

1984

## Session Law 84-206

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Year 1984	Session Law No. 84-206	also 54/309/159	LOF Cite	#pp
Prime Bill# SE 883	Sponsor	Comp./Sim/ Bills SB 352 HB 529		
JIMC Hist. Leg. Cites	Senate pp.#s	House pp.#s		#pp
Committee of Ref.	Senate <i>Transmittal</i>	House <i>Transmittal</i>	Previous versions?	

Committee Records

H/S	Committee	Year	Record Series: Folder Title, etc.	Location Cite	#pp
H	Transp	1984	Meeting etc.	19/1335-6	X
			Bill files, volume for H 829	17/1337	u
			SE 883, (18 529/6)	19/1338	⊖
S	Transp	1984	Bill files SE 352 & (idow')	18/1386	
			SB 853	18/1388	
			HB 529	18/1389	

Senate/House Journals

Page	?	Date	#pp	Page	?	Date	#pp
SJ 95-6		(1984)					
HJ							

Tape Recordings

H/S	Floor	Committee/subcommittee	Date	# Tapes	Location Cite

Other Documentation

Record series title, folder title, etc.	Location Cite	#pp

By Senator Beard-

22-1340-84

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1 A bill to be entitled

2 An act relating to Department of Transportation

3 contracts; amending s. 337 19, F S ; providing

4 that suits against the department must be

5 commenced as provided by chapter 95, F.S ;

6 providing for retroactivity; providing that

7 certain suits must be commenced within 6 months

8 after this act takes effect; providing an

9 effective date.

10

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

12

13 Section 1. Subsections (2) and (3) of section 337 19,

14 Florida Statutes, are amended to read-

15 337.19 Suits by and against department; limitation of

16 actions; forum.--

17 (2) Suits against the department under this section

18 shall ~~can~~ only be commenced within the time provided by

19 chapter 95 for liability founded on a written instrument.

20 This provision shall apply retroactively, provided, however,

21 that any cause of action accruing more than 2 years prior to

22 the effective date of this act and within the limitation

23 period of chapter 95 shall be commenced no later than 6 months

24 following the effective date of this act. 2 years from and

25 after the time of the completion of the work done-

26 (3) All actions and suits brought against the

27 department after July 9, 1969, shall be brought in the county

28 or counties where the cause of action accrued or in Leon

29 County.

30 Section 2. This act shall take effect upon becoming a

31 law.

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SENATE SUMMARY

Provides that suits against the Department of Transportation must be brought within the time period specified in ch 95, F S Provides for retroactive application Requires that certain suits be commenced within 6 months after the effective date of the act

By Committee on Transportation and Senator Beard-

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A bill to be entitled

An act relating to Department of Transportation contracts, amending s 337 19, F S , providing that suits by and against the department must be commenced within 3 years after final acceptance of the work, permitting certain counterclaims to be maintained against the department under specified conditions, providing for retroactivity, providing an effective date

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

Section 1 Subsections (2) and (3) of section 337 19, Florida Statutes, are amended to read

337 19 Suits by and against department, limitation of actions, forum --

(2) Suits by and against the department under this section shall ~~can only~~ be commenced within 3 2 years ~~from and~~ after the time of the final acceptance completion of the work ~~done~~ However, for any suit commenced by the department prior to the effective date of this act, the person against whom the department's suit was commenced shall be permitted to maintain against the department any counterclaim arising out of the same transaction or occurrence, provided that this provision permitting such a counterclaim shall apply retroactively regardless of prior law.

(3) All actions and suits brought against the department ~~after July 9, 1969;~~ shall be brought in the county or counties where the cause of action accrued or in Leon County

1 Section 2 This act shall take effect upon becoming a  
2 law.  
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STATEMENT OF SUBSTANTIAL CHANGE CONTAINED IN  
COMMITTEE SUBSTITUTE FOR SB 883

Date: May 7, 1984

Reduces the 5-year time period for commencing suits by and against the department to 3 years after final acceptance of the work. Provides for retroactivity only as to counterclaims on suits commenced by the department prior to the act's effective date.

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Legislat 5/3/84

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

BILL NO. SB 883

DATE: May 1, 1984

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Garqiulo</u>	<u>Christensen</u>	1. <u>TR</u>	_____
2. _____	_____	2. <u>JCI</u>	_____
3. _____	_____	3. _____	_____

SUBJECT:

BILL NO. AND SPONSOR:

Construction Contract Suits  
By and Against The  
Department of Transportation

SB 883 by  
Senator Beard

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I. SUMMARY:

A. Present Situation:

Suits by the Department of Transportation

Section 95.011, F.S., provides that a civil action, including one brought by the state, an agency thereof or other governmental authority, will be barred unless begun within the time prescribed in chapter 95, or within such different time as may be prescribed elsewhere in the statutes. Section 95.11, F.S., establishes that legal or equitable actions on a contract, obligation or liability founded on a written instrument must be commenced within 5 years from the time the cause of action accrues.

