

Committee Substitute for House Bill Nos. 311 and 243

An act relating to suits by and against the Department of Transportation and public authorities; amending s. 337.11, F.S.; repealing authority for owner controlled insurance plans in the Department of Transportation; amending s. 337.185, F.S.; increasing claim limits with respect to certain contractual claims governed by the State Arbitration Board; revising language with respect to hearings on certain disputes; increasing certain fees; amending s. 337.19, F.S.; revising language with respect to suits at law and in equity brought by or against the department with respect to breach of an express provision or an implied covenant of a written agreement or a written directive issued by the department pursuant to the written agreement; providing for rights and obligations; prohibiting liability under certain circumstances; providing exceptions with respect to liability; amending s. 255.05, F.S.; specifying conditions under which suits may be brought by and against a public authority with respect to specified public works projects; providing for rights and obligations of the public authority and the contractor; excluding specified basis of liability; providing for construction of the act; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (16) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

~~(16) The department is authorized to undertake and contract to provide an owner controlled insurance plan (OCIP) on any construction project or group of related construction projects if the head of the department determines that an OCIP will be both cost-effective for the department and otherwise in its best interests. Such OCIP may provide insurance coverage for the department and for worker's compensation and employers liability and general liability and builders risk for contractors and subcontractors, for and in conjunction with any or all work performed on such projects. The department may directly purchase such coverage in the manner provided for the purchase of commodities pursuant to s. 287.057, or self-insure, or use a combination thereof, any other statutory provisions or limitations on self-insurance or purchase of insurance notwithstanding. The department's authority hereunder includes the purchase of risk management, risk and loss control, safety management, investigative and claims adjustment services, advancement of funds for payment of claims, and other services reasonably necessary to process and pay claims under and administer the OCIP. In addition to any prequalification required under s. 337.14, no contractor shall be prequalified to bid on an OCIP project unless the contractor's casualty~~

~~and loss experience and safety record meets the minimum requirements for OCIP coverage issuance on the project, were the contractor to be awarded the project. Exercise of the department's authority under this subsection shall not be deemed a waiver of sovereign immunity.~~

Section 2. Subsections (1), (2), (3), (7), and (8) of section 337.185, Florida Statutes, are amended to read:

337.185 State Arbitration Board.—

(1) To facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between the department and the various contractors with whom it transacts business, the Legislature does hereby establish the State Arbitration Board, referred to in this section as the "board." For the purpose of this section, "claim" shall mean the aggregate of all outstanding claims by a party arising out of a construction contract. Every contractual claim in an amount up to ~~\$250,000~~ \$100,000 per contract or, at the claimant's option, up to ~~\$500,000~~ \$250,000 per contract ~~or, upon agreement of the parties, up to \$1,000,000 per contract~~ that cannot be resolved by negotiation between the department and the contractor shall be arbitrated by the board after acceptance of the project by the department. As an exception, either party to the dispute may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of such a claim until the process established by this section has been exhausted.

(2) The board shall be composed of three members. One member shall be appointed by the head of the department, and one member shall be elected by those construction companies who are under contract with the department. The third member shall be chosen by agreement of the other two members. Whenever the third member has a conflict of interest regarding affiliation with one of the parties, the other two members shall select an alternate member for that hearing. The head of the department may select an alternative or substitute to serve as the department member for any hearing or term. Each member shall serve a 2-year term. The board shall elect a chair, each term, who shall be the administrator of the board and custodian of its records.

(3) A hearing may be requested by the department or by a contractor who has a dispute with the department which, under the rules of the board, may be the subject of arbitration. The board shall conduct the hearing within 45 days of the request. The party requesting the board's consideration shall give notice of the hearing to each member. If the board finds that a third party is necessary to resolve the dispute, the board may vote to dismiss the claim, which may thereafter be pursued in accordance with the laws of the State of Florida ~~a court of law.~~

(7) ~~The members member of the board elected by construction companies and the third member of the board~~ may receive compensation for the performance of their duties hereunder, from administrative fees received by the board, except that no employee of the department may receive compensation from the board. The compensation amount shall be determined by the board, but shall not exceed \$125 per hour, up to a maximum of \$1,000 ~~\$750~~ per day

for each member authorized to receive compensation. Nothing in this section shall prevent the member elected by construction companies from being an employee of an association affiliated with the industry, even if the sole responsibility of that member is service on the board. Travel expenses for the industry member may be paid by an industry association, if necessary. The board may allocate funds annually for clerical and other administrative services.

(8) The party requesting arbitration shall pay a fee to the board in accordance with a schedule established by it, not to exceed \$500 per claim which is \$25,000 or less, not to exceed \$1,000 per claim which is in excess of \$25,000 but not exceeding \$50,000, not to exceed \$1,500 per claim which is in excess of \$50,000 but not exceeding \$100,000, not to exceed \$2,000 per claim which is in excess of \$100,000 but not exceeding \$200,000, ~~and not to exceed \$3,000~~ \$2,500 per claim which is in excess of \$200,000 but not exceeding ~~\$300,000~~ \$250,000, ~~not to exceed \$4,000 per claim which is in excess of \$300,000 but not exceeding \$400,000, and not to exceed \$5,000 per claim which is in excess of \$400,000,~~ to cover the cost of administration and compensation of the board.

Section 3. Subsection (1) of section 337.19, Florida Statutes, is amended to read:

337.19 Suits by and against department; limitation of actions; forum.—

(1) Suits at law and in equity may be brought and maintained by and against the department on any contract claim arising from breach of an express provision or an implied covenant of a written agreement or a written directive issued by the department pursuant to the written agreement. In any such suit, the department and the contractor shall have all of the same rights and obligations as a private person under a like contract except that no liability may be based on an oral modification of either the written contract or written directive. Nothing herein shall be construed to waive the sovereign immunity of the state and its political subdivisions from equitable claims and equitable remedies. Notwithstanding anything to the contrary contained in this section, no employee or agent of the department may be held personally liable to an extent greater than that pursuant to s. 768.28 under contract for work done; provided, that no suit sounding in tort shall be maintained against the department.

Section 4. Effective July 1, 1999, subsection (9) is added to section 255.05, Florida Statutes, 1998 Supplement, to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.—

(9) On any public works project for which the public authority requires a performance and payment bond, suits at law and in equity may be brought and maintained by and against the public authority on any contract claim arising from breach of an express provision or an implied covenant of a written agreement or a written directive issued by the public authority pursuant to the written agreement. In any such suit, the public authority and the contractor shall have all of the same rights and obligations as a

private person under a like contract except that no liability may be based on an oral modification of either the written contract or written directive. Nothing herein shall be construed to waive the sovereign immunity of the state and its political subdivisions from equitable claims and equitable remedies. The provisions of this subsection shall apply only to contracts entered into on or after July 1, 1999.

Section 5. Except as otherwise provided herein, this act shall take effect upon becoming law.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.