



354102

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2022	.	
	.	
	.	
	.	

Appropriations Subcommittee on Transportation, Tourism, and Economic Development (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 206.46, Florida Statutes, is amended to read:

206.46 State Transportation Trust Fund.—

(3) Unless otherwise specified in the General Appropriations Act, each fiscal year, at least a minimum of 15 percent but not more than 25 percent of all state revenues



354102

11 deposited into the State Transportation Trust Fund, excluding
12 state revenues used for matching federal grants, shall be
13 committed annually by the department for public transportation
14 projects in accordance with chapter 311, ss. 332.003-332.007,
15 chapter 341, and chapter 343.

16 Section 2. Section 337.025, Florida Statutes, is amended to
17 read:

18 337.025 Innovative transportation projects; department to
19 establish program.—

20 (1) The department may establish a program for
21 transportation projects demonstrating innovative techniques of
22 highway and bridge design, construction, maintenance, and
23 finance which have the intended effect of measuring resiliency
24 and structural integrity and controlling time and cost increases
25 on construction projects. Such techniques may include, but are
26 not limited to, state-of-the-art technology for pavement,
27 safety, and other aspects of highway and bridge design,
28 construction, and maintenance; innovative bidding and financing
29 techniques; progressive design-build contracts as specified in
30 subsection (2); accelerated construction procedures; and those
31 techniques that have the potential to reduce project life cycle
32 costs. To the maximum extent practical, the department must use
33 the existing process to award and administer construction and
34 maintenance contracts. When specific innovative techniques are
35 to be used, the department is not required to adhere to those
36 provisions of law that would prevent, preclude, or in any way
37 prohibit the department from using the innovative technique.
38 However, before using an innovative technique that is
39 inconsistent with another provision of law, the department must



354102

40 document in writing the need for the exception and identify what
41 benefits the traveling public and the affected community are
42 anticipated to receive. The department may enter into no more
43 than \$120 million in contracts awarded annually for the purposes
44 authorized by this section.

45 (2) If the department determines that it is in the best
46 interests of the public, the department may combine the design
47 and construction phases of a project into a single contract and
48 select the design-build firm in the early stages of a project to
49 ensure that the design-build firm is part of the collaboration
50 and development of the design as part of a step-by-step
51 progression through construction. Such contract is referred to
52 as a progressive design-build contract. For progressive design-
53 build contracts, the selection and award processes must include
54 a two-phase process. For phase one, the department shall
55 competitively award the contract to a design-build firm based
56 upon qualifications. For phase two, the design-build firm shall
57 competitively bid construction trade subcontractor packages and,
58 based upon these bids, negotiate with the department a fixed
59 firm price or guaranteed maximum price that meets the project
60 budget and scope as advertised in the request for
61 qualifications.

62 (3) The annual cap on contracts provided in subsection (1)
63 does not apply to:

64 (a) Turnpike enterprise projects.

65 (b) Progressive design-build contracts for complex, high-
66 risk projects with a minimum contract value of \$400 million ~~Low-~~
67 ~~bid design-build milling and resurfacing contracts.~~

68 Section 3. Paragraph (a) of subsection (7) of section



354102

69 337.11, Florida Statutes, is amended to read:

70 337.11 Contracting authority of department; bids; emergency
71 repairs, supplemental agreements, and change orders; combined
72 design and construction contracts; progress payments; records;
73 requirements of vehicle registration.-

74 (7) (a) If the department determines that it is in the best
75 interests of the public, the department may combine the design
76 and construction phases of a ~~building, a major bridge, a limited~~
77 ~~access facility, or a rail corridor~~ project into a single
78 contract. Such contract is referred to as a design-build
79 contract. Design-build contracts may be advertised and awarded
80 notwithstanding the requirements of paragraph (3) (c). However,
81 construction activities may not begin on any portion of such
82 projects for which the department has not yet obtained title to
83 the necessary rights-of-way and easements for the construction
84 of that portion of the project has vested in the state or a
85 local governmental entity and all railroad crossing and utility
86 agreements have been executed. Title to rights-of-way shall be
87 deemed to have vested in the state when the title has been
88 dedicated to the public or acquired by prescription.

89 Section 4. Subsection (1) of section 337.1101, Florida
90 Statutes, is amended to read:

91 337.1101 Contracting and procurement authority of the
92 department; settlements; notification required.-

93 (1) When the department, or any entity or enterprise within
94 the department, determines that it is in the best interest of
95 the public to resolve a protest filed in accordance with s.
96 120.57(3) of the award of a contract being procured pursuant to
97 s. 337.11 or related to the purchase of personal property or



354102

98 contractual services being procured pursuant to s. 287.057,
99 through a settlement that requires the department to pay a
100 nonselected responsive bidder a total sum of \$1 million or more,
101 including any amount paid pursuant to s. 334.049, any amount
102 paid pursuant to s. 337.11(8) which is not included in the
103 department's work program approved by the Legislature as part of
104 the General Appropriations Act, or any amount paid pursuant to
105 any other law, the department must:

106 (a) Document in a written memorandum by the secretary the
107 specific reasons that such settlement and payment to a
108 nonselected responsive bidder is in the best interest of the
109 state. The written memorandum must be included and maintained in
110 the department's permanent files concerning the procurement and
111 must include:

112 1. A description of the property rights, patent rights,
113 copyrights, trademarks, or the engineering design or other
114 design work that the department will acquire or retain as a
115 result of such settlement; and

116 2. The specific appropriation in the existing General
117 Appropriations Act which the department intends to use to
118 provide such payment.

