

By the Committees on Appropriations; and Transportation; and
Senator Hooper

576-03554-22

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1 A bill to be entitled
2 An act relating to transportation projects; amending
3 s. 206.46, F.S.; revising the requirement for the
4 annual commitment of State Transportation Trust Fund
5 revenues for public transportation projects by the
6 Department of Transportation; amending s. 337.025,
7 F.S.; providing that the department's program for
8 innovative transportation projects may include
9 progressive design-build contracts; authorizing the
10 department to enter into a progressive design-build
11 contract if it makes a certain determination;
12 providing procedures and requirements for progressive
13 design-build contracts; revising contracts exempt from
14 a specified annual monetary cap on contracts; amending
15 s. 337.11, F.S.; revising the department's authority
16 relating to design-build contracts; amending s.
17 337.1101, F.S.; revising the calculation of a certain
18 settlement paid to a nonselected responsive bidder
19 which requires the department to maintain certain
20 records and provide certain notices to the Legislature
21 and Attorney General; amending s. 337.14, F.S.;
22 revising a dollar limit of proposed budget estimates
23 of construction contracts for which an applying
24 contractor may submit certain financial statements;
25 revising procedures relating to certificates of
26 qualification issued by the department to construction
27 contractors seeking certification to bid on certain
28 contracts; exempting progressive design-build
29 prequalifications from a certain restriction on

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30 contractors and their affiliates; amending s. 337.168,
31 F.S.; deleting a public records exemption for certain
32 documents revealing the identity of a potential
33 bidder; providing an effective date.

34

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

36

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

39 206.46 State Transportation Trust Fund.—

40 (3) Unless otherwise specified in the General
41 Appropriations Act, each fiscal year, at least a minimum of 15
42 percent but not more than 25 percent of all state revenues
43 deposited into the State Transportation Trust Fund, excluding
44 state revenues used for matching federal grants, shall be
45 committed annually by the department for public transportation
46 projects in accordance with chapter 311, ss. 332.003-332.007,
47 chapter 341, and chapter 343.

48 Section 2. Section 337.025, Florida Statutes, is amended to
49 read:

50 337.025 Innovative transportation projects; department to
51 establish program.—

52 (1) The department may establish a program for
53 transportation projects demonstrating innovative techniques of
54 highway and bridge design, construction, maintenance, and
55 finance which have the intended effect of measuring resiliency
56 and structural integrity and controlling time and cost increases
57 on construction projects. Such techniques may include, but are
58 not limited to, state-of-the-art technology for pavement,

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59 safety, and other aspects of highway and bridge design,
60 construction, and maintenance; innovative bidding and financing
61 techniques; progressive design-build contracts as specified in
62 subsection (2); accelerated construction procedures; and those
63 techniques that have the potential to reduce project life cycle
64 costs. To the maximum extent practical, the department must use
65 the existing process to award and administer construction and
66 maintenance contracts. When specific innovative techniques are
67 to be used, the department is not required to adhere to those
68 provisions of law that would prevent, preclude, or in any way
69 prohibit the department from using the innovative technique.
70 However, before using an innovative technique that is
71 inconsistent with another provision of law, the department must
72 document in writing the need for the exception and identify what
73 benefits the traveling public and the affected community are
74 anticipated to receive. The department may enter into no more
75 than \$120 million in contracts awarded annually for the purposes
76 authorized by this section.

77 (2) If the department determines that it is in the best
78 interests of the public, the department may combine the design
79 and construction phases of a project into a single contract and
80 select the design-build firm in the early stages of a project to
81 ensure that the design-build firm is part of the collaboration
82 and development of the design as part of a step-by-step
83 progression through construction. Such contract is referred to
84 as a progressive design-build contract. For progressive design-
85 build contracts, the selection and award processes must include
86 a two-phase process. For phase one, the department shall
87 competitively award the contract to a design-build firm based

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88 upon qualifications. For phase two, the design-build firm shall
89 competitively bid construction trade subcontractor packages and,
90 based upon these bids, negotiate with the department a fixed
91 firm price or guaranteed maximum price that meets the project
92 budget and scope as advertised in the request for
93 qualifications.

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

96 (a) Turnpike enterprise projects.

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

100 Section 3. Paragraph (a) of subsection (7) of section
101 337.11, Florida Statutes, is amended to read:

102 337.11 Contracting authority of department; bids; emergency
103 repairs, supplemental agreements, and change orders; combined
104 design and construction contracts; progress payments; records;
105 requirements of vehicle registration.-

106 (7) (a) If the department determines that it is in the best
107 interests of the public, the department may combine the design
108 and construction phases of a ~~building, a major bridge, a limited~~
109 ~~access facility, or a rail corridor~~ project into a single
110 contract. Such contract is referred to as a design-build
111 contract. Design-build contracts may be advertised and awarded
112 notwithstanding the requirements of paragraph (3) (c). However,
113 construction activities may not begin on any portion of such
114 projects for which the department has not yet obtained title to
115 the necessary rights-of-way and easements for the construction
116 of that portion of the project has vested in the state or a

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117 local governmental entity and all railroad crossing and utility
118 agreements have been executed. Title to rights-of-way shall be
119 deemed to have vested in the state when the title has been
120 dedicated to the public or acquired by prescription.

