

1 A bill to be entitled
2 An act relating to transportation; creating s.
3 287.05705, F.S.; providing that governmental entities
4 may not prohibit certain vendors from responding to
5 competitive solicitations of certain contractual
6 services; providing applicability; amending s.
7 316.003, F.S.; revising the definition of the term
8 "personal delivery device"; amending s. 316.2397,
9 F.S.; authorizing certain equipment to show or display
10 flashing lights; authorizing vehicles to display
11 flashing lights during certain periods under certain
12 conditions; amending s. 337.025, F.S.; revising the
13 application of the cap on innovative transportation
14 projects; amending s. 337.14, F.S.; requiring
15 contractors wishing to bid on certain contracts to
16 first be certified by the Department of Transportation
17 as qualified; revising requirements for applying for
18 and issuing a certificate of qualification; revising
19 provisions regarding interim financial statements;
20 providing construction with respect to submission and
21 approval of an application for such certificate;
22 exempting airports from certain restrictions regarding
23 entities performing design and construction
24 engineering and inspection services; amending s.
25 337.185, F.S.; revising and providing definitions;

26 | revising requirements for arbitration of certain
 27 | contracts by the State Arbitration Board; revising
 28 | requirements regarding arbitration requests, hearings,
 29 | procedures, and awards; revising membership and
 30 | meeting requirements; revising compensation of board
 31 | members; amending s. 348.754, F.S.; prohibiting the
 32 | Central Florida Expressway Authority from performing
 33 | certain activities in Lake County without prior
 34 | consultation with the secretary of the department;
 35 | amending s. 378.403, F.S.; defining the term "borrow
 36 | pit"; amending s. 378.801, F.S.; prohibiting operation
 37 | of a borrow pit at a new location without notifying
 38 | the Secretary of Environmental Protection of the
 39 | intent to extract; conforming provisions; amending s.
 40 | 378.802, F.S.; revising application of provisions to
 41 | exclude existing mines; providing an effective date.

42 |

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

44 |

45 | Section 1. Section 287.05705, Florida Statutes, is created
 46 | to read:

47 | 287.05705 Procurements of road, bridge, and other
 48 | specified public construction services.—

49 | (1) With respect to competitive solicitations for the
 50 | procurement of contractual services that are limited to the

51 classes of work for which the Department of Transportation
 52 issues certificates of qualification pursuant to s. 337.14,
 53 which services do not involve the construction, remodeling,
 54 repair, or improvement of any building, a governmental entity
 55 procuring such services may not prohibit a response from a
 56 vendor possessing a valid certificate of qualification under s.
 57 337.14 or license under chapter 489 corresponding to the
 58 contractual services being procured.

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

61 Section 2. Paragraph (b) of subsection (56) of section
 62 316.003, Florida Statutes, is amended to read:

63 316.003 Definitions.—The following words and phrases, when
 64 used in this chapter, shall have the meanings respectively
 65 ascribed to them in this section, except where the context
 66 otherwise requires:

67 (56) PERSONAL DELIVERY DEVICE.—An electrically powered
 68 device that:

69 (b) Weighs less than 550 ~~80~~ pounds, excluding cargo;

70
 71 A personal delivery device is not considered a vehicle unless
 72 expressly defined by law as a vehicle. A mobile carrier is not
 73 considered a personal delivery device.

74 Section 3. Subsection (10) of section 316.2397, Florida
 75 Statutes, is renumbered as subsection (12), subsections (2) and

76 (7) are amended, and new subsections (10) and (11) are added to
 77 that section, to read:

78 316.2397 Certain lights prohibited; exceptions.—

79 (2) It is expressly prohibited for any vehicle or
 80 equipment, except police vehicles and road construction
 81 equipment specified in subsections (10) and (11), to show or
 82 display blue lights. However, vehicles owned, operated, or
 83 leased by the Department of Corrections or any county
 84 correctional agency may show or display blue lights when
 85 responding to emergencies.

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

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

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

93 (c) During periods of extreme low visibility on roadways
 94 with a posted speed limit of 55 mph or higher; and

95 (d) ~~(e)~~ For the lamps authorized under subsections (1),
 96 (2), (3), (4), and (9), s. 316.2065, or s. 316.235(6) which may
 97 flash.

98 (10) Paving machines or compaction rollers within a work
 99 zone area on roadways with a posted speed limit of 55 mph or
 100 higher may show or display flashing blue lights while performing

101 paving operations or where a hazard exists.

102 (11) Under the direction of a law enforcement officer,
103 portable radar speed display units in advance of a work zone
104 area on roadways with a posted speed limit of 55 mph or higher
105 may show or display flashing red and blue lights when workers
106 are present.

