

By Senator Hooper

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1 A bill to be entitled
2 An act relating to the Department of Transportation;
3 amending s. 206.46, F.S.; requiring that no more than
4 20 percent of revenues derived from certain taxes and
5 fees and deposited into the State Transportation Trust
6 Fund be committed annually by the department for
7 public transit projects; amending s. 334.179, F.S.;
8 revising the definition of the term "certified for
9 use" in regard to permissible use of aggregates;
10 prohibiting a producer from certifying shipments of
11 aggregates which are not in compliance with department
12 rules; requiring the department to certify aggregates
13 in accordance with specified rules; amending s.
14 337.025, F.S.; authorizing the department to include
15 progressive design-build contracts in its program for
16 innovative transportation; authorizing the department
17 to enter into a progressive design-build contract if
18 it makes a certain determination; providing
19 requirements for progressive design-build contracts;
20 revising the exemption from a specified annual
21 monetary cap on certain contracts; amending s. 337.11,
22 F.S.; revising the department's authority relating to
23 design-build contracts; requiring the department to
24 adopt procedures for administering progressive design-
25 build contracts; requiring that contracts let by the
26 department for performance of bridge construction or
27 maintenance over navigable waters contain certain
28 insurance requirements; requiring the department to
29 implement and track strategies to reduce the cost of

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30 projects while ensuring such projects meet federal and
31 state standards; authorizing the department to share a
32 portion of cost savings with certain consultants under
33 specified circumstances; providing that payment to
34 consultants may not exceed a specified amount;
35 amending s. 337.1101, F.S.; revising the calculation
36 of a certain settlement paid to a nonselected
37 responsive bidder which requires the department to
38 maintain certain records and provide certain notices
39 to the Legislature and the Attorney General; amending
40 s. 337.14, F.S.; revising the dollar limit of proposed
41 budget estimates of construction contracts for which
42 an applying contractor may submit certain financial
43 statements; revising procedures relating to
44 certificates of qualification issued by the department
45 to construction contractors seeking certification to
46 bid on certain contracts; exempting progressive
47 design-build prequalifications from a certain
48 restriction on contractors and their affiliates;
49 amending s. 337.168, F.S.; deleting a public records
50 exemption for certain documents that reveal the
51 identity of a potential bidder; amending s. 338.223,
52 F.S.; deleting a specified timeframe required for the
53 department's request for legislative approval of
54 proposed turnpike projects; creating s. 334.180, F.S.;
55 prohibiting local governments from refusing to accept
56 electronic tickets approved by the department for use
57 as official records for material deliveries on local
58 government projects; providing an effective date.

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

Section 1. Subsection (6) is added to section 206.46, Florida Statutes, to read:

206.46 State Transportation Trust Fund.—

(6) The department may not annually commit to public transit projects in accordance with chapter 341 more than 20 percent of the revenues derived from state fuel taxes and motor vehicle license-related fees deposited into the State Transportation Trust Fund.

Section 2. Section 334.179, Florida Statutes, is amended to read:

334.179 Department standards or specifications for permissible use of aggregates.—

(1) Notwithstanding any law, rule, or ordinance to the contrary, a local government may not adopt standards or specifications that are contrary to the department standards or specifications for permissible use of aggregates that have been certified for use. For purposes of this section, the term “certified for use” means that the aggregates have been certified by the producer in compliance ~~accordance~~ with department rules. This section does not apply to a multicounty independent special district created by a special act of the Legislature.

(2) A producer may not certify any shipment of aggregates to a non-department customer unless such shipment is in compliance with department rules. Notwithstanding the provisions of this section, the department shall certify aggregates in

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88 accordance with rules adopted pursuant to s. 334.044(10).