119 (b) Provide prior written notification to the President of
120 the Senate, the Speaker of the House of Representatives, the
121 Senate and House of Representatives minority leaders, the chair
122 and vice chair of the Legislative Budget Commission, and the
123 Attorney General at least 5 business days, or as soon thereafter
124 as practicable, before the department makes the settlement
125 agreement final. Such written notification must include the
126 written memorandum required pursuant to paragraph (a).



354102

127 (c) Provide, at the time settlement discussions regarding
128 any such payment have begun in earnest, written notification of
129 such discussions to the President of the Senate, the Speaker of
130 the House of Representatives, the Senate and House of
131 Representatives minority leaders, the chair and vice chair of
132 the Legislative Budget Commission, and the Attorney General.

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

135 337.14 Application for qualification; certificate of
136 qualification; restrictions; request for hearing.—

137 (1) Any contractor desiring to bid for the performance of
138 any construction contract in excess of \$250,000 which the
139 department proposes to let must first be certified by the
140 department as qualified pursuant to this section and rules of
141 the department. The rules of the department must address the
142 qualification of contractors to bid on construction contracts in
143 excess of \$250,000 and must include requirements with respect to
144 the equipment, past record, experience, financial resources, and
145 organizational personnel of the applying contractor which are
146 necessary to perform the specific class of work for which the
147 contractor seeks certification. Any contractor who desires to
148 bid on contracts in excess of \$50 million and who is not
149 qualified and in good standing with the department as of January
150 1, 2019, must first be certified by the department as qualified
151 and must have satisfactorily completed two projects, each in
152 excess of \$15 million, for the department or for any other state
153 department of transportation. The department may limit the
154 dollar amount of any contract upon which a contractor is
155 qualified to bid or the aggregate total dollar volume of



156 | contracts such contractor is allowed to have under contract at
157 | any one time. Each applying contractor seeking qualification to
158 | bid on construction contracts in excess of \$250,000 shall
159 | furnish the department a statement under oath, on such forms as
160 | the department may prescribe, setting forth detailed information
161 | as required on the application. Each application for
162 | certification must be accompanied by audited, certified
163 | financial statements prepared in accordance with generally
164 | accepted accounting principles and auditing standards by a
165 | certified public accountant licensed in this state or another
166 | state. The audited, certified financial statements must be for
167 | the applying contractor and must have been prepared within the
168 | immediately preceding 12 months. The department may not consider
169 | any financial information of the parent entity of the applying
170 | contractor, if any. The department may not certify as qualified
171 | any applying contractor who fails to submit the audited,
172 | certified financial statements required by this subsection. If
173 | the application or the annual financial statement shows the
174 | financial condition of the applying contractor more than 4
175 | months before the date on which the application is received by
176 | the department, the applicant must also submit interim audited,
177 | certified financial statements prepared in accordance with
178 | generally accepted accounting principles and auditing standards
179 | by a certified public accountant licensed in this state or
180 | another state. The interim financial statements must cover the
181 | period from the end date of the annual statement and must show
182 | the financial condition of the applying contractor no more than
183 | 4 months before the date that the interim financial statements
184 | are received by the department. However, upon the request of the



354102

185 applying contractor, an application and accompanying annual or
186 interim financial statement received by the department within 15
187 days after either 4-month period under this subsection shall be
188 considered timely. An applying contractor desiring to bid
189 exclusively for the performance of construction contracts with
190 proposed budget estimates of less than \$2 ~~\$1~~ million may submit
191 reviewed annual or reviewed interim financial statements
192 prepared by a certified public accountant. The information
193 required by this subsection is confidential and exempt from s.
194 119.07(1). The department shall act upon the application for
195 qualification within 30 days after the department determines
196 that the application is complete. The department may waive the
197 requirements of this subsection for projects having a contract
198 price of \$500,000 or less if the department determines that the
199 project is of a noncritical nature and the waiver will not
200 endanger public health, safety, or property.