107 Section 4. Section 337.025, Florida Statutes, is amended
108 to read:

109 337.025 Innovative transportation projects; department to
110 establish program.—

111 (1) The department may establish a program for
112 transportation projects demonstrating innovative techniques of
113 highway and bridge design, construction, maintenance, and
114 finance which have the intended effect of measuring resiliency
115 and structural integrity and controlling time and cost increases
116 on construction projects. Such techniques may include, but are
117 not limited to, state-of-the-art technology for pavement,
118 safety, and other aspects of highway and bridge design,
119 construction, and maintenance; innovative bidding and financing
120 techniques; accelerated construction procedures; and those
121 techniques that have the potential to reduce project life cycle
122 costs. To the maximum extent practical, the department must use
123 the existing process to award and administer construction and
124 maintenance contracts. When specific innovative techniques are
125 to be used, the department is not required to adhere to those

126 provisions of law that would prevent, preclude, or in any way
127 prohibit the department from using the innovative technique.
128 However, before using an innovative technique that is
129 inconsistent with another provision of law, the department must
130 document in writing the need for the exception and identify what
131 benefits the traveling public and the affected community are
132 anticipated to receive. The department may enter into no more
133 than \$120 million in contracts annually for the purposes
134 authorized by this section.

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

137 (a) Turnpike enterprise projects, ~~and turnpike enterprise~~
138 ~~projects shall not be counted toward the department's annual~~
139 ~~cap.~~

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

143 Section 5. Subsections (1), (4), and (7) of section
144 337.14, Florida Statutes, are amended to read:

145 337.14 Application for qualification; certificate of
146 qualification; restrictions; request for hearing.—

147 (1) Any contractor desiring to bid for the performance of
148 any construction contract in excess of \$250,000 which the
149 department proposes to let must first be certified by the
150 department as qualified pursuant to this section and rules of

151 the department. The rules of the department must address the
152 qualification of contractors to bid on construction contracts in
153 excess of \$250,000 and must include requirements with respect to
154 the equipment, past record, experience, financial resources, and
155 organizational personnel of the applying contractor which are
156 necessary to perform the specific class of work for which the
157 contractor seeks certification. Any contractor who desires to
158 bid on contracts in excess of \$50 million and who is not
159 qualified and in good standing with the department as of January
160 1, 2019, must first be certified by the department as qualified
161 ~~and desires to bid on contracts in excess of \$50 million~~ must
162 have satisfactorily completed two projects, each in excess of
163 \$15 million, for the department or for any other state
164 department of transportation. The department may limit the
165 dollar amount of any contract upon which a contractor is
166 qualified to bid or the aggregate total dollar volume of
167 contracts such contractor is allowed to have under contract at
168 any one time. Each applying contractor seeking qualification to
169 bid on construction contracts in excess of \$250,000 shall
170 furnish the department a statement under oath, on such forms as
171 the department may prescribe, setting forth detailed information
172 as required on the application. Each application for
173 certification must be accompanied by audited, certified
174 financial statements prepared in accordance with generally
175 accepted accounting principles and auditing standards by a

176 certified public accountant licensed in this state or another
177 state. The audited, certified financial statements must be for
178 the applying contractor and must have been prepared the latest
179 annual financial statement of the applying contractor completed
180 within the immediately preceding last 12 months. The department
181 may not consider any financial information of the parent entity
182 of the applying contractor, if any. The department may not
183 certify as qualified any applying contractor that fails to
184 submit the audited, certified financial statements required by
185 this subsection. If the application or the annual financial
186 statement shows the financial condition of the applying
187 contractor more than 4 months before ~~prior to~~ the date on which
188 the application is received by the department, a reviewed
189 interim financial statement or an interim audited, certified
190 financial statement prepared in accordance with generally
191 accepted accounting principles and auditing standards by a
192 certified public accountant licensed in this state or another
193 state may be requested by the department ~~statement and an~~
194 ~~updated application must be submitted.~~ The interim financial
195 statements, if requested, ~~statement~~ must cover the period from
196 the end date of the annual statement and must show the financial
197 condition of the applying contractor no more than 4 months
198 before ~~prior to~~ the date that the interim financial statements
199 are ~~statement is~~ received by the department. However, upon the
200 request of the applying contractor, an application and

201 accompanying annual or interim financial statement received by
202 the department within 15 days after either 4-month period under
203 this subsection shall be considered timely. ~~Each required annual~~
204 ~~or interim financial statement must be audited and accompanied~~
205 ~~by the opinion of a certified public accountant.~~ An applying
206 contractor desiring to bid exclusively for the performance of
207 construction contracts with proposed budget estimates of less
208 than \$1 million may submit reviewed annual or reviewed interim
209 financial statements prepared by a certified public accountant.
210 The information required by this subsection is confidential and
211 exempt from s. 119.07(1). The department shall act upon the
212 application for qualification within 30 days after the
213 department determines that the application is complete. The
214 department may waive the requirements of this subsection for
215 projects having a contract price of \$500,000 or less if the
216 department determines that the project is of a noncritical
217 nature and the waiver will not endanger public health, safety,
218 or property.