89 Section 3. Section 337.025, Florida Statutes, is amended to
90 read:

91 337.025 Innovative transportation projects; department to
92 establish program.—

93 (1) The department may establish a program for
94 transportation projects demonstrating innovative techniques of
95 highway and bridge design, construction, maintenance, and
96 finance which have the intended effect of measuring resiliency
97 and structural integrity and controlling time and cost increases
98 on construction projects. Such techniques may include, but are
99 not limited to, state-of-the-art technology for pavement,
100 safety, and other aspects of highway and bridge design,
101 construction, and maintenance; innovative bidding and financing
102 techniques; progressive design-build contracts as specified in
103 subsection (2); accelerated construction procedures; and those
104 techniques that have the potential to reduce project life cycle
105 costs. To the maximum extent practical, the department must use
106 the existing process to award and administer construction and
107 maintenance contracts. When specific innovative techniques are
108 to be used, the department is not required to adhere to those
109 provisions of law that would prevent, preclude, or in any way
110 prohibit the department from using the innovative technique.
111 However, before using an innovative technique that is
112 inconsistent with another provision of law, the department must
113 document in writing the need for the exception and identify the
114 ~~what~~ benefits the traveling public and the affected community
115 are anticipated to receive. The department may enter into no
116 more than \$120 million in contracts awarded annually for the

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117 purposes authorized by this section.

118 (2) If the department determines that it is in the best
119 interests of the public, the department may combine the design
120 and construction phases of a project into a single contract and
121 select the design-build firm in the early stages of a project to
122 ensure that the design-build firm is part of the collaboration
123 and development of the design and step-by-step progression
124 through construction. Such contract is referred to as a
125 progressive design-build contract. For progressive design-build
126 contracts, the selection and award processes must include a two-
127 phase process. For phase one, the department shall competitively
128 award the contract to a design-build firm based upon the firm's
129 qualifications. For phase two, the design-build firm must
130 solicit and receive competitive bids on all construction trade
131 subcontractor packages and, based upon these bids, negotiate
132 with the department a fixed firm price or guaranteed maximum
133 price that meets the project budget and scope as advertised in
134 the department's request for qualifications.

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

137 (a) Turnpike enterprise projects.

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

141 Section 4. Present subsections (15) and (16) of section
142 337.11, Florida Statutes, are redesignated as subsections (18)
143 and (19), respectively, new subsections (15) and (16) and
144 subsection (17) are added to that section, and paragraphs (a)
145 and (b) of subsection (7) of that section are amended, to read:

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146 337.11 Contracting authority of department; bids; emergency
147 repairs, supplemental agreements, and change orders; combined
148 design and construction contracts; progress payments; records;
149 requirements of vehicle registration.-

150 (7) (a) If the department determines that it is in the best
151 interests of the public, the department may combine the design
152 and construction phases of a ~~building, a major bridge, a limited~~
153 ~~access facility, or a rail corridor~~ project into a single
154 contract. Such contract is referred to as a design-build
155 contract. Design-build contracts may be advertised and awarded
156 notwithstanding the requirements of paragraph (3) (c). However,
157 construction activities may not begin on any portion of such
158 projects for which the department has not yet obtained title to
159 the necessary rights-of-way and easements for the construction
160 of that portion of the project has vested in the state or a
161 local governmental entity and all railroad crossing and utility
162 agreements have been executed. Title to rights-of-way is ~~shall~~
163 ~~be deemed to have~~ vested in the state when the title has been
164 dedicated to the public or acquired by prescription.

165 (b) The department shall adopt by rule procedures for
166 administering design-build contracts, including progressive
167 design-build contracts. Such procedures ~~shall~~ include, but are
168 not ~~be~~ limited to:

- 169 1. Prequalification requirements.
- 170 2. Public announcement procedures.
- 171 3. Scope of service requirements.
- 172 4. Letters of interest requirements.
- 173 5. Short-listing criteria and procedures.
- 174 6. Bid proposal requirements.

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175 7. Technical review committee.

176 8. Selection and award processes.

177 9. Stipend requirements.

178 (15) Each contract let by the department for performance of
179 bridge construction or maintenance over navigable waters must
180 contain a provision requiring marine general liability
181 insurance, in an amount to be determined by the department,
182 which covers third-party personal injury and property damage
183 caused by vessels used by the contractor in the performance of
184 the work.

