

# 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.)

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Prepared By: Governmental Oversight and Productivity Committee

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BILL: CS/CS/SB 460

SPONSOR: Governmental Oversight and Productivity Committee, Transportation Committee, and Senator Sebesta

SUBJECT: Transportation

DATE: April 21, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>                    </u>	<u>                    </u>	<u>CA</u>	<u>Withdrawn</u>
3.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
4.	<u>                    </u>	<u>                    </u>	<u>TA</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>Withdrawn</u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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## I. Summary:

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

- Requires the Florida Seaport Transportation and Economic Development Council to develop programs for funding dredging projects in counties having a population of less than 300,000.
- The bill 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 bill adjusts the composition and the duties of the Council.
- The bill allows supplemental agreements and written work orders for up to 25 percent 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 percent of the original contract amount.
- The bill limits the liability of FDOT's construction and maintenance contractors performing services for FDOT when they are in compliance with contract documents. The bill 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 bill provides a presumption the impaired or speeding driver's actions are the proximate cause of the incident unless the gross negligence or intentional misconduct of the DOT or its contractors was a proximate cause of the death or injury.
- Provides that persons participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty are exempt from the payment of tolls.
  - Requires that each long-range transportation plan, each annually updated Transportation Improvement Program, and each unified planning work program must be approved by each metropolitan planning organization on a recorded roll call vote.
  - The bill 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.
  - Creates the "Northwest Florida Transportation Corridor Authority Law." The Authority is created to improve mobility, traffic safety, and economic development along the U.S. 98 corridor, and identify and develop hurricane evaluation routes.
  - Adjusts a provision requiring further development-of-regional-impact review for a proposed change to an airport located in two counties.

This bill amends the following sections of the Florida Statutes: ss. 332.007, 337.11, 332.14, 338.155, 339.175, 339.64, and 380.06.

This bill creates the following sections of the Florida Statutes: ss. 311.22, 337.195, 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.837, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, 343.885, and 343.89

## **II. Present Situation:**

The Florida Seaport Transportation and Economic Development Council is created within the FDOT by ch. 337, F. S., to define the goals and objectives of the council concerning the development of port facilities and an intermodal transportation system consistent with the goals of the Florida Transportation Plan.

Section 338.155, F. S., establishes the requirement that tolls be paid in toll facilities, and provides that certain persons are exempt from paying such tolls.

Section 339.175, F.S., provides that metropolitan planning organizations shall develop, in cooperation with the state and public transit operators, transportation plans and programs for metropolitan areas, and provides for the responsibilities and authority for M.P.O.s.

Chapter 343, F.S., establishes the powers and duties of the Commuter Rail and Regional Transportation Authorities, the South Florida Regional Transportation Authority, the Central Florida Regional Transportation Authority, and the Tampa Bay Commuter Transit Authority.

### **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** creates s 311.22, F. S., to require the Florida Seaport Transportation and Economic Development Council to develop programs for funding dredging projects in counties having a population of less than 300,000. Funds made available may be used to fund approved dredging projects on a 50-50 matching basis with any port authority. The bill also provides for the adoption of rules and a review process.

**Section 2** 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 3** amends s. 332.14, F.S., by reducing the number of members on the Secure Airports for Florida's Economy (SAFE) Council within the Department of Transportation from 27 to 7, and by providing that the members are to be appointed by the DOT from recommendations submitted by the Board of the Florida Airports Council. The bill also provides that the DOT shall fund the Council, and that the Council may contract from not-for-profit organizations that represent a majority of public airports in Florida. The bill provides that the Council may establish an advisory board of industry and agency representatives. The bill clarifies the duties of the Council, and provides that the Council shall sunset on January 1, 2009.

**Section 4** allows FDOT and its contractors and consultants to negotiate and implement supplemental agreements and written work orders for up to 25 percent above the original contract amount without the approval of the surety. The surety's approval is required for cumulative modifications in excess of 25 percent of the original contract amount.

**Section 5** creates s. 337.195, F.S., to limit the liability of FDOT's construction and maintenance contractors performing services for FDOT when they are in compliance with contract documents. The bill 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. Claims by the DOT against any contractor are unaffected. In lawsuits against FDOT or its agents in cases involving DUI, speeding or reckless driving, the bill provides a presumption the impaired or speeding driver's actions are the proximate cause of death or injury, unless the gross negligence or intentional misconduct of the DOT or its contractors was a proximate cause of the death or injury.

**Section 6** amends s. 338.155, F.S., to provide that persons participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty are exempt from the payment of tolls.

**Section 7** adds subsection (12) to s. 339.175, F.S., to require that each long-range transportation plan, each annually updated Transportation Improvement Program, and each unified planning work program must be approved by each metropolitan planning organization on a recorded roll call vote. Modifications in certain circumstances require a super majority vote.

