOT developing a major capital investment policy and methodology for funding public transit projects that receive federal dollars. DOT must use already-established federal guidelines.

Sections 4, 15 and 17 are cross-reference corrections, deleting references to DOT's "major capital investment policy" for public transit.

### **Sections 5, 8, 9 and 10: Contractor bidding on local government/expressway projects**

#### Present Situation:

The basic process for counties, municipalities, special districts and other political subdivisions of the state to award contracts for construction projects is described in s. 255.20, F.S., and elsewhere in statute. Typically, any construction project with a cost in excess of \$200,000, and any electrical

project costing more than \$50,000, must be competitively awarded. However, s. 255.20, F.S., lists 10 types of projects where a competitive award is not required, such as emergency repair of facilities damaged by hurricanes, riots, or other "sudden unexpected turn of events."

Section 255.20, F.S., also includes a basic definition and framework for the competitive award process, but allows local governmental entities to establish specific procedures for conducting the process. This has resulted in differences among counties, cities, and other local governmental entities in bidding and contractor qualification requirements.

Sections 336.41 and 336.44, F.S., more specifically relate to county road contracting. Each county is required to competitively bid transportation projects, except in emergency situations and for projects that either don't exceed \$250,000 or 5 percent of the county's share of the 2-cents-gallon constitutional fuel tax, whichever is greater.

Section 337.14, F.S., details DOT's contractor certification process. All contractors who wish to bid on transportation projects costing in excess of \$250,000 must meet DOT qualifications and be certified.

Effect of Proposed Changes:

Section 255.20 (1)(a) is amended to add an eleventh exemption -- projects subject to chapter 336, F.S., County Road System -- from the provisions that set competitive bidding thresholds and allow local-government variations in the competitive award process. In effect, any contractor who is pre-qualified by DOT and eligible to bid on DOT projects to perform certain work also would be pre-qualified to obtain bid documents and to submit a bid on those same types of projects for any local government or expressway authority. A local government entity would be able to disqualify a prospective bidder who is at least 10 percent behind on another construction project for that same entity. Sections 336.41 and 337.14, F.S., are similarly amended.

**Sections 7 and 13: DOT's powers and duties**

Current Situation:

DOT's powers and duties are listed in s. 334.044, F.S. Among its responsibilities is the ability to purchase, lease, or otherwise acquire promotional or educational materials on traffic and train safety awareness, commercial motor vehicle safety, and alternatives to single-occupant vehicle travel.

DOT also is authorized to regulate and prescribe conditions for the transfer of storm water to state right-of-way because of development of, or other manmade changes to, adjacent properties. Pursuant to s. 334.044(15), F.S., DOT is authorized to adopt rules for issuing storm water management permits. However, the section also directs DOT to accept storm water permits from the water management districts, the Department of Environmental Protection, or local governments, provided those permits are based on requirements equal to, or even more stringent than, DOT's requirements. Situations have arisen where a water management district's permit criteria were not equal to or more than stringent than DOT's criteria, yet still would have accomplished the goal of protection of state right-of-way.

In addition, s. 339.08, F.S., details how DOT must spend its annual legislative appropriations from the State Transportation Trust Fund, directs DOT to implement rules that further elaborate on its spending powers.

Effect of Proposed Changes:

Section 344.044(5), F.S., is amended to include "scenic roads" among the topics for which DOT can purchase promotional materials.

Also, subsection (15) is amended to allow DOT to delegate storm water permitting to a water management district or other entity, provided that the permit is based on requirements, as determined by DOT, that ensure the safety and integrity of transportation facilities being affected by the runoff.

Finally, s. 339.08, F.S., is amended to delete the requirement that DOT promulgate rules on how it should spend its legislative appropriations. The agency contends such a rule is unnecessary, because it has to spend its funds the way the Legislature directs it in the annual General Appropriations Act.

### **Section 11: Utility easements on public right-of-way**

#### Current situation:

DOT or a local government, where applicable, has the authority to allow utilities the use of public right-of-way. Pursuant to s. 337.401, F.S., no utility shall be installed, located or relocated on a public right-of-way unless authorized by a permit issued by the entity owning the right-of-way. By practice, DOT also enters into utility relocation schedules and relocation agreement, which it treats like a utility permit, but this has raised legal issues.

#### Effect of Proposed Changes:

Section 337.401(2), F.S., is amended to allow DOT and a utility to execute a utility relocation schedule or relocation agreement in lieu of a permit, for activities on state-owned rights-of-way or rail corridors. This is expected to expedite the process and clear up legal confusion over whether a permit overrides a relocation schedule or agreement.

### **Section 12: Regulation of signage on light poles**

#### Current Situation:

Concerns about safety and commercial use of public property led, many years ago, to passage of section 337.408, F.S., which regulates the placement, size and advertisers' use of bus benches, bus transit shelters, and trash barrels and other "waste receptacles" situated on public rights-of-way. These public rights-of-way may be owned by the state or by local government.

More recently, similar concerns have been raised about excess signage on street light poles.

#### Effect of Proposed Changes:

Section 337.408, F.S. is amended to add street light poles to those roadside structures that are regulated by DOT and local governments. Public service messages and advertising may be attached to these poles, as specified by local ordinance if the poles are on county or city right-of-way, or by DOT rules if along the State Highway System. No advertising on street light poles may be erected along the Interstate Highway System or National Highway System.

### **Section 14: Local government compensation**

#### Current situation:

Section 339.12, F.S., guides DOT on the acceptance of monetary aid and contributions from federal, local and other governmental entities. There are different accounting processes for handling a situation where a local government is advancing money to DOT in order to expedite a state road project of community importance, and where a local government agrees to expend its own funds and perform the work. In the latter example, local governments are reimbursed their actual costs, pursuant to s. 339.12(5), F.S.