185 (16) The department shall implement strategies to reduce
186 the cost of all project phases, including design, construction,
187 and inspection, while ensuring that the design and construction
188 of projects meet applicable federal and state standards, and
189 shall track such strategies and the projected savings.

190 (17) The department may share a portion of the construction
191 cost savings realized due to a change in the construction
192 contract design and scope, initiated after execution of the
193 contract, with a design services consultant or a construction
194 engineering and inspection services consultant in accordance
195 with the extent that the consultant's input and involvement
196 contributed to such savings. The amount paid to a consultant
197 pursuant to this subsection may not exceed 10 percent of the
198 construction cost savings realized.

199 Section 5. Subsection (1) of section 337.1101, Florida
200 Statutes, is amended to read:

201 337.1101 Contracting and procurement authority of the
202 department; settlements; notification required.-

203 (1) When the department, or any entity or enterprise within

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204 the department, determines that it is in the best interest of
205 the public to resolve a protest filed in accordance with s.
206 120.57(3) of the award of a contract being procured pursuant to
207 s. 337.11 or related to the purchase of personal property or
208 contractual services being procured pursuant to s. 287.057,
209 through a settlement that requires the department to pay a
210 nonselected responsive bidder a total sum of \$1 million or more,
211 including any amount paid pursuant to s. 334.049, any amount
212 paid pursuant to s. 337.11(8) which is not included in the
213 department's work program approved by the Legislature as part of
214 the General Appropriations Act, or any amount paid pursuant to
215 any other law, the department must:

216 (a) Document in a written memorandum by the secretary the
217 specific reasons that such settlement and payment to a
218 nonselected responsive bidder is in the best interest of the
219 state. The written memorandum must be included and maintained in
220 the department's permanent files concerning the procurement and
221 must include:

222 1. A description of the property rights, patent rights,
223 copyrights, trademarks, or the engineering design or other
224 design work that the department will acquire or retain as a
225 result of such settlement; and

226 2. The specific appropriation in the existing General
227 Appropriations Act which the department intends to use to
228 provide such payment.

229 (b) Provide prior written notification to the President of
230 the Senate, the Speaker of the House of Representatives, the
231 Senate and House of Representatives minority leaders, the chair
232 and vice chair of the Legislative Budget Commission, and the

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233 Attorney General at least 5 business days, or as soon thereafter
234 as practicable, before the department makes the settlement
235 agreement final. Such written notification must include the
236 written memorandum required pursuant to paragraph (a).

237 (c) Provide, at the time settlement discussions regarding
238 any such payment have begun in earnest, written notification of
239 such discussions to the President of the Senate, the Speaker of
240 the House of Representatives, the Senate and House of
241 Representatives minority leaders, the chair and vice chair of
242 the Legislative Budget Commission, and the Attorney General.

243 Section 6. Subsections (1), (4), and (7) of section 337.14,
244 Florida Statutes, are amended to read:

245 337.14 Application for qualification; certificate of
246 qualification; restrictions; request for hearing.—

247 (1) A ~~Any~~ contractor desiring to bid for the performance of
248 any construction contract in excess of \$250,000 which the
249 department proposes to let must first be certified by the
250 department as qualified pursuant to this section and rules of
251 the department. The rules of the department must address the
252 qualification of contractors to bid on construction contracts in
253 excess of \$250,000 and must include requirements with respect to
254 the equipment, past record, experience, financial resources, and
255 organizational personnel of the applying contractor which are
256 necessary to perform the specific class of work for which the
257 contractor seeks certification. Any contractor who desires to
258 bid on contracts in excess of \$50 million and who is not
259 qualified and in good standing with the department as of January
260 1, 2019, must first be certified by the department as qualified
261 and must have satisfactorily completed two projects, each in

