

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 905 Department of Transportation

**SPONSOR(S):** Transportation & Tourism Appropriations Subcommittee, Transportation & Infrastructure Subcommittee, Andrade

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	14 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee	11 Y, 0 N, As CS	Davis	Davis
3) State Affairs Committee			

### SUMMARY ANALYSIS

The bill amends various statutory provisions relating to the Department of Transportation (DOT). In summary, the bill:

- Provides statutory qualifications for the Secretary of Transportation.
- Prohibits local governments from adopting standards or specifications for the permissible use of aggregates that are contrary to DOT's standards or specifications.
- Authorizes the use of certain innovative transportation projects and techniques.
- Requires any contractor desiring to bid on DOT contracts in excess of \$50 million to have satisfactorily completed certain projects prior to being eligible to bid.
- Increases the dollar threshold for certain contract claims that may go before the State Arbitration Board.

The bill has an indeterminate, but likely insignificant, fiscal impact to DOT, which can be absorbed within its existing resources. See Fiscal Analysis for details.

The bill has an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Secretary of Transportation Qualifications**

###### Present Situation

The Department of Transportation (DOT) is headed by the Secretary of Transportation who is appointed by the Governor from among three persons nominated by the Florida Transportation Commission<sup>1</sup> and is subject to Senate confirmation. The Secretary of Transportation serves at the pleasure of the Governor.<sup>2</sup>

The Secretary of Transportation must be a proven, effective administrator who by a combination of education and experience clearly possesses a broad knowledge of the administrative, financial, and technical aspects of the development, operation, and regulation of transportation systems and facilities or comparable systems and facilities.<sup>3</sup>

DOT's operations are organized into seven geographic districts, each headed by a district secretary, and a turnpike enterprise and a rail enterprise, each headed by an executive director. Florida law requires DOT's district secretaries and executive directors to be registered professional engineers in accordance with Florida law<sup>4</sup> or the laws of another state, or, in lieu of professional engineer registration, he or she may hold an advanced degree in an appropriate related discipline, such as a Master of Business Administration.<sup>5</sup> While there are statutory qualifications for DOT's district secretaries and executive directors, there are no statutory qualifications for the Secretary of Transportation.

###### Effect of Proposed Changes

The bill amends s. 20.23(1)(b), F.S., requiring the Secretary of Transportation to be a professional engineer under Florida law or the laws of another state, or in lieu of such licensure, to hold an advanced degree in a related discipline, such as a Master of Business Administration and five years of relevant transportation experience, or to have 10 years of relevant transportation experience.

##### **DOT Materials Standards and Specifications**

###### Present Situation

DOT has a standardized method for producers of construction aggregates<sup>6</sup> to apply for, receive, and maintain DOT approval of construction aggregate sources for use on DOT projects. Source and product approval, and maintenance of an on-going effective Quality Control Program, as monitored by DOT, comprise DOT's primary methods of determining acceptability of aggregate on DOT projects. DOT's Quality Control Program requires producers<sup>7</sup> of construction materials to be responsible for their products; to establish, maintain, and implement their own individualized process control system; and to certify to DOT compliance of their product with applicable standards and contract specifications.<sup>8</sup>

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<sup>1</sup> The Florida Transportation Commission is a citizens' oversight board for the Department of Transportation.

<sup>2</sup> Section 20.23(1)(a), F.S.

<sup>3</sup> Section 20.23(1)(b), F.S.

<sup>4</sup> Professional engineers are licensed under Ch. 471, F.S.

<sup>5</sup> Section 20.23(4)(a), F.S.

<sup>6</sup> Aggregates are crushed stone, limestone, dolomite, limerock, shell rock, cemented coquina, sand for use as a component of mortars, concrete, bituminous mixtures, or underdrain filters, and other mined resources providing the basic material for concrete, asphalt, and road base.

<sup>7</sup> The term "producer" means any business or individual seeking to supply aggregate to DOT or its contractors.

<sup>8</sup> Florida Department of Transportation, Agency Analysis of 2019 Senate Bill 1044, p. 3. (February 14, 2019).

In the materials context, the term “certify” means that the producer affixes the statement “CERTIFIED FOR FDOT” or “CERT.FOR FDOT” to a shipping ticket attesting that this specific aggregate shipment was produced and shipped under a DOT-approved Quality Control Program and for which quality control tests indicate that the specific aggregate meets DOT specifications and DOT quality and uniformity requirements set out in DOT’s Construction Aggregates Manual.<sup>9</sup>

Currently, there is no provision in state law requiring local governments to accept aggregates certified pursuant to DOT’s rules.<sup>10</sup> There have been cases where local governments have not allowed transportation contractors to use DOT-approved aggregates on the local government’s transportation facilities.

### Effect of Proposed Changes

The bill creates s. 334.179, F.S., providing that notwithstanding any law, rule, or ordinance to the contrary, a local government may not adopt standards or specifications that are contrary to DOT’s standards or specifications for permissible use of aggregates that have been certified for use. The bill defines “certified for use” as that the aggregates and materials have been certified by the producer in accordance with DOT’s rules.