**Section 8** 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 Statewide Intermodal Transportation Advisory Council. The bill also deletes obsolete provisions relating to the initial development of the Strategic Intermodal System plan.

**Section 9** creates Part IV of ch. 343, F. S., the "Northwest Florida Transportation Corridor Authority Law." The Authority is created to improve mobility, traffic safety, and economic development along the U.S. 98 corridor stretching through Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla counties. Another goal of the Authority is to identify and develop hurricane evaluation routes. Specifically, the bill:

- Provides that the governing board shall be composed of a resident from each of the eight counties, to be appointed by the governor to 4-year terms. They can be removed by the Governor for cause. The board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to s. 112.061, F.S. The board also can hire an executive director and other staff, and consultants, as needed;
- The FDOT District 3 secretary shall serve as an ex-officio, not-voting member;
- Directs the Authority to adopt a master plan by July 1, 2007, that identifies areas of the corridor where mobility, traffic safety, and efficient hurricane evacuation needs to be improved; evaluates the economic development potential of the corridor and considers strategies to develop that potential; identifies methods of building partnerships with local governments, other state and federal entities, the private-sector business community, and the public in support of corridor improvements; and to identify projects that will accomplish these goals and objectives. This plan must be updated annually, and presented to the county commissions within the corridor and to the legislative delegation members whose districts lie within the eight-county region within 90 days of adoption;
- Directs the Authority to build and maintain highways and other transportation facilities within the U.S. 98 corridor that will help meet its statutory goals. These projects may be

- undertaken in phases, as the projects or segments thereof become feasible and as funding is available;
- Empowers the Authority to issue revenue bonds, either on its own or through the state Division of Bond Finance. In both cases, the bonds and the issuance process must conform to the State Bond Act requirements. These bonds' term shall not exceed 40 years. The bonds shall not be pledged against the credit of the State of Florida;
  - Allows the Authority to set and collect tolls, fees, and other charges; acquire land by purchase, donation, or eminent domain; borrow money; to sue and be sued; enter into contracts, agreements, and partnerships;
  - Allows the Authority to enter into lease-purchase agreements with FDOT to manage the U.S. 98 Corridor System, which shall be a part of the State Highway System. The FDOT also may be appointed by the Authority as its agent to oversee construction of the system's components; and
  - Allows the Authority to enter into public-private partnerships to construct, operate, own, or finance transportation facilities that are part of the system.

**Section 10** amends s. 380.06(19)(b), F.S., by deleting a provision requiring further development-of-regional-impact review for a proposed change to an airport located in two counties, when the change is a 10 percent lengthening of an existing runway or a 20 percent increase in the number of gates in an existing terminal. The effect of the deletion is to default to standards applicable to all airports, which have higher thresholds before the development-of-regional-impact review is required.

**Section 11** provides that the act takes effect upon becoming law.

#### **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.

The fiscal impact of the Northwest Florida Transportation Corridor Authority Law is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Supreme Court of Florida has held<sup>1</sup> that the “government specification defense” is inappropriate in a products liability action where the contract in question is to supply services or goods of a commercial, nonmilitary nature. The court recognized a contract specification defense that exists where an independent contractor strictly follows the plans, directions or specifications supplied by his employer, whether or not that employer is a sovereign, and has no knowledge<sup>2</sup> and no reason to believe that those plans, directions or specifications pose a danger of harm.<sup>2</sup>

Section 1 of the bill permits the FDOT to provide funds for “eligible projects performed by not-for-profit organizations that represent a majority of public airports in this state.” There is only one organization that meets that definition: the Florida Airports Council, a private organization that claims to be “. . . the largest airport-specific organization in Florida.”<sup>3</sup> It is unclear how the Council will allocate funds for the projects, which later portions of that section define to include “aviation master planning, professional education, safety and security planning, enhancing economic development and efficiency at airports in the state, or other planning efforts to improve the viability of airports in the state.” An accepted method of identifying appropriate contract vendors is through a request for information or qualifications solicitation. Following receipt of information from such a solicitation, a funding agency can make a determination whether a competitive procurement should proceed. As presently phrased, section 1 would permit the Florida Airports Council to distribute state funds for the achievement of the above objectives without the transparency that ordinarily accompanies the allocation of public funds.

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<sup>1</sup> *Dorse v. Armstrong World Industries*, 513 So.2d 1265 (Fla. 1987).

<sup>2</sup> *Dorse* at 1267.

<sup>3</sup> [www.floridaairports.org](http://www.floridaairports.org)

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

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## **VIII. Summary of Amendments:**

None.

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