

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Transportation Committee

BILL: CS/SB 460

SPONSOR: Transportation Committee and Senator Sebesta

SUBJECT: Transportation

DATE: March 18, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer	TR	Fav/CS
2.			CA	
3.			GO	
4.			TA	
5.			RC	
6.				

I. Summary:

The Committee Substitute (CS) for Senate Bill 460 is a compilation of various issues relating to transportation. The following is a summary of changes included in the CS:

- The CS provides the Florida Department of Transportation (FDOT) the authority to fund a number of aviation activities conducted by the Secure Airports for Florida's Economy (SAFE) Council or other not-for-profit organizations. Eligible activities include master planning, professional education, safety and security planning, and economic development and efficiency enhancements.
- The CS allows supplemental agreements and written work orders for up to 25% above the original contract amount to proceed without approval of the surety. The surety's approval is required for cumulative modifications in excess of 25% of the original contract amount.
- The CS limits the liability of FDOT's construction and maintenance contractors performing services for FDOT when they are in compliance with contract documents. The CS limits the liability of FDOT's contracted design engineers when they use that degree of care and skill ordinarily exercised by other engineers in the field. Further, in lawsuits against FDOT or its agents in cases involving DUI, speeding, or reckless driving, the CS provides a presumption the impaired or speeding driver's actions are the proximate cause of the incident.

- The CS updates obsolete language relating to the development of the initial Strategic Intermodal System (SIS) Plan and requires coordination with and inclusion of military interests in development of the SIS Plan.

This CS substantially amends the following sections of the Florida Statutes: ss. 332.007, 337.11 and 339.64. This CS also creates s. 337.195, F.S.

II. Present Situation:

Aviation Programs

Section 332.007, F.S., requires the FDOT to prepare and continuously update an aviation and airport work program. The plan must be consistent with the statewide aviation system plan and to the maximum extent feasible, local government comprehensive plans. The section restricts state funding to those aviation and airport projects and programs contributing to the implementation of the state aviation system plan. In addition to funding capital projects, FDOT also provides staffing assistance and pays some administrative costs of the SAFE Council, a 27-member group representing aviation-related businesses and state agencies created in 2003 by the Legislature. The SAFE Council's primary responsibility is to prepare a five-year SAFE Master Plan, which recommends the acquisition and construction of specific transportation facilities linking airports to other transportation modes, protecting the safety and security of passengers and cargo, or enhancing international trade and other economic benefits. Since its creation, the SAFE Council has received funding from FDOT by means of proviso language in the annual General Appropriations Act.

Surety

Section 337.11, F.S., establishes FDOT's authority to contract with road builders, design professionals, product vendors, and others for the construction and maintenance of roads and other facilities under its jurisdiction. FDOT also contracts for planning and other non-construction activities. A successful bid over \$150,000 requires the contractor to post a surety bond payable to FDOT for the purposes of ensuring the prompt, faithful, and efficient performance of the contract according to plans and specifications within the time period specified, and for the prompt payment of all persons furnishing labor, material, equipment, and supplies for work provided in the contract. Surety bonds are provided by a third party. When a contract item needs to be renegotiated, FDOT and the contractor enter into a "supplemental agreement" or in the case of smaller amounts, a "work order", which the contractor's surety provider must approve. There can be as much as a two-month delay in closing out the contract while waiting for a surety company's approval of a small-dollar supplemental pay item project. This results in unnecessary delays to a contractor's final payment and to FDOT in closing out its project accounting.

Liability

Sovereign immunity prohibits suits against the government, unless the government waives the protection. Section 768.28, F.S., provides a partial waiver of sovereign immunity in tort actions by allowing individuals to sue state government, subdivisions of the state, and municipalities. The statute imposes a \$100,000 limit on the government's liability to a single person. Furthermore, it imposes a \$200,000 limit on the government's liability for claims arising out of a single incident. These limits do not preclude plaintiffs from obtaining judgments in excess of the

recovery cap. However, plaintiffs cannot force the government to pay damages that exceed the recovery cap. Plaintiffs in such cases can receive additional compensation through passage of a claims bill filed with the Florida Legislature. Most contractors and consultants to FDOT are not afforded the protection of sovereign immunity. However, s. 728.28, F.S., confers sovereign immunity on a number of entities that perform public service. Among those entities are professional firms providing monitoring and inspection services of work required for FDOT roadway, bridge, or other transportation facility projects. Construction contracting firms performing work for FDOT, as well as FDOT itself, are periodically named as parties to litigation filed by plaintiffs involved in traffic accidents. These lawsuits can impose a significant financial burden and raise the cost of liability insurance required to participate in public transportation projects. Other costs include the expense of lost man-hours for depositions, record recovery, and court appearances.

Strategic Intermodal System

The SIS was created by the Legislature in 2003 as a network of highways, bridges, airports, ports, and other transportation facilities to provide for the statewide and interregional movement of people and goods. The SIS is composed of the Florida Intrastate Highway System, the state's seven busiest airports, its seven largest seaports, Florida's spaceport, and major rail lines. A number of smaller highways, airports and seaports, and other transportation facilities are defined as "emerging systems." Development of the SIS Plan was guided by the Strategic Intermodal Transportation Advisory Council (SITAC). Recognizing the importance of an interconnected intermodal transportation system to national defense and the impact military facilities have on Florida's public transportation system and its economic viability, the SIS Plan recommends greater military coordination in future updates of the plan.

III. Effect of Proposed Changes:

Section 1 provides FDOT the authority to fund a number of aviation activities conducted by the SAFE Council or other not-for-profit organizations. Eligible activities include master planning, professional education, safety and security planning, and economic development and efficiency enhancements.

Section 2 allows FDOT and its contractors and consultants to negotiate and implement supplemental agreements and written work orders for up to 25% above the original contract amount without the approval of the surety. The surety's approval is required for cumulative modifications in excess of 25% of the original contract amount.

Section 3 limits the liability of FDOT's construction and maintenance contractors performing services for FDOT when they are in compliance with contract documents. The CS limits the liability of FDOT's contracted design engineers when they use that degree of care and skill ordinarily exercised by other engineers in the field. Further, in lawsuits against FDOT or its agents in cases involving DUI, speeding, or reckless driving, the amendment provides a presumption the impaired or speeding driver's actions are the proximate cause of the incident.

Section 4 directs FDOT to coordinate with its federal and local partners in planning and implementing transportation improvements on roads and rail corridors linked to military

installations and adds a military representative with command responsibilities to the SITAC. The CS also deletes obsolete provisions relating to the initial development of the SIS Plan.

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:

Road and bridge contractors and design engineers working on FDOT projects will likely benefit from the limited liability provision and the evidentiary presumption provision due to the potential for reduced insurance and legal costs.

Drivers and occupants involved in litigated crashes may be adversely affected by the limited liability and evidentiary presumption provisions.

C. Government Sector Impact:

The limited liability provision for FDOT contractors and the evidentiary presumption provision may result in lower than expected future costs for state road and bridge projects due to the potential for contractors' savings in insurance and legal costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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