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

123 337.1101 Contracting and procurement authority of the
124 department; settlements; notification required.-

125 (1) When the department, or any entity or enterprise within
126 the department, determines that it is in the best interest of
127 the public to resolve a protest filed in accordance with s.
128 120.57(3) of the award of a contract being procured pursuant to
129 s. 337.11 or related to the purchase of personal property or
130 contractual services being procured pursuant to s. 287.057,
131 through a settlement that requires the department to pay a
132 nonselected responsive bidder a total sum of \$1 million or more,
133 including any amount paid pursuant to s. 334.049, any amount
134 paid pursuant to s. 337.11(8) which is not included in the
135 department's work program approved by the Legislature as part of
136 the General Appropriations Act, or any amount paid pursuant to
137 any other law, the department must:

138 (a) Document in a written memorandum by the secretary the
139 specific reasons that such settlement and payment to a
140 nonselected responsive bidder is in the best interest of the
141 state. The written memorandum must be included and maintained in
142 the department's permanent files concerning the procurement and
143 must include:

144 1. A description of the property rights, patent rights,
145 copyrights, trademarks, or the engineering design or other

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146 design work that the department will acquire or retain as a
147 result of such settlement; and

148 2. The specific appropriation in the existing General
149 Appropriations Act which the department intends to use to
150 provide such payment.

151 (b) Provide prior written notification to the President of
152 the Senate, the Speaker of the House of Representatives, the
153 Senate and House of Representatives minority leaders, the chair
154 and vice chair of the Legislative Budget Commission, and the
155 Attorney General at least 5 business days, or as soon thereafter
156 as practicable, before the department makes the settlement
157 agreement final. Such written notification must include the
158 written memorandum required pursuant to paragraph (a).

159 (c) Provide, at the time settlement discussions regarding
160 any such payment have begun in earnest, written notification of
161 such discussions to the President of the Senate, the Speaker of
162 the House of Representatives, the Senate and House of
163 Representatives minority leaders, the chair and vice chair of
164 the Legislative Budget Commission, and the Attorney General.

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

167 337.14 Application for qualification; certificate of
168 qualification; restrictions; request for hearing.—

169 (1) Any contractor desiring to bid for the performance of
170 any construction contract in excess of \$250,000 which the
171 department proposes to let must first be certified by the
172 department as qualified pursuant to this section and rules of
173 the department. The rules of the department must address the
174 qualification of contractors to bid on construction contracts in

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175 excess of \$250,000 and must include requirements with respect to
176 the equipment, past record, experience, financial resources, and
177 organizational personnel of the applying contractor which are
178 necessary to perform the specific class of work for which the
179 contractor seeks certification. Any contractor who desires to
180 bid on contracts in excess of \$50 million and who is not
181 qualified and in good standing with the department as of January
182 1, 2019, must first be certified by the department as qualified
183 and must have satisfactorily completed two projects, each in
184 excess of \$15 million, for the department or for any other state
185 department of transportation. The department may limit the
186 dollar amount of any contract upon which a contractor is
187 qualified to bid or the aggregate total dollar volume of
188 contracts such contractor is allowed to have under contract at
189 any one time. Each applying contractor seeking qualification to
190 bid on construction contracts in excess of \$250,000 shall
191 furnish the department a statement under oath, on such forms as
192 the department may prescribe, setting forth detailed information
193 as required on the application. Each application for
194 certification must be accompanied by audited, certified
195 financial statements prepared in accordance with generally
196 accepted accounting principles and auditing standards by a
197 certified public accountant licensed in this state or another
198 state. The audited, certified financial statements must be for
199 the applying contractor and must have been prepared within the
200 immediately preceding 12 months. The department may not consider
201 any financial information of the parent entity of the applying
202 contractor, if any. The department may not certify as qualified
203 any applying contractor who fails to submit the audited,