Suits Against the Department of Transportation

Under 337.19, F.S., suits may be brought against the department on any claim under contract for work done. However, subsection (2) of this section requires that any such suit must be commenced within 2 years after the time of completion of the work done (this 2-year period begins to run from the time of final acceptance of the work by the department).

B. Effect of Proposed Changes:

Section 337.19 is amended to eliminate the 2-year limitation on construction contract suits against the department and instead provide that such suits must be commenced within the 5-year period in chapter 95 that is applicable to the department when commencing a contract action. The provision would apply retroactively; however, any cause of action accruing more than 2 years prior to the act's effective date but within the 5-year period must be commenced within 6 months following the effective date of the act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The department has estimated that the retroactive application of the 5-year limitation of chapter 95 would revive 40 construction contracts on which suits are barred under the present 2-year limitation. The department estimates that four to six of these contracts could result in additional suits

against the department. The department's potential liability on these contracts is unknown.

The department has estimated the average minimum cost to the department of a lawsuit to be \$10,000 (includes witness and expert witness fees, deposition and transcript costs and travel expenses; excludes attorney's and secretary's salaries, possible payment of the contractor's costs and any damages awarded to the contractor).

Further, to the extent that the department establishes contingency funds for potential liabilities in lawsuits, funds are not available for current projects and are not available for matching other funding sources.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.



SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Garquigo</u>	<u>Christensen</u>	1. <u>TR</u>	<u>FAV as CS</u>
2. _____	_____	2. <u>JCI</u>	_____
3. _____	_____	3. _____	_____

SUBJECT:

Construction Contract Suits  
By and Against The  
Department of Transportation

BILL NO. AND SPONSOR:

CS/SB 883 by  
Committee on Transportation  
and Senator Beard

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B. Effect of Proposed Changes:

Section 337.19 is amended to provide that suits by and against the department must be commenced within 3 years after final acceptance of the work. However, for any suit commenced by the department prior to the effective date of the act, the person against whom the suit was commenced would be permitted to maintain a counterclaim arising from the same transaction. This provision would apply retroactively regardless of prior law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

Department legal staff indicated that they anticipate a counterclaim in one suit as a result of the bill's provisions. The department's potential liability on this contract is estimated to be about \$2.0 to \$2.2 million including prejudgment interest.

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

BILL NO. CS/SB 883

DATE: May 7, 1984

Page 2

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III. COMMENTS:

None.

IV. AMENDMENTS:

None.

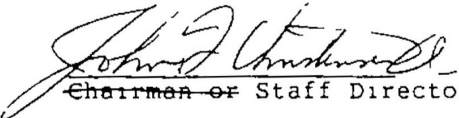
STATEMENT OF SUBSTANTIAL CHANGE CONTAINED IN  
COMMITTEE SUBSTITUTE FOR SB 883

Date: May 7, 1984

Reduces the 5-year time period for commencing suits by and against the department to 3 years after final acceptance of the work. Provides for retroactivity only as to counterclaims on suits commenced by the department prior to the act's effective date.

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Committee on Transportation

  
Chairman or Staff Director

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Garciulo</u>	<u>Christensen</u>	1. <u>TR</u>	<u>Fav/CS</u>
2. <u>Nelson GPN</u>	<u>Alberdi</u>	2. <u>JCI</u>	
3. _____	_____	3. _____	_____

SUBJECT:

Transportation Department  
Contracts

BILL NO. AND SPONSOR:

CS/SB 883 by  
Transportation Committee  
and Senator Beard

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I. SUMMARY:

A. Present Situation:

Section 337.19(1), F.S., provides that the Department of Transportation (DOT) may bring suits in law or equity for claims under a contract for work done. Section 95.011, F.S., provides that a civil action brought by an agency of the state will be barred unless begun within the time prescribed in Chapter 95, or within such different time as may be prescribed elsewhere in the statutes. Section 95.11 establishes that a legal or equitable action on a contract must be commenced within 5 years from the time the cause of action accrues.

Section 337.19(1) also provides that suits may be brought against DOT on any claim for work done. However, subsection (2) requires that any such suit must be commenced within two years after the completion of the work.

