

By Senator Hooper

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1 A bill to be entitled
2 An act relating to transportation; creating s.
3 287.05705, F.S.; providing that certain governmental
4 entities may not prohibit certain vendors from
5 responding to competitive solicitations of certain
6 contractual services; providing applicability;
7 amending s. 316.2397, F.S.; revising provisions
8 authorizing vehicles to show or display flashing
9 lights; amending s. 337.025, F.S.; revising the type
10 of transportation project contracts that are subject
11 to an annual cap; revising application of such cap;
12 amending s. 337.14, F.S.; requiring contractors
13 wishing to bid on certain contracts to first be
14 certified by the Department of Transportation as
15 qualified; revising requirements for applying for and
16 issuing a certificate of qualification; providing
17 construction with respect to submission and approval
18 of an application for such certificate; exempting
19 airports from certain restrictions regarding entities
20 performing engineering and inspection services;
21 amending s. 337.185, F.S.; revising and providing
22 definitions; revising requirements for arbitration of
23 certain contracts by the State Arbitration Board;
24 revising requirements regarding arbitration requests,
25 hearings, procedures, and awards; revising membership
26 and meeting requirements; revising compensation of
27 board members; amending s. 378.403, F.S.; defining the
28 term "borrow pit"; amending s. 378.801, F.S.;
29 prohibiting operation of a borrow pit at a new

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30 location without notifying the Secretary of
31 Environmental Protection of the intent to extract;
32 conforming provisions to changes made by the act;
33 amending s. 378.802, F.S.; revising application of
34 provisions to exclude existing locations; providing an
35 effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Section 287.05705, Florida Statutes, is created
40 to read:

41 287.05705 Procurements of road, bridge, and other specified
42 public construction services.-

43 (1) With respect to competitive solicitations for the
44 procurement of contractual services that are limited to the
45 classes of work for which the Department of Transportation
46 issues certificates of qualification pursuant to s. 337.14, and
47 which services do not involve the construction, remodeling,
48 repair, or improvement of any building, a governmental entity
49 procuring such services may not prohibit a response from a
50 vendor possessing a valid certificate of qualification under s.
51 337.14 or license under chapter 489 corresponding to the
52 contractual services being procured.

53 (2) This section applies to all competitive solicitations
54 issued by a governmental entity on or after October 1, 2021.

55 Section 2. Present subsection (10) of section 316.2397,
56 Florida Statutes, is redesignated as subsection (12), new
57 subsections (10) and (11) are added to that section, and
58 subsections (2) and (7) of that section are amended, to read:

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59 316.2397 Certain lights prohibited; exceptions.-

60 (2) It is expressly prohibited for any vehicle or
61 equipment, except police vehicles and vehicles and equipment
62 specified in subsections (10) and (11), to show or display blue
63 lights. However, vehicles owned, operated, or leased by the
64 Department of Corrections or any county correctional agency may
65 show or display blue lights when responding to emergencies.

66 (7) Flashing lights are prohibited on vehicles except:

67 (a) As a means of indicating a right or left turn, to
68 change lanes, or to indicate that the vehicle is lawfully
69 stopped or disabled upon the highway;

70 (b) When a motorist intermittently flashes his or her
71 vehicle's headlamps at an oncoming vehicle notwithstanding the
72 motorist's intent for doing so;

73 (c) During periods of extremely low visibility on roadways
74 with a posted speed limit of 55 miles per hour or higher; and

75 (d) ~~(e)~~ For the lamps authorized under subsections (1), (2),
76 (3), (4), and (9), s. 316.2065, or s. 316.235(6) which may
77 flash.

78 (10) Construction vehicles within a work zone on roadways
79 with a posted speed limit of 55 miles per hour or higher may
80 show or display flashing blue lights while performing paving
81 operations or where a hazard exists.

82 (11) Under the direction of a law enforcement officer,
83 portable radar speed display units in advance of a work zone on
84 roadways with a posted speed limit of 55 miles per hour or
85 higher may show or display flashing red and blue lights when
86 workers are present.

87 Section 3. Section 337.025, Florida Statutes, is amended to

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88 read:

89 337.025 Innovative transportation projects; department to
90 establish program.—

91 (1) The department may establish a program for
92 transportation projects demonstrating innovative techniques of
93 highway and bridge design, construction, maintenance, and
94 finance which have the intended effect of measuring resiliency
95 and structural integrity and controlling time and cost increases
96 on construction projects. Such techniques may include, but are
97 not limited to, state-of-the-art technology for pavement,
98 safety, and other aspects of highway and bridge design,
99 construction, and maintenance; innovative bidding and financing
100 techniques; accelerated construction procedures; and those
101 techniques that have the potential to reduce project life cycle
102 costs. To the maximum extent practical, the department must use
103 the existing process to award and administer construction and
104 maintenance contracts. When specific innovative techniques are
105 to be used, the department is not required to adhere to those
106 provisions of law that would prevent, preclude, or in any way
107 prohibit the department from using the innovative technique.
108 However, before using an innovative technique that is
109 inconsistent with another provision of law, the department must
110 document in writing the need for the exception and identify what
111 benefits the traveling public and the affected community are
112 anticipated to receive. The department may enter into no more
113 than \$120 million in contracts awarded annually for the purposes
114 authorized by this section.