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204 certified financial statements required by this subsection. If
205 the application or the annual financial statement shows the
206 financial condition of the applying contractor more than 4
207 months before the date on which the application is received by
208 the department, the applicant must also submit interim audited,
209 certified financial statements prepared in accordance with
210 generally accepted accounting principles and auditing standards
211 by a certified public accountant licensed in this state or
212 another state. The interim financial statements must cover the
213 period from the end date of the annual statement and must show
214 the financial condition of the applying contractor no more than
215 4 months before the date that the interim financial statements
216 are received by the department. However, upon the request of the
217 applying contractor, an application and accompanying annual or
218 interim financial statement received by the department within 15
219 days after either 4-month period under this subsection shall be
220 considered timely. An applying contractor desiring to bid
221 exclusively for the performance of construction contracts with
222 proposed budget estimates of less than \$2 ~~\$1~~ million may submit
223 reviewed annual or reviewed interim financial statements
224 prepared by a certified public accountant. The information
225 required by this subsection is confidential and exempt from s.
226 119.07(1). The department shall act upon the application for
227 qualification within 30 days after the department determines
228 that the application is complete. The department may waive the
229 requirements of this subsection for projects having a contract
230 price of \$500,000 or less if the department determines that the
231 project is of a noncritical nature and the waiver will not
232 endanger public health, safety, or property.

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233 (4) If the applicant is found to possess the prescribed
234 qualifications, the department shall issue to him or her a
235 certificate of qualification that, unless thereafter revoked by
236 the department for good cause, will be valid for a period of 18
237 months after the date of the applicant's financial statement or
238 such shorter period as the department prescribes. Submission of
239 an application does ~~and subsequent approval do~~ not affect
240 expiration of the certificate of qualification, ~~the ability~~
241 ~~factor of the applicant, or the maximum capacity rating of the~~
242 ~~applicant.~~ An applicant may submit a written request with a
243 timely submitted application to keep an existing certificate of
244 qualification in place until the expiration date. If the request
245 is approved by the department, the current maximum capacity
246 rating of the applicant must remain in place until expiration of
247 the current certificate of qualification. If the department
248 finds that an application is incomplete or contains inadequate
249 information or information that cannot be verified, the
250 department may request in writing that the applicant provide the
251 necessary information to complete the application or provide the
252 source from which any information in the application may be
253 verified. If the applicant fails to comply with the initial
254 written request within a reasonable period of time as specified
255 therein, the department shall request the information a second
256 time. If the applicant fails to comply with the second request
257 within a reasonable period of time as specified therein, the
258 application shall be denied.

259 (7) A "contractor" as defined in s. 337.165(1)(d) or his or
260 her "affiliate" as defined in s. 337.165(1)(a) qualified with
261 the department under this section may not also qualify under s.

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262 287.055 or s. 337.105 to provide testing services, construction,
263 engineering, and inspection services to the department. This
264 limitation does not apply to any design-build, including
265 progressive design-build, prequalification under s. 337.11(7)
266 and does not apply when the department otherwise determines by
267 written order entered at least 30 days before advertisement that
268 the limitation is not in the best interests of the public with
269 respect to a particular contract for testing services,
270 construction, engineering, and inspection services. This
271 subsection does not authorize a contractor to provide testing
272 services, or provide construction, engineering, and inspection
273 services, to the department in connection with a construction
274 contract under which the contractor is performing any work.
275 Notwithstanding any other provision of law to the contrary, for
276 a project that is wholly or partially funded by the department
277 and administered by a local governmental entity, except for a
278 seaport listed in s. 311.09 or an airport as defined in s.
279 332.004, the entity performing design and construction
280 engineering and inspection services may not be the same entity.

281 Section 6. Section 337.168, Florida Statutes, is amended to
282 read:

283 337.168 Confidentiality of official estimates, ~~identities~~
284 ~~of potential bidders~~, and bid analysis and monitoring system.—

285 (1) A document or electronic file revealing the official
286 cost estimate of the department of a project is confidential and
287 exempt from the provisions of s. 119.07(1) until the contract
288 for the project has been executed or until the project is no
289 longer under active consideration.

290 (2) ~~A document that reveals the identity of a person who~~

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291 ~~has requested or obtained a bid package, plan, or specifications~~
292 ~~pertaining to any project to be let by the department is~~
293 ~~confidential and exempt from the provisions of s. 119.07(1) for~~
294 ~~the period that begins 2 working days before the deadline for~~
295 ~~obtaining bid packages, plans, or specifications and ends with~~
296 ~~the letting of the bid. A document that reveals the identity of~~
297 ~~a person who has requested or obtained a bid package, plan, or~~
298 ~~specifications pertaining to any project to be let by the~~
299 ~~department before the 2 working days before the deadline for~~
300 ~~obtaining bid packages, plans, or specifications remains a~~
301 ~~public record subject to s. 119.07(1).~~

302 ~~(3)~~ The bid analysis and monitoring system of the
303 department is confidential and exempt from the provisions of s.
304 119.07(1). This exemption applies to all system documentation,
305 input, computer processes and programs, electronic data files,
306 and output, but does not apply to the actual source documents,
307 unless otherwise exempted under other provisions of law.

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