B. Effect of Proposed Changes:

The bill would amend s. 337.19(2) to provide that suits brought by and against DOT must be commenced within 3 years after the final acceptance of the work. However, the bill also provides that in any suit commenced by the department prior to the date the act becomes law, the person against whom the suit was commenced would be permitted to maintain a counterclaim arising out of the same transaction. This provision would apply retroactively regardless of prior law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

DOT legal staff indicated that they anticipate a counterclaim in one suit as a result of the bill's provisions. The department's potential liability on this contract is estimated to be about \$2.0 to \$2.2 million including prejudgment interest.

III. COMMENTS:

Both HB 529, currently in the House Appropriations Committee, and engrossed SB 352 provide that the statute of limitations on actions brought against DOT would accrue from the time of the final acceptance of the work by DOT rather than the time of completion of the work.

REVISED: May 10, 1984

BILL NO. CS/SB 883

DATE: May 7, 1984

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IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Garqiulo</u>	<u>Christensen</u>	1. <u>TR</u>	<u>Fav/CS</u>
2. <u>Nelson</u>	<u>Alberdi</u>	2. <u>JCI</u>	<u>Fav</u>
3. _____	_____	3. _____	_____

SUBJECT:

Transportation Department  
Contracts

BILL NO. AND SPONSOR:

CS/SB 883 by  
Transportation Committee  
and Senator Beard

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Section 337.19(1) also provides that suits may be brought against DOT on any claim for work done. However, subsection (2) requires that any such suit must be commenced within two years after the completion of the work.

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A. Public:

None.

B. Government:

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III. COMMENTS:

Both HB 529, currently in the House Appropriations Committee, and engrossed SB 352 provide that the statute of limitations on actions brought against DOT would accrue from the time of the final acceptance of the work by DOT rather than the time of completion of the work.

REVISED: May 18, 1984

BILL NO. CS/SB 883

DATE: May 7, 1984

Page 2

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IV. AMENDMENTS:

None.

Date April 25, 1984

NOTE: See reverse side for completion instructions

TO: Sally Quinn, House Appropriations Committee  
219 Capitol Building, Tallahassee, Florida 32301

FROM: Program Manager: Department of Transportation Telephone \_\_\_\_\_  
Agency Contact : Office of Legislation & Energy Policy Telephone 488-5712

The following information is requested on Bill No. SB883 :

- Agency requirements to administer the bill's provisions by appropriations categories (include cost of additional personnel, operating capital outlay, and other additional costs):

Description	Amount Year 1	Amount Year 2	Amount Year 3
<u>Non-recurring:</u>			
<u>Recurring:</u> <i>See attached</i>			

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- Appropriations Consequences/Source of Funds:

Description	Amount Year 1	Amount Year 2	Amount Year 3
1. State Transportation Trust Fund 2. Turnpike revenue bonds 3. Federal-aid			

- Amount and Disposition of any anticipated revenue collections:

Description	Amount Year 1	Amount Year 2	Amount Year 3
None			

- Long run effects other than normal growth:

- Fiscal impact on local government units within the state:  
(start-up, annual, and long run effects)

None

- Impact on agency and/or bill objective:

See attached

- Other comments or suggestions concerning the bill:

We suggest a three year statute of limitations after final acceptance be applied to both the Department and contractor under this section.

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APR 30 1984

SENATE TRANSPORTATION  
COMMITTEE



The immediate impact of this proposed amendment is to attempt to retroactively extend the timeframe for bringing lawsuits against the Department on construction contracts from two years after completion of the construction project to five years from the breach of the contract. This would revive actions which are now barred by sovereign immunity. Assuming this would not allow a contractor to reopen a contract which is already closed (approximately 500), it appears to revive contract actions on about 50 construction contracts which are now more than 2 years after completion.

In the last few months, four lawsuits have been brought against the Department on projects which have been completed and accepted for more than two years. These actions seek in excess of \$4.5 million in damages and prejudgment interest which could amount as much as 60% more to the damages recovered. It is impossible to speculate on the number of additional lawsuits which could be brought should this statute pass and be applied retroactively.

The Department's Legal Staff estimates the average cost to the Legal Office of each lawsuit to be a minimum of \$10,000.00 for witness fees, subpoena costs, deposition and ~~transcript~~ costs, expert witness costs, and attorney travel costs. This figure does not include attorney's and secretarial salaries for these complex suits which often take two to three years to resolve. In addition the Department would have to pay the contractor's costs should they be successful. In two recent cases cost judgments were entered against the Department for \$68,359.00 and \$15,600.00.

Another direct impact of extending the statute of limitations to five years would be a gradual increase in the number of completed projects being held open by the Final Estimates office. This might require additional storage space.

It is in the Department's interest to close out as many projects as possible as quickly as possible to assure funding for future projects. When contingency funds are established for potential liabilities, funds are not available for current projects and are not available for matching other fund sources. If a contingency liability fund is set up for the \$4.5 million in potential liability from the suits already filed, it represents a possible loss of \$40 million in federal interstate matching funds.