115 (2) The annual cap on contracts provided in subsection (1)
116 does ~~shall~~ not apply to:

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117 (a) Turnpike enterprise projects, ~~and turnpike enterprise~~
118 ~~projects shall not be counted toward the department's annual~~
119 ~~cap.~~

120 (b) Low-bid design-build milling and resurfacing contracts
121 ~~Transportation projects funded by the American Recovery and~~
122 ~~Reinvestment Act of 2009.~~

123 Section 4. Subsections (1), (4), and (7) of section 337.14,
124 Florida Statutes, are amended to read:

125 337.14 Application for qualification; certificate of
126 qualification; restrictions; request for hearing.—

127 (1) Any contractor desiring to bid for the performance of
128 any construction contract in excess of \$250,000 which the
129 department proposes to let must first be certified by the
130 department as qualified pursuant to this section and rules of
131 the department. The rules of the department must address the
132 qualification of contractors to bid on construction contracts in
133 excess of \$250,000 and must include requirements with respect to
134 the equipment, past record, experience, financial resources, and
135 organizational personnel of the applying contractor which are
136 necessary to perform the specific class of work for which the
137 contractor seeks certification. Any contractor who desires to
138 bid on contracts in excess of \$50 million and who is not
139 qualified and in good standing with the department as of January
140 1, 2019, must first be certified by the department as qualified
141 ~~and desires to bid on contracts in excess of \$50 million~~ must
142 have satisfactorily completed two projects, each in excess of
143 \$15 million, for the department or for any other state
144 department of transportation. The department may limit the
145 dollar amount of any contract upon which a contractor is

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146 qualified to bid or the aggregate total dollar volume of
147 contracts such contractor is allowed to have under contract at
148 any one time. Each applying contractor seeking qualification to
149 bid on construction contracts in excess of \$250,000 shall
150 furnish the department a statement under oath, on such forms as
151 the department may prescribe, setting forth detailed information
152 as required on the application. Each application for
153 certification must be accompanied by audited, certified
154 financial statements prepared in accordance with generally
155 accepted accounting principles and auditing standards by a
156 certified public accountant licensed in this state or another
157 state. The audited, certified financial statements must be for
158 the applying contractor and must have been prepared ~~the latest~~
159 annual financial statement of the applying contractor completed
160 within the immediately preceding ~~last~~ 12 months. The department
161 may not consider any financial information of the parent entity
162 of the applying contractor, if any. The department may not
163 certify as qualified any applying contractor who fails to submit
164 the audited, certified financial statements required by this
165 subsection. If the application or the annual financial statement
166 shows the financial condition of the applying contractor more
167 than 4 months before ~~prior to~~ the date on which the application
168 is received by the department, the applicant must also submit an
169 interim audited, certified financial statements prepared in
170 accordance with generally accepted accounting principles and
171 auditing standards by a certified public accountant licensed in
172 this state or another state ~~statement and an updated application~~
173 ~~must be submitted~~. The interim financial statements ~~statement~~
174 must cover the period from the end date of the annual statement

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175 and must show the financial condition of the applying contractor
176 no more than 4 months before ~~prior to~~ the date that the interim
177 financial statements are ~~statement is~~ received by the
178 department. However, upon the request of the applying
179 contractor, an application and accompanying annual or interim
180 financial statement received by the department within 15 days
181 after either 4-month period under this subsection shall be
182 considered timely. ~~Each required annual or interim financial~~
183 ~~statement must be audited and accompanied by the opinion of a~~
184 ~~certified public accountant.~~ An applying contractor desiring to
185 bid exclusively for the performance of construction contracts
186 with proposed budget estimates of less than \$1 million may
187 submit reviewed annual or reviewed interim financial statements
188 prepared by a certified public accountant. The information
189 required by this subsection is confidential and exempt from s.
190 119.07(1). The department shall act upon the application for
191 qualification within 30 days after the department determines
192 that the application is complete. The department may waive the
193 requirements of this subsection for projects having a contract
194 price of \$500,000 or less if the department determines that the
195 project is of a noncritical nature and the waiver will not
196 endanger public health, safety, or property.

