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2 An act relating to the Department of
3 Transportation (RAB); amending s. 334.044,
4 F.S.; authorizing the department to regulate
5 the transfer of storm water to the right-of-way
6 as a result of changes to adjacent property;
7 amending s. 337.105, F.S.; authorizing the
8 department to suspend a consultant from awards
9 of department contracts for specified good
10 cause; amending s. 337.18, F.S.; providing
11 incentives or damages for contractors for early
12 completion of projects that provide substantial
13 benefits to the public; amending s. 339.0805,
14 F.S.; authorizing the department to suspend or
15 revoke the certification of a disadvantaged
16 business enterprise for specified good cause;
17 providing an effective date.

18

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

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21 Section 1. Present subsections (15) through (30) of
22 section 334.044, Florida Statutes, are renumbered as
23 subsections (16) through (31), respectively, and a new
24 subsection (15) is added to that section, to read:

25 334.044 Department; powers and duties.--The department
26 shall have the following general powers and duties:

27 (15) To regulate and prescribe conditions for the
28 transfer of storm water to the state right-of-way as a result
29 of man-made changes to adjacent properties.

30 (a) Such regulation shall be through a permitting
31 process designed to ensure the safety and integrity of the

1 Department of Transportation facilities and to prevent an
2 unreasonable burden on lower properties.

3 (b) Issuance of a permit under this subsection will
4 not exempt a property owner from compliance with otherwise
5 applicable federal, state, local, or regional regulations
6 governing pollution control, water quality, surfacewater
7 management, or land use. The permittee will reimburse the
8 department for any expenses, including fines, abatement, and
9 cleanup costs incurred by the department as a result of the
10 permittee's discharge to the right-of-way failing to meet, or
11 contributing to a violation of, the applicable local, state,
12 or regional water-quality standards or minimum design and
13 performance standards.

14 (c) The department may revoke or suspend a permit for
15 failure to construct, operate, or maintain the facilities
16 authorized by the permit in accordance with the permit, for
17 failure to comply with permit conditions, for failure to
18 reimburse the department in accordance with the provisions of
19 paragraph (b), or for submission of false or misleading
20 information to the department with regard to the permitting,
21 construction, operation, or maintenance of the facilities.

22 Section 2. Subsection (1) of section 337.105, Florida
23 Statutes, is amended to read:

24 337.105 Qualifications of professional consultants and
25 other providers of contractual services; performance bonds;
26 and audits of indirect costs.--

27 (1) Before the employment of a professional consultant
28 or other provider of service, the department shall make a
29 finding that the person to be employed is fully qualified to
30 render the desired service. Among the factors to be
31 considered in making this finding are the professional

1 reputation, past performance record, and experience of the
2 candidate and the adequacy of the personnel making up his or
3 her organization. The department may, for good cause, deny or
4 suspend for a specified period of time a person or firm from
5 consideration for award of a professional service contract for
6 a particular type of work ~~because of unsatisfactory~~
7 ~~performance of a previously awarded professional service~~
8 ~~contract.~~ The department shall adopt rules to administer
9 ~~implement~~ this section. As used in this subsection, the term
10 "good cause," includes, but is not limited to, circumstances
11 in which a consultant or other provider of service or its
12 official representative:

13 (a) Makes or submits false, deceptive, or fraudulent
14 statements in any bid or proposal to the department, in any
15 application for certification of qualification, or in any
16 administrative or judicial proceeding;

17 (b) Becomes insolvent or is the subject of a
18 bankruptcy petition;

19 (c) Has been qualified by the department based on a
20 license or registration issued by the state which has
21 subsequently been revoked or suspended or has been denied;

22 (d) Has been qualified by the department based on the
23 employment of personnel no longer employed by the consultant
24 or other provider of service;

25 (e) Fails to maintain adequate professional liability
26 insurance for the certified areas of work;

27 (f) Fails to satisfactorily perform contract
28 requirements;

29 (g) Wrongfully employs or otherwise provides
30 compensation to any employee or officer of the department, or
31 willfully offers an employee or officer of the department any

1 pecuniary or other benefit, with the intent to influence the
2 employee's or officer's official action or judgment;

3 (h) Is affiliated with a consultant or other provider
4 of service whose qualification to render professional services
5 has been denied or suspended by the department and is
6 dependent upon such consultant or other provider of service
7 for personnel, equipment, or finances; or

8 (i) Has been barred or suspended from consideration
9 for work with any other governmental entity.