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

226 | expiration of the certificate of qualification, the ability
227 | factor of the applicant, or the maximum capacity rating of the
228 | applicant. If the department finds that an application is
229 | incomplete or contains inadequate information or information
230 | that cannot be verified, the department may request in writing
231 | that the applicant provide the necessary information to complete
232 | the application or provide the source from which any information
233 | in the application may be verified. If the applicant fails to
234 | comply with the initial written request within a reasonable
235 | period of time as specified therein, the department shall
236 | request the information a second time. If the applicant fails to
237 | comply with the second request within a reasonable period of
238 | time as specified therein, the application shall be denied.

239 | (7) A "contractor" as defined in s. 337.165(1)(d) or his
240 | or her "affiliate" as defined in s. 337.165(1)(a) qualified with
241 | the department under this section may not also qualify under s.
242 | 287.055 or s. 337.105 to provide testing services, construction,
243 | engineering, and inspection services to the department. This
244 | limitation does not apply to any design-build prequalification
245 | under s. 337.11(7) and does not apply when the department
246 | otherwise determines by written order entered at least 30 days
247 | before advertisement that the limitation is not in the best
248 | interests of the public with respect to a particular contract
249 | for testing services, construction, engineering, and inspection
250 | services. This subsection does not authorize a contractor to

251 provide testing services, or provide construction, engineering,
252 and inspection services, to the department in connection with a
253 construction contract under which the contractor is performing
254 any work. Notwithstanding any other provision of law to the
255 contrary, for a project that is wholly or partially funded by
256 the department and administered by a local governmental entity,
257 except for a seaport listed in s. 311.09 or an airport as
258 defined in s. 332.004, the entity performing design and
259 construction engineering and inspection services may not be the
260 same entity.

261 Section 6. Section 337.185, Florida Statutes, is amended
262 to read:

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

265 337.185 State Arbitration Board.—

266 (1) To facilitate the prompt resolution of claims arising
267 out of or in connection with a construction or maintenance
268 contract with the department, the Legislature has established
269 the State Arbitration Board, referred to in this section as the
270 "board."

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

272 (a) "Claim" means the aggregate of all outstanding written
273 requests for additional monetary compensation, time, or other
274 adjustments to the contract, the entitlement or impact of which
275 is disputed with the department and could not be resolved by

276 negotiations between the department and the contractor.

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

280 (c) "Final acceptance" means that the contractor has
 281 completely performed the work provided for under the contract,
 282 the department or its agent has determined that the contractor
 283 has satisfactorily completed the work provided for under the
 284 contract, and the department or its agent has submitted written
 285 notice of final acceptance to the contractor.

286 (3) Every claim in an amount of up to \$250,000 per
 287 contract that could not be resolved by negotiations between the
 288 department and the contractor shall be arbitrated by the board.
 289 An award issued by the board pursuant to this subsection is
 290 final and enforceable by a court of competent jurisdiction.

291 (4) The contractor may submit a claim greater than
 292 \$250,000 up to \$1 million per contract or, upon agreement of the
 293 parties, up to \$2 million per contract to be arbitrated by the
 294 board. An award issued by the board pursuant to this subsection
 295 is final if a request for a trial de novo is not filed within
 296 the time provided by Rule 1.830, Florida Rules of Civil
 297 Procedure. At the trial de novo, the court may not admit
 298 evidence that there has been an arbitration proceeding, the
 299 nature or amount of the award, or any other matter concerning
 300 the conduct of the arbitration proceeding, except that testimony

301 given at an arbitration hearing may be used for any purpose
302 otherwise permitted by the Florida Evidence Code. If a request
303 for trial de novo is not filed within the time provided, the
304 award issued by the board is final and enforceable by a court of
305 competent jurisdiction.

306 (5) An arbitration request may not be made to the board
307 before final acceptance but must be made to the board within 820
308 days after final acceptance.