197 (4) If the applicant is found to possess the prescribed
198 qualifications, the department shall issue to him or her a
199 certificate of qualification that, unless thereafter revoked by
200 the department for good cause, will be valid for a period of 18
201 months after the date of the applicant's financial statement or
202 such shorter period as the department prescribes. Submission of
203 an application and subsequent approval do ~~shall~~ not affect

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204 expiration of the certificate of qualification, the ability
205 factor of the applicant, or the maximum capacity rating of the
206 applicant. If the department finds that an application is
207 incomplete or contains inadequate information or information
208 that cannot be verified, the department may request in writing
209 that the applicant provide the necessary information to complete
210 the application or provide the source from which any information
211 in the application may be verified. If the applicant fails to
212 comply with the initial written request within a reasonable
213 period of time as specified therein, the department shall
214 request the information a second time. If the applicant fails to
215 comply with the second request within a reasonable period of
216 time as specified therein, the application shall be denied.

217 (7) A "contractor" as defined in s. 337.165(1)(d) or his or
218 her "affiliate" as defined in s. 337.165(1)(a) qualified with
219 the department under this section may not also qualify under s.
220 287.055 or s. 337.105 to provide testing services, construction,
221 engineering, and inspection services to the department. This
222 limitation does not apply to any design-build prequalification
223 under s. 337.11(7) and does not apply when the department
224 otherwise determines by written order entered at least 30 days
225 before advertisement that the limitation is not in the best
226 interests of the public with respect to a particular contract
227 for testing services, construction, engineering, and inspection
228 services. This subsection does not authorize a contractor to
229 provide testing services, or provide construction, engineering,
230 and inspection services, to the department in connection with a
231 construction contract under which the contractor is performing
232 any work. Notwithstanding any other provision of law to the

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233 contrary, for a project that is wholly or partially funded by
234 the department and administered by a local governmental entity,
235 except for a seaport listed in s. 311.09 or an airport as
236 defined in s. 332.004, the entity performing design and
237 construction engineering and inspection services may not be the
238 same entity.

239 Section 5. Section 337.185, Florida Statutes, is amended to
240 read:

241 (Substantial rewording of section. See
242 s. 337.185, F.S., for present text.)

243 337.185 State Arbitration Board.-

244 (1) To facilitate the prompt resolution of claims arising
245 out of or in connection with a construction or maintenance
246 contract with the department, the Legislature establishes the
247 State Arbitration Board, referred to in this section as the
248 "board."

249 (2) As used in this section, the term:

250 (a) "Claim" means the aggregate of all outstanding written
251 requests for additional monetary compensation, time, or other
252 adjustments to the contract, the entitlement or impact of which
253 is disputed by the department and could not be resolved by
254 negotiation between the department and the contractor.

255 (b) "Contractor" means a person or firm having a contract
256 for rendering services to the department relating to the
257 construction or maintenance of a transportation facility.

258 (c) "Final acceptance" means that the contractor has
259 completely performed the work provided for under the contract,
260 the department or its agent has determined that the contractor
261 has satisfactorily completed the work provided for under the

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262 contract, and the department or its agent has submitted written
263 notice of final acceptance to the contractor.

264 (3) Every claim in an amount of up to \$250,000 per contract
265 that could not be resolved by negotiation between the department
266 and the contractor must be arbitrated by the board. An award
267 issued by the board pursuant to this section is final and
268 enforceable by a court of law.

269 (4) The contractor may submit a claim greater than \$250,000
270 up to \$1 million per contract or, upon agreement of the parties,
271 up to \$2 million per contract to be arbitrated by the board. An
272 award issued by the board pursuant to this subsection is final
273 if a request for a trial de novo is not filed within the time
274 provided by Rule 1.830, Florida Rules of Civil Procedure. At the
275 trial de novo, the court may not admit evidence that there has
276 been an arbitration proceeding, the nature or amount of the
277 award, or any other matter concerning the conduct of the
278 arbitration proceeding, except that testimony given at an
279 arbitration hearing may be used for any purpose otherwise
280 permitted by the Florida Evidence Code. If a request for trial
281 de novo is not filed within the time provided, the award issued
282 by the board is final and enforceable by a court of law.

283 (5) An arbitration request may not be made to the board
284 before final acceptance but must be made to the board within 820
285 days after final acceptance.

286 (6) The board shall schedule a hearing within 45 days after
287 an arbitration request and, if possible, shall conduct the
288 hearing within 90 days after the request. The board may
289 administer oaths and conduct the proceedings as provided by the
290 rules of the court. The hearing shall be conducted informally.