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262 excess of \$15 million, for the department or for any other state
263 department of transportation. The department may limit the
264 dollar amount of any contract upon which a contractor is
265 qualified to bid or the aggregate total dollar volume of
266 contracts such contractor is allowed to have under contract at
267 any one time. Each applying contractor seeking qualification to
268 bid on construction contracts in excess of \$250,000 shall
269 furnish the department a statement under oath, on such forms as
270 the department may prescribe, setting forth detailed information
271 as required on the application. Each application for
272 certification must be accompanied by audited, certified
273 financial statements prepared in accordance with generally
274 accepted accounting principles and auditing standards by a
275 certified public accountant licensed in this state or another
276 state. The audited, certified financial statements must be for
277 the applying contractor and must have been prepared within the
278 immediately preceding 12 months. The department may not consider
279 any financial information of the parent entity of the applying
280 contractor, if any. The department may not certify as qualified
281 any applying contractor who fails to submit the audited,
282 certified financial statements required by this subsection. If
283 the application or the annual financial statement shows the
284 financial condition of the applying contractor more than 4
285 months before the date on which the application is received by
286 the department, the applicant must also submit interim audited,
287 certified financial statements prepared in accordance with
288 generally accepted accounting principles and auditing standards
289 by a certified public accountant licensed in this state or
290 another state. The interim financial statements must cover the

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291 period from the end date of the annual statement and must show
292 the financial condition of the applying contractor no more than
293 4 months before the date that the interim financial statements
294 are received by the department. However, upon the request of the
295 applying contractor, an application and accompanying annual or
296 interim financial statement received by the department within 15
297 days after either 4-month period under this subsection shall be
298 considered timely. An applying contractor desiring to bid
299 exclusively for the performance of construction contracts with
300 proposed budget estimates of less than \$2 ~~\$1~~ million may submit
301 reviewed annual or reviewed interim financial statements
302 prepared by a certified public accountant. The information
303 required by this subsection is confidential and exempt from s.
304 119.07(1). The department shall act upon the application for
305 qualification within 30 days after the department determines
306 that the application is complete. The department may waive the
307 requirements of this subsection for projects having a contract
308 price of \$500,000 or less if the department determines that the
309 project is of a noncritical nature and that the waiver will not
310 endanger public health, safety, or property.

311 (4) If the applicant is found to possess the prescribed
312 qualifications, the department must ~~shall~~ issue to him or her a
313 certificate of qualification that, unless thereafter revoked by
314 the department for good cause, will be valid for a period of 18
315 months after the date of the applicant's financial statement or
316 such shorter period as the department prescribes. Submission of
317 an application does ~~and subsequent approval do~~ not affect
318 expiration of the certificate of qualification, ~~the ability~~
319 ~~factor of the applicant, or the maximum capacity rating of the~~

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320 ~~applicant.~~ An applicant may submit a written request with a
321 timely submitted application to keep an existing certificate of
322 qualification in place until the expiration date. If the request
323 is approved by the department, the current maximum capacity
324 rating of the applicant must remain in place until expiration of
325 the current certificate of qualification. If the department
326 finds that an application is incomplete or contains inadequate
327 information or information that cannot be verified, the
328 department may request in writing that the applicant provide the
329 necessary information to complete the application or provide the
330 source from which any information in the application may be
331 verified. If the applicant fails to comply with the initial
332 written request within a reasonable period of time as specified
333 therein, the department must ~~shall~~ request the information a
334 second time. If the applicant fails to comply with the second
335 request within a reasonable period of time as specified therein,
336 the application must ~~shall~~ be denied.