309 (6) The board shall schedule a hearing within 45 days
310 after an arbitration request and, if possible, shall conduct the
311 hearing within 90 days after the request. The board may
312 administer oaths and conduct the proceedings as provided by the
313 Florida Rules of Civil Procedure and the Florida Evidence Code.
314 The hearing may be conducted informally. Presentation of
315 testimony and evidence shall be kept to a minimum, and matters
316 shall be presented to the board primarily through the statements
317 and arguments of counsel. The board shall address the scope of
318 discovery, presentation of testimony, and evidence at a
319 preliminary hearing by considering the size, subject matter, and
320 complexity of the dispute. Any party to the arbitration may
321 petition the board, for good cause shown, to issue subpoenas for
322 the attendance of witnesses and the production of books,
323 records, documents, and other evidence at the arbitration and
324 may petition the board for orders compelling such attendance and
325 production at the arbitration. Subpoenas shall be served and are

326 enforceable in the manner provided in the Florida Rules of Civil
 327 Procedure.

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

332 (8) The board shall be composed of three members. The
 333 first member shall be appointed by the Secretary of
 334 Transportation, and the second member shall be elected by those
 335 construction or maintenance companies that are under contract
 336 with the department. The third member shall be chosen by
 337 agreement of the first and second members. If the first or
 338 second member has a conflict of interest regarding affiliation
 339 with one of the parties to an arbitration hearing, the
 340 appointing entity shall appoint an alternate member for that
 341 hearing. If the third member has such a conflict of interest,
 342 the first and second members shall select an alternate member.
 343 Each member shall serve a 4-year term. The board shall elect a
 344 chair for each term, who shall be the administrator of the board
 345 and custodian of its records.

346 (9) The presence of all board members is required to
 347 conduct a meeting either in person or by means of communications
 348 media technology used in accordance with rules adopted by the
 349 Administration Commission under s. 120.54(5).

350 (10) The members of the board may receive compensation for

351 the performance of their duties from deposits made by the
352 parties based on an estimate of compensation by the board,
353 except that no employee of the department may receive
354 compensation from the board. All deposits shall be held in
355 escrow in advance of the hearing. Each member eligible for
356 compensation shall be compensated at a rate of \$200 per hour, up
357 to a maximum of \$1,500 per day. Members of the board are
358 entitled to receive per diem and travel expenses pursuant to s.
359 112.061. The board may allocate funds annually for clerical and
360 other administrative services.

361 (11) To cover the cost of administration and initial
362 compensation of the board, the party requesting arbitration
363 shall pay a filing fee to the board, according to a schedule
364 established by the board, of:

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

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

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

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

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

374 (f) Up to \$4,000 for a claim that is more than \$300,000
375 but is \$400,000 or less.

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

377
 378 The board may apportion the filing fees and the cost of
 379 recording and preparing a transcript of the hearing among the
 380 parties in its award.

381 Section 7. Paragraph (c) of subsection (1) of section
 382 348.754, Florida Statutes, is amended to read:

383 348.754 Purposes and powers.—

384 (1)

385 (c) Notwithstanding any other provision of this section to
 386 the contrary, to ensure the continued financial feasibility of
 387 the portion of the Wekiva Parkway to be constructed by the
 388 department, the authority may not, without ~~the~~ prior
 389 consultation with consent of the secretary of the department,
 390 construct any extensions, additions, or improvements to the
 391 expressway system in Lake County.

392 Section 8. Subsections (3) through (19) of section
 393 378.403, Florida Statutes, are renumbered as subsections (4)
 394 through (20), respectively, and a new subsection (3) is added to
 395 that section to read:

396 378.403 Definitions.—As used in this part, the term:

397 (3) "Borrow pit" means an area of land upon which
 398 excavation of surface resources has been conducted, is being
 399 conducted, or is planned to be conducted, as the term is
 400 commonly used in the trade, and is not considered a mine. Such

401 resources are limited to soil, organic soil, sand, or clay that
 402 can be removed with construction excavating equipment and loaded
 403 on a haul truck with no additional processing.

404 Section 9. Section 378.801, Florida Statutes, is amended
 405 to read:

406 378.801 Other resources; notice of intent to extract ~~mine~~
 407 required.—

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

415 (2) The operator's notice of intent to extract ~~mine~~ shall
 416 consist of the operator's estimated life of the extraction
 417 location ~~mine~~ and the operator's signed acknowledgment of the
 418 performance standards provided by s. 378.803.

419 Section 10. Section 378.802, Florida Statutes, is amended
 420 to read:

421 378.802 Existing extraction locations ~~mines~~.—After January
 422 1, 1989, all operators of existing locations ~~mines~~ for the
 423 extraction of resources as described in s. 378.801 shall meet
 424 the performance standards provided by s. 378.803 for any new
 425 surface area disturbed at such locations ~~mines~~.

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2021

426 | Section 11. This act shall take effect July 1, 2021. |