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291 Presentation of testimony and evidence shall be kept to a
292 minimum, and matters shall be presented to the arbitrators
293 primarily through the statements and arguments of counsel. The
294 board shall address the scope of discovery, presentation of
295 testimony, and evidence at a preliminary hearing by considering
296 the size, subject matter, and complexity of the dispute. Any
297 party to the arbitration may petition the board, for good cause
298 shown, to issue subpoenas for the attendance of witnesses and
299 the production of books, records, documents, and other evidence
300 at the arbitration and may petition the board for orders
301 compelling such attendance and production at the arbitration.
302 Subpoenas shall be served and are enforceable in the manner
303 provided by law.

304 (7) The board must issue an award within 45 days after the
305 conclusion of the arbitration hearing. If all three members of
306 the board do not agree, the award agreed to by the majority
307 shall constitute the award of the board.

308 (8) The board shall be composed of three members. The first
309 member shall be appointed by the Secretary of Transportation,
310 and the second member shall be elected by those construction or
311 maintenance companies that are under contract with the
312 department. The third member shall be chosen by agreement of the
313 first and second members. If the first or second member has a
314 conflict of interest regarding affiliation with one of the
315 parties to an arbitration hearing, the appointing entity shall
316 appoint an alternate member for that hearing. If the third
317 member has such a conflict of interest, the first and second
318 members shall select an alternate member. Each member shall
319 serve a 4-year term. The board shall elect a chair for each

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320 term, who shall be the administrator of the board and custodian
321 of its records.

322 (9) The presence of all board members is required to
323 conduct a meeting in person or via videoconferencing.

324 (10) The members of the board shall receive compensation
325 for the performance of their duties from deposits made by the
326 parties based on an estimate of compensation by the board,
327 except that an employee of the department may not receive
328 compensation from the board. All deposits will be held in escrow
329 by the chair in advance of the hearing. Each member eligible for
330 compensation shall be compensated at \$200 per hour, up to a
331 maximum of \$1,500 per day. A member shall be reimbursed for the
332 actual cost of his or her travel expenses. The board may
333 allocate funds annually for clerical and other administrative
334 services.

335 (11) To cover the cost of administration and initial
336 compensation of the board, the party requesting arbitration
337 shall pay a filing fee to the board, according to a schedule
338 established by the board, of:

339 (a) Up to \$500 for a claim that is \$25,000 or less.

340 (b) Up to \$1,000 for a claim that is more than \$25,000 but
341 is \$50,000 or less.

342 (c) Up to \$1,500 for a claim that is more than \$50,000 but
343 is \$100,000 or less.

344 (d) Up to \$2,000 for a claim that is more than \$100,000 but
345 is \$200,000 or less.

346 (e) Up to \$3,000 for a claim that is more than \$200,000 but
347 is \$300,000 or less.

348 (f) Up to \$4,000 for a claim that is more than \$300,000 but

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349 is \$400,000 or less.

350 (g) Up to \$5,000 for a claim that is more than \$400,000.

351
352 The board may apportion the filing fees and the cost of
353 recording and preparing a transcript of the hearing among the
354 parties in its award.

355 Section 6. Present subsections (3) through (19) of section
356 378.403, Florida Statutes, are redesignated as subsections (4)
357 through (20), respectively, and a new subsection (3) is added to
358 that section, to read:

359 378.403 Definitions.—As used in this part, the term:

360 (3) "Borrow pit" means an area of land upon which
361 excavation of surface resources has been conducted, is being
362 conducted, or is planned to be conducted, as the term is
363 commonly used in the mining trade, and is not considered a mine.
364 Such resources are limited to soil, organic soil, sand, or clay
365 that can be removed with construction excavating equipment and
366 loaded on a haul truck with no additional processing.

367 Section 7. Section 378.801, Florida Statutes, is amended to
368 read:

369 378.801 Other resources; notice of intent to extract ~~mine~~
370 required.—

371 (1) An ~~No~~ operator may not begin the operation of a borrow
372 pit, or the process of extracting clay, peat, gravel, sand, or
373 any other solid substance of commercial value found in natural
374 deposits or in the earth, except fuller's earth clay, heavy
375 minerals, limestone, or phosphate, which are regulated elsewhere
376 in this chapter, at a new location ~~mine~~ without notifying the
377 secretary of the intention to extract ~~mine~~.

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378 (2) The operator's notice of intent to extract ~~mine~~ shall
379 consist of the operator's estimated life of the extraction
380 location ~~mine~~ and the operator's signed acknowledgment of the
381 performance standards provided by s. 378.803.

382 Section 8. Section 378.802, Florida Statutes, is amended to
383 read:

384 378.802 Existing extraction locations ~~mines~~.—After January
385 1, 1989, all operators of existing locations ~~mines~~ for the
386 extraction of resources as described in s. 378.801 shall meet
387 the performance standards provided by s. 378.803 for any new
388 surface area disturbed at such locations ~~mines~~.

389 Section 9. This act shall take effect July 1, 2021.