10 Section 3. Paragraph (a) of subsection (4) of section
11 337.18, Florida Statutes, is amended to read:

12 337.18 Surety bonds; requirement with respect to
13 contract award; defaults; damage assessments.--

14 (4)(a) If the department determines and adequately
15 documents that the timely completion of any project will
16 provide a substantial benefit ~~is essential~~ to the public
17 health, safety, or welfare; will limit the disruptive effect
18 of construction on the community; ~~or~~ is cost beneficial on a
19 revenue-producing project, the contract for such project may
20 provide for an incentive payment payable to the contractor for
21 early completion of the project or critical phases of the work
22 and for additional damages to be assessed against the
23 contractor for the completion of the project or critical
24 phases of the work in excess of the time specified. All
25 contracts containing such provisions shall be approved by the
26 head of the department or his or her designee. The amount of
27 such incentive payment or such additional damages shall be
28 established in the contract but shall not exceed \$10,000 per
29 calendar day, except that for revenue-producing projects the
30 amounts and periods of the incentive may be greater if an
31 analysis indicates that additional revenues projected to be

1 received upon completion of the project will exceed the cost
2 of the incentive payments. Any liquidated damages provided for
3 under subsection (2) and any additional damages provided for
4 under this subsection shall be payable to the department
5 because of the contractor's failure to complete the contract
6 work within the time stipulated in the contract or within such
7 additional time as may have been granted by the department.

8 Section 4. Subsection (2) of section 339.0805, Florida
9 Statutes, is amended to read:

10 339.0805 Funds to be expended with certified
11 disadvantaged business enterprises; specified percentage to be
12 expended; construction management development program; bond
13 guarantee program.--It is the policy of the state to
14 meaningfully assist socially and economically disadvantaged
15 business enterprises through a program that will provide for
16 the development of skills through construction and business
17 management training, as well as by providing contracting
18 opportunities and financial assistance in the form of bond
19 guarantees, to primarily remedy the effects of past economic
20 disparity.

21 (2) The department shall revoke the certification of a
22 disadvantaged business enterprise upon receipt of notification
23 of any change in ownership which results in the disadvantaged
24 individual or individuals used to qualify the business as a
25 disadvantaged business enterprise, no longer owning at least
26 51 percent of the business enterprise. Such notification shall
27 be made to the department by certified mail within 10 days
28 after the change in ownership, and such business shall be
29 removed from the certified disadvantaged business list until a
30 new application is submitted and approved by the department.
31 Failure to notify the department of the change in the

1 ownership which qualifies the business as a disadvantaged
2 business enterprise will result in revocation of certification
3 and subject the business to the provisions of s. 337.135. In
4 addition, the department may, for good cause, deny or suspend
5 the certification of a disadvantaged business enterprise. As
6 used in this subsection, the term "good cause" includes, but
7 is not limited to, the disadvantaged business enterprise:
8 (a) No longer meeting the certification standards set
9 forth in department rules;
10 (b) Making a false, deceptive, or fraudulent statement
11 it its application for certification or in any other
12 information submitted to the department;
13 (c) Failing to maintain the records required by
14 department rules;
15 (d) Failing to perform a commercially useful function
16 on projects for which the enterprise was used to satisfy
17 contract goals;
18 (e) Failing to fulfill its contractual obligations with
19 contractors;
20 (f) Failing to respond with a statement of interest to
21 requests for bid quotations from contractors for three
22 consecutive lettings;
23 (g) Subcontracting to others more than 49 percent of
24 the amount of any single subcontract that was used by the
25 prime contractor to meet a contract goal;
26 (h) Failing to provide notarized certification of
27 payments received on specific projects to the prime contractor
28 when required to do so by contract specifications;
29 (i) Failing to schedule an on-site review upon request
30 of the department; or
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1 (j) Becoming insolvent or the subject of a bankruptcy
2 proceeding.

3 Section 5. This act shall take effect upon becoming a
4 law.

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