337 (7) A "contractor" as defined in s. 337.165(1)(d) or his or
338 her "affiliate" as defined in s. 337.165(1)(a) qualified with
339 the department under this section may not also qualify under s.
340 287.055 or s. 337.105 to provide testing services, construction,
341 engineering, and inspection services to the department. This
342 limitation does not apply to any design-build, including
343 progressive design-build, prequalification under s. 337.11(7)
344 and does not apply when the department otherwise determines by
345 written order entered at least 30 days before advertisement that
346 the limitation is not in the best interests of the public with
347 respect to a particular contract for testing services,
348 construction, engineering, and inspection services. This

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349 subsection does not authorize a contractor to provide testing
350 services, or provide construction, engineering, and inspection
351 services, to the department in connection with a construction
352 contract under which the contractor is performing any work.
353 Notwithstanding any other provision of law to the contrary, for
354 a project that is wholly or partially funded by the department
355 and administered by a local governmental entity, except for a
356 seaport listed in s. 311.09 or an airport as defined in s.
357 332.004, the entity performing design and construction
358 engineering and inspection services may not be the same entity.

359 Section 7. Section 337.168, Florida Statutes, is amended to
360 read:

361 337.168 Confidentiality of official estimates, ~~identities~~
362 ~~of potential bidders,~~ and bid analysis and monitoring system.-

363 (1) A document or electronic file revealing the official
364 cost estimate of the department of a project is confidential and
365 exempt from the provisions of s. 119.07(1) until the contract
366 for the project has been executed or until the project is no
367 longer under active consideration.

368 ~~(2) A document that reveals the identity of a person who~~
369 ~~has requested or obtained a bid package, plan, or specifications~~
370 ~~pertaining to any project to be let by the department is~~
371 ~~confidential and exempt from the provisions of s. 119.07(1) for~~
372 ~~the period that begins 2 working days before the deadline for~~
373 ~~obtaining bid packages, plans, or specifications and ends with~~
374 ~~the letting of the bid. A document that reveals the identity of~~
375 ~~a person who has requested or obtained a bid package, plan, or~~
376 ~~specifications pertaining to any project to be let by the~~
377 ~~department before the 2 working days before the deadline for~~

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378 ~~obtaining bid packages, plans, or specifications remains a~~
379 ~~public record subject to s. 119.07(1).~~

380 ~~(3)~~ The bid analysis and monitoring system of the
381 department is confidential and exempt from the provisions of s.
382 119.07(1). This exemption applies to all system documentation,
383 input, computer processes and programs, electronic data files,
384 and output, but does not apply to the actual source documents,
385 unless otherwise exempted under other provisions of law.

386 Section 8. Paragraph (a) of subsection (1) of section
387 338.223, Florida Statutes, is amended to read:

388 338.223 Proposed turnpike projects.—

389 (1) (a) Any proposed project to be constructed or acquired
390 as part of the turnpike system and any turnpike improvement must
391 ~~shall~~ be included in the tentative work program. A proposed
392 project or group of proposed projects may not be added to the
393 turnpike system unless such project or projects are determined
394 to be economically feasible and a statement of environmental
395 feasibility has been completed for such project or projects and
396 such projects are determined to be consistent, to the maximum
397 extent feasible, with approved local government comprehensive
398 plans of the local governments in which such projects are
399 located. The department may authorize engineering studies,
400 traffic studies, environmental studies, and other expert studies
401 of the location, costs, economic feasibility, and practicality
402 of proposed turnpike projects throughout this ~~the~~ state and may
403 proceed with the design phase of such projects. ~~The department~~
404 ~~may not request legislative approval of a proposed turnpike~~
405 ~~project until the design phase of that project is at least 30~~
406 ~~percent complete.~~ If a proposed project or group of proposed

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407 projects is found to be economically feasible, consistent, to
408 the maximum extent feasible, with approved local government
409 comprehensive plans of the local governments in which such
410 projects are located, and a favorable statement of environmental
411 feasibility has been completed, the department, with the
412 approval of the Legislature, shall, after the receipt of all
413 necessary permits, construct, maintain, and operate such
414 turnpike projects.

415 Section 9. Section 334.180, Florida Statutes, is created to
416 read:

417 334.180 Department electronic tickets.—Notwithstanding any
418 law, rule, or ordinance to the contrary, a local government may
419 not refuse to accept electronic tickets approved by the
420 department for use on department projects as an official record
421 for material deliveries on local government projects.

422 Section 10. This act shall take effect July 1, 2023.