201 (4) If the applicant is found to possess the prescribed
202 qualifications, the department shall issue to him or her a
203 certificate of qualification that, unless thereafter revoked by
204 the department for good cause, will be valid for a period of 18
205 months after the date of the applicant's financial statement or
206 such shorter period as the department prescribes. Submission of
207 an application does ~~and subsequent approval do~~ not affect
208 expiration of the certificate of qualification, ~~the ability~~
209 ~~factor of the applicant, or the maximum capacity rating of the~~
210 ~~applicant.~~ An applicant may submit a written request with a
211 timely submitted application to keep an existing certificate of
212 qualification in place until the expiration date. If the request
213 is approved by the department, the current maximum capacity



354102

214 rating of the applicant must remain in place until expiration of
215 the current certificate of qualification. If the department
216 finds that an application is incomplete or contains inadequate
217 information or information that cannot be verified, the
218 department may request in writing that the applicant provide the
219 necessary information to complete the application or provide the
220 source from which any information in the application may be
221 verified. If the applicant fails to comply with the initial
222 written request within a reasonable period of time as specified
223 therein, the department shall request the information a second
224 time. If the applicant fails to comply with the second request
225 within a reasonable period of time as specified therein, the
226 application shall be denied.

227 (7) A "contractor" as defined in s. 337.165(1)(d) or his or
228 her "affiliate" as defined in s. 337.165(1)(a) qualified with
229 the department under this section may not also qualify under s.
230 287.055 or s. 337.105 to provide testing services, construction,
231 engineering, and inspection services to the department. This
232 limitation does not apply to any design-build, including
233 progressive design-build, prequalification under s. 337.11(7)
234 and does not apply when the department otherwise determines by
235 written order entered at least 30 days before advertisement that
236 the limitation is not in the best interests of the public with
237 respect to a particular contract for testing services,
238 construction, engineering, and inspection services. This
239 subsection does not authorize a contractor to provide testing
240 services, or provide construction, engineering, and inspection
241 services, to the department in connection with a construction
242 contract under which the contractor is performing any work.



354102

243 Notwithstanding any other provision of law to the contrary, for
244 a project that is wholly or partially funded by the department
245 and administered by a local governmental entity, except for a
246 seaport listed in s. 311.09 or an airport as defined in s.
247 332.004, the entity performing design and construction
248 engineering and inspection services may not be the same entity.

249 Section 6. Section 337.168, Florida Statutes, is amended to
250 read:

251 337.168 Confidentiality of official estimates, ~~identities~~
252 ~~of potential bidders,~~ and bid analysis and monitoring system.—

253 (1) A document or electronic file revealing the official
254 cost estimate of the department of a project is confidential and
255 exempt from the provisions of s. 119.07(1) until the contract
256 for the project has been executed or until the project is no
257 longer under active consideration.

258 ~~(2) A document that reveals the identity of a person who~~
259 ~~has requested or obtained a bid package, plan, or specifications~~
260 ~~pertaining to any project to be let by the department is~~
261 ~~confidential and exempt from the provisions of s. 119.07(1) for~~
262 ~~the period that begins 2 working days before the deadline for~~
263 ~~obtaining bid packages, plans, or specifications and ends with~~
264 ~~the letting of the bid. A document that reveals the identity of~~
265 ~~a person who has requested or obtained a bid package, plan, or~~
266 ~~specifications pertaining to any project to be let by the~~
267 ~~department before the 2 working days before the deadline for~~
268 ~~obtaining bid packages, plans, or specifications remains a~~
269 ~~public record subject to s. 119.07(1).~~

270 ~~(3)~~ The bid analysis and monitoring system of the
271 department is confidential and exempt from the provisions of s.



354102

272 119.07(1). This exemption applies to all system documentation,
273 input, computer processes and programs, electronic data files,
274 and output, but does not apply to the actual source documents,
275 unless otherwise exempted under other provisions of law.

276 Section 7. This act shall take effect July 1, 2022.

277

278 ===== T I T L E A M E N D M E N T =====

279 And the title is amended as follows:

280 Delete everything before the enacting clause
281 and insert:

282 A bill to be entitled
283 An act relating to transportation projects; amending
284 s. 206.46, F.S.; revising the requirement for the
285 annual commitment of State Transportation Trust Fund
286 revenues for public transportation projects by the
287 Department of Transportation; amending s. 337.025,
288 F.S.; providing that the department's program for
289 innovative transportation projects may include
290 progressive design-build contracts; authorizing the
291 department to enter into a progressive design-build
292 contract if it makes a certain determination;
293 providing procedures and requirements for progressive
294 design-build contracts; revising contracts exempt from
295 a specified annual monetary cap on contracts; amending
296 s. 337.11, F.S.; revising the department's authority
297 relating to design-build contracts; amending s.
298 337.1101, F.S.; revising the calculation of a certain
299 settlement paid to a nonselected responsive bidder
300 which requires the department to maintain certain



354102

301 records and provide certain notices to the Legislature
302 and Attorney General; amending s. 337.14, F.S.;
303 revising a dollar limit of proposed budget estimates
304 of construction contracts for which an applying
305 contractor may submit certain financial statements;
306 revising procedures relating to certificates of
307 qualification issued by the department to construction
308 contractors seeking certification to bid on certain
309 contracts; exempting progressive design-build
310 prequalifications from a certain restriction on
311 contractors and their affiliates; amending s. 337.168,
312 F.S.; deleting a public records exemption for certain
313 documents revealing the identity of a potential
314 bidder; providing an effective date.