## **Innovative Transportation Projects and Techniques**

### Present Situation

Section 337.025, F.S., authorizes DOT to establish a program for highway projects demonstrating innovative techniques of highway construction, maintenance, and finance which have the intended effect of controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway construction and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. DOT may annually enter into up to \$120 million in contracts for innovative transportation projects. However, the annual cap does not apply to turnpike enterprise projects and transportation projects funded by the American Recovery and Reinvestment Act of 2009.<sup>11</sup>

### Effect of Proposed Changes

The bill amends s. 337.025(1), F.S., changing DOT’s authorization for innovative highway projects to innovative transportation projects. This new authorization specifically includes innovative techniques for bridge design that have the effect of measuring resiliency and structural integrity. The bill also authorizes the use of innovative transportation projects for new and existing bridge design.

## **Qualifications to Bid on Contracts**

### Present Situation

Section 337.14(1), F.S., requires that any person<sup>12</sup> desiring to bid on any construction contract in excess of \$250,000 which DOT proposes to let must first be certified by DOT pursuant to s. 337.14, F.S., and applicable rules.<sup>13</sup> DOT’s rules must address the qualification of persons to bid on construction contracts in excess of \$250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification. DOT may limit the dollar amount of any contract upon which a person is qualified to bid or the aggregate total dollar volume of contracts such person is allowed to have under contract at any one time.

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<sup>9</sup> *Id.*

<sup>10</sup> Ch. 14-103, F.A.C.

<sup>11</sup> Pub. L. 111-5.

<sup>12</sup> Section 334.03(19), F.S., defines “person” means any person described in s. 1.01, F.S., or any unit of government in or outside the state. Section 1.01(3), F.S., provides that “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>13</sup> DOT’s rules regarding qualifications to bid on highway projects are in Rule 14-22, F.A.C.

For purposes of Ch. 337, F.S., relating to contracting by DOT, the term “contractor” is only defined in s. 337.165(1)(d), F.S., relating to contract crime. In that provision, the term “contractor” is defined as any person who bids or applies to bid on work let by DOT or any counterpart agency of any other state or of the Federal Government or who provides professional services to DOT or other such agency.

#### Effect of Proposed Changes

The bill amends s. 337.14(1), F.S., changing references of “person” to “contractor.” The bill also requires that any contractor desiring to bid on contracts in excess of \$50 million to have satisfactorily completed two projects, each in excess of \$25 million, for DOT or for any other state department of transportation.

The bill further amends s. 337.14(7), F.S., stipulating that neither a department district nor the Turnpike Enterprise may contract with the same entity for both design services and construction, engineering, and inspections services on the same project.

### **State Arbitration Board**

#### Present Situation

Section 337.185, F.S., creates the State Arbitration Board to facilitate the prompt settlement of claims<sup>14</sup> for additional compensation arising out of construction and maintenance contracts between DOT and its various contractors. Every contractual claim in an amount up to \$250,000 per contract or, at the claimant’s option, up to \$500,000 per contract or, upon agreement of the parties, up to \$1 million per contract that cannot be resolved by negotiation between DOT and the contractor must be arbitrated by the State Arbitration Board after DOT’s acceptance of the project. However, 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 State Arbitration Board process has been exhausted.<sup>15</sup>

#### Effect of Proposed Changes

The bill amends s. 337.185(1), F.S., increasing the dollar value of contracts that may be arbitrated using the State Arbitration Board at the claimant’s option to up to \$1 million per contract, or upon agreement of the parties to up to \$2 million per contract. The requirement that all claims of up to \$250,000 be arbitrated by the State Arbitration Board remains.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 20.23, F.S., relating to the Department of Transportation.

Section 2 amends s. 334.179, F.S., relating to department standards or specifications for permissible use of aggregates and materials.

Section 3 amends s. 337.025, F.S., relating to innovative transportation projects.

Section 4 amends s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 5 amends s. 337.185, F.S., relating to the State Arbitration Board.

Section 6 provides an effective date of July 1, 2019.

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<sup>14</sup> For the purpose of s. 337.185, F.S., the term “claim” means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract.

<sup>15</sup> Section 337.185(1), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOT may see a reduction in litigation costs associated with the eligibility for additional claims to go before the State Arbitration Board for settlement.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The prohibition against local governments developing standards and specifications for aggregates that are contrary to DOT's standards or specifications may have an impact on local governments, but it is indeterminate and cannot be quantified at this time.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that neither a department district nor the Turnpike Enterprise may contract with the same entity for both design services and construction, engineering, and inspections services on the same project.

DOT contractors may see a reduction in expenditures with the authorization for additional claims to go before the State Arbitration Board.

### D. FISCAL COMMENTS:

The preclusion of certain contractors from bidding on construction contracts in excess of \$50 million may limit the pool of eligible contractors; thereby decreasing competition, and potentially leading to inflated bids.<sup>16</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax revenues shared with counties or municipalities.

2. Other:

None.

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<sup>16</sup> *Id.*

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 12, 2019, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed provisions relating to:

- The establishment of policies by DOT's central office and the carrying out of policies by DOT districts.
- The nomination of the Secretary of Transportation by the Florida Transportation Commission.
- The calculation of mileage for official state travel.
- The requirement that 80 percent of the pavement in each DOT district meets DOT standards.
- The assessment of liquidated damages for transportation projects.
- The allocation of transportation capacity funds to the Strategic Intermodal System.
- The prioritization of certain projects on Strategic Intermodal System Highway Corridors.

The strike-all amendment also revised provisions regarding the qualifications for the Secretary of Transportation and revised provisions regarding local government use of aggregates.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

On March 26, 2019, the Transportation & Tourism Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment prohibits a department district office or the Florida Turnpike Enterprise from contracting with the same entity under certain circumstances.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Tourism Appropriations Subcommittee.