#### Effect of Proposed Changes:

Section 339.12(5), F.S., is amended so that the words "compensation" and "compensate" replace, where appropriate, the words "reimbursement" and "reimburse." Agency accountants have said the changes more accurately reflect the agency's financial and administrative processes.

### **Section 18: Miami-Dade County Expressway Authority**

#### Present Situation:

Chapter 348, F.S., deals with the creation and regulation of expressway authorities. Part I of the chapter, created by the Legislature in 1990, specifies the process for a county or counties to create and operate an expressway authority, including appointment of members. Parts II through IX refer to specific expressway authorities that were legislatively created. But other than the requirement that all the voting members of an authority must live in the county served by the expressway, no other qualifications for authority members are listed in statute.

#### Effect of Proposed Changes:

The bill amends s. 348.003(2)(d), F.S., to give a charter county, as defined by s. 125.011(1), F.S., the authority to establish qualifications, terms of office, and the obligations and rights of appointees to an expressway authority within its jurisdiction. Although there are several charter counties in Florida, only Miami-Dade County meets all of the conditions relevant to the section being amended. So, only the Dade County Expressway Authority will be impacted by the law change.

### **Section 19: Wetlands Mitigation Requirements for expressway and bridge authorities**

#### Current Situation:

Many DOT projects involve the dredging and filling of wetlands, Florida's environmental "kidneys" that filter surface water runoff before it is absorbed into the ground, help hold floodwaters, and provide natural habitat. Since the 1970s, the state's environmental agencies have required "mitigation" for damage done to wetlands by human development. Originally, this mitigation was either done on-site, or adjacent to the damaged area, by trying to create or restore a wetland area, or to leave existing green space untouched. But a wealth of biological studies in the early 1990s indicted that this piece-meal, project-by-project approach to mitigation was largely unsuccessful in restoring an ecosystem. Florida and other states began developing regional or basin approaches to mitigating for wetlands damage.

In 1996 the Legislature created s. 373.4137, F.S., detailing a process by which DOT could pay a per-acre sum of money to the Department of Environmental Protection (DEP) and the water management districts (WMDs) for their staffs to perform basin-wide mitigation to offset the adverse environmental impacts of road projects. Currently, DOT, DEP and the WMDs match up transportation projects with wetlands impacts, and develop environmental impact inventories for each WMD region of the state. Based on a current \$80,000 per acre of impact cost, DOT makes quarterly deposits in a special escrow account within the State Transportation Trust Fund, and DEP can withdraw funds from it to pay for the mitigation projects within the basins overseen by each WMD. Much of the funds have been spent over the years to acquire and preserve lands from future development.

From DOT's perspective, this has proven to be a cost-effective and environmentally sound approach.

#### Effect of Proposed Changes:

Section 373.4137, F.S., is amended throughout to allow expressway authorities to utilize the process developed for DOT to pay mitigation funds into escrow accounts, managed by DEP, which finance WMD mitigation projects to offset the adverse environmental impacts of expressway projects.

### **Sections 20 and 21: Solicitation of funds at certain public transportation facilities**

#### Current situation:

Chapter 496, F.S., regulates solicitation of funds by charitable and other organizations. Section 496.425, F.S., contains specific regulations on solicitation of funds within airports, railroad and bus stations, ports, rest areas, and similar facilities. For example, a soliciting organization must obtain a permit from the entity responsible for the transportation facility.

Once common, fund-raisers and fund soliciting at highway rest areas and welcome stations have declined in recent years. This can be attributed to a number of reasons; among them security concerns and competition from the variety of soda and snack machines now on site.

Effect of Proposed Changes:

Section 496.425(1), F.S., is amended to delete highway rest areas, roadside welcome centers and highway service plazas from the types of transportation facilities where fund solicitation can occur. Also, s. 496.4256, F.S., is created, specifying that any governmental entity or authority that owns or operates welcome centers, wayside parks, service plazas, or rest areas on the state highway system are not required to issue a solicitation permit.

**Section 22: Sovereign Immunity**

Current Situation:

Chapter 728, F.S., includes a number of provisions on negligence, sovereign immunity, and release of liability.

Sovereign immunity means neither the state, its agencies, nor subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$100,000 or \$200,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, which considers requests for additional amounts as claims bills.

Section 728.28, F.S., lists a number of entities or circumstances where sovereign immunity is applicable.

Effect of Proposed Changes:

Section 768.28, F.S., is amended to add that operators and security providers who are contracted by the Tri-County Commuter Rail Authority shall be considered agents of the state while acting within the scope of their contracted duties. As agents of the state, they are eligible for sovereign immunity protection in liability claims.

**Section 23:** Specifies this act shall take effect July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate, but likely minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. In two instances, however, expenditures may be reduced. Expressway authorities, for example, may save time and money in the wetlands permitting process and the eventual mitigation by giving environmental agencies, pursuant to Section 19, the funds to perform the restoration or mitigation of wetlands adversely impacted by expressway projects. And the Tri-County Commuter Rail Authority's potential liability expenditures could be reduced if the entity's operators and security providers become eligible for sovereign immunity under Section 22.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Contractors prequalified with DOT would not incur the costs of obtaining project qualification with local governments, if Sections 5, 8, 9 and 10 of the bill become law. Also, businesses engaged in advertising on street light poles could benefit financially from expanded use of these structures, pursuant to Section 12.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of HB 757 because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 757 does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 757 does not reduce the percentage of a state tax shared with counties or municipalities in the aggregate.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

HB 757 does not raise any constitutional issues.

B. RULE-MAKING AUTHORITY:

Section 13 deletes an unnecessary statutory grant of rulemaking.

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Not applicable.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION :

Prepared by:

Staff Director:

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Phillip B. Miller