The department is currently letting approximately 450 projects per year which means as many as 2200 projects may be closed out over the next five years. The longer statute of limitations extend the time a matter is heard in court which increases the possibility for loss of memories, lost documents, and loss of key Department of Transportation witnesses.

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KEY POINTS  
CS/SB 883

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I FILED THIS BILL TO RESOLVE A PROBLEM THAT HAS BEEN BROUGHT TO MY ATTENTION REGARDING SUITS ON DOT CONSTRUCTION CONTRACTS. UNDER THE PRESENT LAW, THE DOT HAS 5 YEARS TO FILE SUIT AGAINST A CONTRACTOR, BUT A CONTRACTOR ONLY HAS 2 YEARS TO FILE SUIT ON A CLAIM AGAINST THE DOT. IT'S MY FEELING THAT IN ALL FAIRMESS TO THE CONTRACTOR THESE TIME PERIODS SHOULD BE EQUAL. MY ORIGINAL BILL ESTABLISHED A 5-YEAR FILING PERIOD FOR BOTH DOT AND CONTRACTORS. HOWEVER, THE DEPARTMENT PREFERRED A SHORTER PERIOD, AND A COMPROMISE WAS MADE AT 3 YEARS.

FURTHER, MY ORIGINAL BILL WAS RETROACTIVE FOR THE 5-YEAR PERIOD. LATER, IT WAS DISCOVERED THAT THE RETROACTIVE PROVISION WAS OVERLY BROAD AND REVIVED SEVERAL SUITS. AGAIN, A COMPROMISE WAS STRUCK TO LIMIT THE RETROACTIVE PROVISION IN A WAY THAT ADDRESSES ONLY ONE SUIT. THIS SUIT WAS ONE IN WHICH THERE WAS A DISPUTE BETWEEN DOT AND THE CONTRACTOR CONCERNING THE AMOUNT OF FINAL PAYMENT DUE ON THE CONTRACT. THE DOT HAS CONCEDED THAT THE RECORDS WERE SO POOR ON THIS PROJECT THAT IT TOOK 2 YEARS TO GET A USABLE FINAL ESTIMATE TO THE CONTRACTOR. AFTER THE CONTRACTOR'S 2-YEAR PERIOD TO FILE SUIT WAS ALREADY OVER, THE DOT SUED THE CONTRACTOR FOR ABOUT \$130,000 IT FELT WAS OWED. WHEN THE CONTRACTOR ATTEMPTED TO FILE ITS COUNTERCLAIM AGAINST DOT, THE CLAIM WAS BARRED BECAUSE THE 2 YEAR FILING PERIOD HAD EXPIRED.

TO MY KNOWLEDGE, AND THE DOT WILL VERIFY THIS, THIS IS THE ONLY TIME THE DOT HAS SUED A CONTRACTOR IN THIS SITUATION. DOT OFFICIALS HAVE PERSONALLY ACKNOWLEDGED THAT THIS WAS A SUIT THAT SHOULDN'T HAVE BEEN FILED IN THE FIRST PLACE. THE BILL WOULD SIMPLY GIVE THE CONTRACTOR THE OPPORTUNITY TO FILE HIS COUNTERCLAIM IN COURT AND PROCEED TO LITIGATE THIS SUIT ON EQUAL FOOTING WITH THE DOT.

KEY POINTS

CS/SB 883

THIS BILL ESTABLISHES A 3-YEAR FILING PERIOD FOR LAWSUITS BY AND AGAINST THE DOT ON CONSTRUCTION CONTRACTS.

THE BILL ALSO ALLOWS THE FILING OF A COUNTERCLAIM ON ANY SUIT COMMENCED BY THE DOT PRIOR TO THE EFFECTIVE DATE OF THE ACT.

---

PRESENTLY, THE DOT HAS 5 YEARS TO FILE SUIT AGAINST A CONTRACTOR, BUT A CONTRACTOR ONLY HAS 2 YEARS TO FILE SUIT ON A CLAIM AGAINST THE DOT.

THE RETROACTIVE PROVISION APPLIES TO ONLY ONE SUIT AND WOULD SIMPLY ALLOW THE CONTRACTOR TO FILE A COUNTERCLAIM AGAINST DOT. IN THIS CASE, THE DOT FILED SUIT AGAINST THE CONTRACTOR AFTER THE CONTRACTOR'S 2-YEAR PERIOD TO FILE SUIT WAS EXPIRED. THIS IS THE ONLY TIME THE DOT HAS FILED SUIT AGAINST A CONTRACTOR IN THIS SITUATION AND THE BILL CORRECTS THIS INEQUITY.